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Monday
November 1, 1982

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

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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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 82-335]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of suppressive areas under the witchweed quarantine and regulations by adding areas in 5 counties in North Carolina and 1 county in South Carolina to the list of suppressive areas; by deleting areas in 18 counties in North Carolina and South Carolina from the list of suppressive areas; and by deleting 1 entire county in South Carolina from the list of suppressive areas. This action is necessary as an emergency measure in order to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Effective date of amendment November 1, 1982. Written comments concerning this rule must be received on or before January 3, 1983.

ADDRESS: Written comments should be submitted to Thomas J. Lanier, Assistant Director, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 643 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 641 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lanier, Assistant Director, Regulatory Services Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 643 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of approximately $500; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291. Also, the Assistant Secretary for Marketing and Inspection Services has waived the requirements of Secretary's Memorandum 1512-1.

Certification under the Regulatory Flexibility Act

Dr. H. C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small businesses and should not have a significant economic impact on any small organizations or small governmental jurisdictions. This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that there are approximately 290,000 small entities that move regulated articles interstate from such States and many hundreds of thousands of small entities that move regulated articles interstate from other States. However, based on such information, it has been determined that only approximately 20 entities move regulated articles interstate from the specified areas affected by this action. Further, the overall economic impact from this action is estimated to be only about $500.

Emergency Action

Harvey L. Ford, Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this interim action. Due to the possibility that witchweed could be artificially spread interstate to noninfested areas of the United States, a situation exists requiring immediate action to better control the spread of this pest. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this interim rule are impracticable and contrary to the public interest and good cause is found for making this action effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the **Federal Register** as soon as possible.

Background

Witchweed is a parasitic plant which causes the degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina. The Witchweed Quarantine and Regulations (7 CFR 301.80 through 301.80-10) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined States for the purpose of preventing the artificial spread of witchweed.

Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of witchweed is undertaken as an objective. Generally

infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the artificial movement of witchweed to noninfested areas to prevent the reinfestation of suppressive areas where the witchweed no longer occurs.

Designation of Areas as Suppressive Areas

As an emergency measure, all of Roebson County in North Carolina, which was previously designated as a witchweed generally infested area is redesignated as a witchweed suppressive area.

As an emergency measure, the following areas in Craven, Duplin, Lenoir, Pender, and Wayne Counties in North Carolina, and Marlboro County in South Carolina which were previously nonregulated areas are designated as witchweed suppressive areas.

North Carolina

Craven County. The Morris, Gerald K., farm located on the north side of State Secondary Road 1444 and 1.4 miles northwest of the junction of State Secondary Road 1447 with said road.

Duplin County. The Garner, C. C., farm located on both sides of Sate Secondary Road 1961 and 0.5 mile west of the intersection of said road and the Northwest Cape Fear River.

The McGowan, Henry, C., Heirs, farm located 0.6 mile south of State Secondary Road 1700 and 0.7 mile east of its junction with State Highway 11.

The Miller, Willie Mae, farm located on the south side of State Secondary Road 1961 and 1.1 miles west of the intersection of said road and State Secondary Road 1962.

The Norris, Norwood, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Outlaw, Oliver, farm located on both sides of State Secondary Road 1300 and the east side of State Secondary Road 1301 where these roads intersect.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

Lenoir County. The Dawson, Wayne, farm located on the east side of State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

Pender County. The Newkirk, M and F, farm located on the south side of State Secondary Road 1131 and 0.7 mile west of its junction with State Secondary Road 1121.

Wayne County. The Price, Jessie W., farm located on the east side of State Secondary Road 1948 and 0.7 mile south of the junction of said road and State Secondary Road 1744.

The Smith, W. H., farm located on the east side of State Secondary Road 1932 and 1.5 miles southeast of intersection of said road and State Secondary Road 1744.

South Carolina

Marlboro County. The Bowman, Cecil, farm located on both sides of a dirt road and 0.5 mile northeast of junction of said dirt road and State Secondary Highway 257, said junction being 0.4 mile north of junction of said highway and State Secondary Highway 165.

Surveys conducted by the United States Department of Agriculture and State agencies or North Carolina and South Carolina establish that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of areas currently designated as suppressive areas. These additional areas are areas where eradication of witchweed is undertaken as an objective. These actions are necessary on an emergency basis in order to prevent the spread of witchweed to these areas and to facilitate its ultimate eradication.

Deletion of Areas From List of Regulated Areas

All previous suppressive regulated areas in Brunswick, Columbus, Craven, Cumberland, Duplin, Harnett, Hoke, Johnston, Lenoir, Onslow, Pender, Richmond, Scotland, and Wayne Counties in North Carolina, and Darlington, Florence, Horry and Marlboro Counties in South Carolina, and all of Chesterfield County in South Carolina are being released, except for those suppressive regulated areas listed in this document in § 301.80–2a, which remain regulated.

It has been determined that the witchweed no longer occurs in certain suppressive regulated areas of the above listed counties in North Carolina and South Carolina and all of Chesterfield County in South Carolina. There is therefore no basis to continue listing such areas as regulated areas for the purpose of preventing the artificial spread of witchweed. Therefore, as an emergency measure, parts or all of such counties are deleted from the list of suppressive areas in order to delete unnecessary restrictions on the movement of witchweed regulated articles.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

Under the circumstances referred to above, § 301.80–2a of the witchweed quarantine and regulations (7 CFR 301.80–2a) is amended to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Beaufort County. The Jefferson, Russell M., farm located on the southwest side of State Secondary Road 1609 and 0.6 mile southeast of the junction of said road and State Highway 32.

The Osborne, H. R., farm located on both sides of State Secondary Road 1609 and 0.5 mile southeast of the junction of said road and State Highway 32.

Bladen County. The entire county.

Brunswick County. The Bryant, Ottice, farm No. 1 located at the end of a farm road 1.0 mile west of State Secondary Road 1342, 2.5 miles northwest of said State Secondary Road and its junction with State Highway 211.

The Bryant, Ottice, farm No. 2 located on both sides of State Secondary Road 1342, 2.3 miles northwest of said road and its junction with State Highway 211.

The Hewett, Patricia J., farm located on the west side of State Secondary Road 1151 and 0.4 mile south of its junction of State Secondary Road 1147.

The Hewett, Jr., R. B., farm located at the end of a farm road on the northeast side of State Secondary Road 1132, 0.4 mile northeast of said road and its intersection with N.C. Highway 130.

Columbus County. That part of the county lying north and west of a line beginning at a point where State Highway 211 intersects the Bladen-Columbus County line, thence south along said Highway 211 to its intersection with State Secondary Road 1740, thence southwest and south along said State Secondary Road 1740 to its junction with U.S. Highways 74 and 76, thence west along said highways to its intersection with White Marsh Swamp, thence south along said swamp to its junction with Cypress Creek, thence southwest along said creek to its intersection with State Highway 130, thence northwest along said highway to its junction with State Secondary Road 1166, thence

southwest along said road to its junction with State Secondary Road 1157, thence southwest along said road to its junction with U.S. Highway 701, thence south and west along said highway to its intersection with State Secondary Road 1314, thence west along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with the North Carolina-South Carolina State line.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of said road with State Highway 87.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of said road 1847 with State Secondary Road 1740.

The Owen, J. A., farm located on the southwest side of State Highway 87 and 0.3 mile southeast of the intersection of said Highway 87 with the Bladen-Columbus County line.

The Shaw, Charles H., farm located 0.1 mile north of State Secondary Road 1847 and 0.9 mile northeast of the junction of said Road 1847 with State Secondary Road 1908.

The Spivey, D. M., farm located in the northeast corner of the intersection of U.S. Highway 701 and Gum Swamp.

Craven County. The Chapman, Idel M., farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road 1459 and 0.3 mile off west side of State Secondary Road 1459.

The Hawkins, Annie A., farm located on both sides of State Secondary Road 1263 and 1 mile east of the junction of said Road 1263 with State Secondary Road 1262.

The Hawkins, Mattie, farm located on the west side of State Secondary Road 1263 and 1.2 miles east and north of its southern junction with State Secondary Road 1262.

The Jones, Vann, farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road and 0.4 mile off of west side of State Secondary Road 1459.

The Morris, Gerald K., farm located on the north side of State Secondary Road 1444 and 1.4 miles northwest of the junction of State Secondary Road 1447 with said road.

The Nelson Estate, Joseph, located on both sides of State Secondary Road 1450 and located 0.1 mile northeast of intersection of State Secondary Road 1454.

The Nobles, Jr., Jack, farm located on both sides of State Secondary Road 1262 and located 0.7 mile south of the junction of State Secondary Road 1258 and State Secondary Road 1262.

The Register, Keith, farm located 0.3 mile west of the junction of State Secondary Road 1251 with Highway 55 and on the north side of Highway 55.

The West, Gladys W., farm located on both sides of State Secondary Road 1263 and 1.4 miles east of its southern junction with State Secondary Road 1262.

The White, Raymond E., farm located on both sides of State Secondary Road 1263 and 0.2 mile east of its northern junction with State Secondary Road 1262.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, than east along said highway to its intersection with the Fayetteville city limits, then south, east, and northeast along said city limits to its junction with U.S. Highway 301 north, then northeast along said highway to its junction with U.S. Interstate 95, then northeast along said interstate to its junction with U.S. Highway 13, then east and northeast along said highway to its intersection with the Cumberland-Sampson County line, then southerly along said county line to its junction with the Bladen-Cumberland County line, then westerly along said county line to its junction with the Cumberland-Robeson County line, then northwesterly along said county line to its junction with Cumberland-Hoke County line, then northwesterly along said county line to the point of beginning.

The Autry, J. G., farm located on the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The Barefoot, William, farm located on the east side of State Secondary Road 1005 and 1.1 miles northeast of its junction with State Secondary Road 1813.

The Bullock, Burline, farm located on the northeast side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The Bunce, Mrs. John, farm located on the north side of State Secondary Road 1814 and 0.3 mile west of its junction with State Secondary Road 1813.

The Contrell, C. T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Carter, Buck, farm located on the east side of State Highway 210 and 1.7 miles northeast of its junction with State Secondary Road 24.

The Elliott, Larry, farm located on the south side of State Secondary Road 1730 and east of its junction with State Secondary Road 1723.

The Elliott, Lattie, farm located on the north side of State Secondary Road 1722 and 0.4 mile east of its junction with State Secondary Road 1714.

The Elliott, W. H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Elmore, Charles M., farm located on the west side of State Highway 87/210 and 0.9 mile of its intersection with U.S. Highway 401 bypass.

The Geddie, W. H., farm located on the east side of State Secondary Road 1714 and 0.2 mile north of its junction with State Secondary Road 1722.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Giles, E. M., farm located on the north side of State Secondary Road 1704 and 1.7 miles east of its junction with U.S. Highway 401.

The Godwin, Ada P., farm located on the east side of State Secondary Road 1714 and 0.2 mile south of its junction with State Secondary Road 1722.

The Grimble, A. I., farm located on the east side of State Secondary Road 1608 and 0.5 mile north of its junction with U.S. Highway 401.

The Lambert, Jack, farm located on the west side of State Secondary Road 1716 and 0.2 mile north of its junction with State Secondary Road 1717.

The Langley, D. A., farm located on the east side of State Highway 210 and 0.9 mile north of its junction with State Highway 224.

The Lee, Jack, farm located on the west side of State Secondary Road 1716 and 0.1 mile north of its junction with State Secondary Road 1717.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Lovick, Grady, farm located on the west side of State Secondary Road 1716 and 0.2 mile north of its junction with State Secondary Road 1717.

The Matthews, Ada H., farm located on the east side of State Secondary Road 1818 and 0.7 mile north of its intersection with U.S. Highway 13.

The Matthews, E. M., farm located on the east side of State Secondary Road 1005 and at its north intersection with State Secondary Road 1813.

The Matthews, Isiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McFayden, F. G., farm located on the west side of State Secondary Road 1400 and 0.2 mile north of its junction with U.S. Highway 401.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, H. A., farm located on the south side of State Secondary Road 1722 and 0.41 mile west of its junction with U.S. Highway 301.

The McLaurin, Henry, farm located on the south side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, M. M., farm located on the south side of State Secondary Road 1722 and 0.42 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722

and 0.51 mile west of its junction with U.S. Highway 301.

The McLaurin, W. A., farm located on the south side of State Secondary Road 1722 and 0.43 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The McNeill, Mattie J., farm located on the west side of State Secondary Road 1593 and 0.8 mile north of its junction with U.S. Highway 401.

The Melvin, Edith, farm located on the east side of State Secondary Road 1600 and 1.7 miles north of its intersection with State Secondary Road 1615.

The Odums, Marshal, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its junction with U.S. Highway 301.

The Powell, William Clinton, farm located on the south side of State Secondary Road 1722 and 0.3 mile east of its junction with State Secondary Road 1714.

The Pruitt, K. D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Gilbert, farm located on the west side of State Secondary Road 1714 and 0.2 mile south of its junction with State Secondary Road 1724.

The Smith, Gilbert, farm located on the south side of State Secondary Road 1730 and 0.2 mile east of its junction with State Secondary Road 1723.

The Smith, Gilbert, farm located on both sides of State Secondary Road 1723 at its junction with State Secondary Road 1730.

The Smith, J. B., farm located on the south side of State Secondary Road 1720 and 0.6 mile east of its intersection with State Secondary Road 1719.

The Smith, J. B., farm located on the north side of State Secondary Road 1719 and 1.1 miles east of its intersection with State Secondary Road 1720.

The Smith, J. B., farm located on the south side of State Secondary Road 1722 and 0.6 mile west of its junction with State Secondary Road 1721.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Thompson, Mrs. Paul, farm located on the west side of U.S. Highway 301 and 0.4 mile south of its junction with State Secondary Road 1863.

The Turner, W. E., farm located on a private road off the east side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1722.

The Underwood, George, farm located on the south side of State Secondary Road 1730 and 0.5 mile east of its junction with State Secondary Road 1723.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Vann, J. R., farm located on the north side of State Secondary Road 1813 and 0.5 mile east of its intersection with State Secondary Road 1005.

The Vann, W. E., farm located on both sides of State Secondary Road 1813 at its junction with State Secondary Road 1819.

The Williams, C. D., farm located on the north side of State Secondary Road 1719 and 1.21 miles north of its intersection with State Secondary Road 1720.

The Williams, Maggie, farm located on the north side of State Secondary Road 1719 and 1.2 miles north of its intersection with State Secondary Road 1720.

The Williams, M. C., farm located on the south side of State Secondary Road 1728 and at its east intersection with State Secondary Road 1725.

The Williams, Robert, farm located on the east side of State Secondary Road 1813 and at its intersection with Interstate 95.

The Williams, Robert F., farm located on the west side of State Secondary Road 1728 and 0.6 mile north of its junction with State Secondary Road 1714.

Duplin County. That area bounded by a line beginning at a point where State Secondary Road 1337 intersects the Duplin-Sampson County line, then northeast along said road to its intersection with State Secondary Road 1301, then southeast along said road to its intersection with State Highway 50, then northwest along said highway to its junction with State Secondary Road 1355, then northeast along said road to its junction with State Secondary Road 1332, then northeast along said road to its junction with State Secondary Road 1304, then southeast along said road to its intersection with Bear Swamp, then east along said swamp to its junction with Goshen Swamp, then southeast along said swamp to its intersection with State Secondary Road 1004, then southeast along said road to its intersection with Nahunga Creek, then southwest along said creek to its intersection with State Secondary Road 1301, then northwest along said road to its junction with State Secondary Road 1346, then southwest along said road to its junction with State Secondary Road 1385, then west along said road to its junction with State Highway 50, then southeast along said highway to its junction with State Secondary Road 1900, then southeast along said road to its junction with State Secondary Road 1003, then east along said road to its junction with State Highway 11, then south along said highway to its junction with State Secondary Road 1922, then southwest along said road to its junction with State Secondary Road 1909, then south along said road to its junction with State Secondary Road 1912, then west along said road to its intersection with the Magnolia city limits, then south, west, and north along said city limits to its intersection with State Secondary Road 1003, then southwest along said road to its junction with State Secondary Road 1101, then southeast along said road to its intersection with State Secondary Road 1102, then southwest along said road to its junction with State Secondary Road 1126, then west along said road to its intersection with State Secondary Road 1100, then southeast along said road to its intersection with State Secondary Road 1102, then south along said road to its junction with State Secondary Road 1129, then southwest along said road to its intersection with State Secondary Road 1128, then northwest along said road to its intersection with Duplin-Sampson County line, then north along said county line to the point of beginning.

The Beard, Mary Lou, farm located on both sides of State Secondary Road 1961 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bradshaw, Milton J., farm located at the northwest end of State Secondary Road 1980.

The Brock, Jack, farm located on both sides of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Brown, George, farm located on the west side of State Secondary Road 1004 and 0.8 mile north of its junction with State Secondary Road 1504.

The Chambers, D. F., farm located on the south side of State Secondary Road 1700 and 0.6 mile west of its intersection with the Northeast Cape Fear River.

The English, James Earl, farm located on the north side of State Secondary Road 1980 and 0.3 mile southwest of the junction of said road and State Secondary Road 1979.

The Garner, C. C., farm located on both sides of State Secondary Road 1961 and 0.5 mile west of the intersection of said road and the Northwest Cape Fear River.

The Georgia Pacific Corporation, farm located on the west side of the Seaboard Coast Line Railroad and 0.1 mile north of its intersection with State Secondary Road 1301.

The Goodson, Emma, farm located on the south side of State Secondary Road 1501 and 0.3 mile west of the junction of said road and State Secondary Road 1505.

The Grady, E. C., farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Hollingsworth, Denver, farm located 0.1 mile east of State Secondary Road 1831 and 1.0 mile south of its junction with State Secondary Road 1827.

The Horne, Harry, farm located on the south side of State Secondary Road 1961 and 0.8 mile west of the intersection of said road and State Secondary Road 1962.

The Howard, Henry, farm located on the north side of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Ivey, Foy, No. 2, farm located on both sides of State Secondary Road 1004 and 0.1 mile south of its junction with State Secondary Road 1561.

The Jernigan, Cornelia, farm located on the west side of State Secondary Road 1360 and

0.4 mile south of its junction with State Secondary Road 1004.

The Johnson, Eldora, farm located on both sides of State Secondary Road 1123 and 1.2 miles west of the junction of said road and State Secondary Road 1103.

The Jones, H. A. No. 2, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of its intersection with the Northeast Cape Fear River.

The King, W. R., farm located on the east side of State Secondary Road 1302 and 0.1 mile south of the junction of said road and State Secondary Road 1308.

The Kornegay, Byrus, farm located on the east side of State Highway 403 and 0.1 mile north of its junction with State Secondary Road 1369.

The Kornegay, Cecil, farm located on the northwest side of State Secondary Road 1306 and 1 mile southwest of its intersection with State Secondary Road 1500.

The McCullen, Larry, farm located on the northeast side of State Highway 24 and 0.2 mile northwest of the junction of said highway and State Secondary Road 1904.

The McGowan, Henry C., Heirs, farm located 0.6 mile south of State Secondary Road 1700 and 0.7 mile east of its junction with State Highway 11.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Miller, Willie Mae, farm located on the south side of State Secondary Road 1961 and 1.1 miles west of the intersection of said road and State Secondary Road 1962.

The Norris, Norwood, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Outlaw, Emma, farm located on the south side of State Secondary Road 1509 and 0.5 mile southwest of the junction of said road and State Secondary Road 1510.

The Outlaw, Oliver, farm located on both sides of State Secondary Road 1300 and the east side of State Secondary Road 1301 where these roads intersect.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1306.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1357 and 0.7 mile northwest of its junction with State Highway 24.

The Rivenbark, George W., farm located on the northwest side of State Secondary Road 1131 and 0.4 mile southwest of the junction of said road and State Secondary Road 1128.

The Miller, Willie Mae, farm located on the south side of State Secondary Road 1961 and 1.1 miles west of the intersection of said road and State Secondary Road 1962.

The Norris, Norwood, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Outlaw, Emma, farm located on the south side of State Secondary Road 1509 and 0.5 mile southwest of the junction of said road and State Secondary Road 1510.

The Outlaw, Oliver, farm located on both sides of State Secondary Road 1300 and the east side of State Secondary Road 1301 where these roads intersect.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1306.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1357 and 0.7 mile northwest of its junction with State Highway 24.

The Rivenbark, George W., farm located on the northwest side of State Secondary Road 1131 and 0.4 mile southwest of the junction of said road and State Secondary Road 1128.

The Rouse, Beatrice S., farm located on both sides of State Secondary Road 1980 and at the west end of said road.

The Smith, Sallie P., farm located on the northeast side of State Highway 111 and 0.8 mile southeast of the Duplin-Wayne County line.

The Stokes, Fred, farm located on the south side of State Secondary Road 1980 land 2.4 miles west of the junction of said road and State Secondary Road 1979.

The Stokes, William C., farm located at the southwest end of State Secondary Road 1980.

The Summerlin, Lannie, farm located on both sides of State Secondary Road 1359 and 0.3 mile southwest of its junction with State Secondary Road 1306.

The Turner, Lumas, farm located on the south side of State Secondary Road 1703 and 0.6 mile west of the junction of said road and State Secondary Road 1732.

The Whitman, Herman E., farm located on the north side of State Secondary Road 1300 and 0.8 mile east of the intersection of said road and State Secondary Road 1301.

The Williams, Jasper, farm located on the east side of State Secondary Road 1323 and 0.2 mile south of its junction with State Highway 403.

The Williams, McArthur, farm located on the south side of State Secondary Road 1961 and 1 mile west of the intersection of said road and State Secondary Road 1962.

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1.0 mile south of the intersection of said highway and State Secondary Road 1700.

Green County. That area bounded by a line beginning at a point where State Highway 102 intersects State Highway 123 and extending south along State Highway 123 to its intersection with Contentnea Creek, then northwest along said creek to its junction with Panther Swamp, then northerly along said swamp to its intersection with U.S. Highway 13–258, then easterly along said highway to the point of beginning.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with North Carolina Highway 102.

The Dixon, John, farm located on the east side of State Secondary Road 1004 at the junction on State Secondary Road 1405.

The Dixon, Sudie, farm located on the west side of State Secondary Road 1004 and 0.2 mile south of its junction of State Secondary Road 1405.

The Murphrey, Edward, farm located on the east side of State Secondary Road 1004 and 0.3 mile south of its junction with State Highway 102.

The Whitaker, J. H., farm located on the east side of State Secondary Road 1004 and 0.6 mile south of its junction with State Highway 102.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of said swamp, then south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, then south and southeast along said road to its junction with State Highway 27, then southeast along said highway to its junction with State Highway 24, then southeast along said highway to its junction with State Secondary Road 1111, then southwest along said road to its intersection with Harnett-Moore County line, then northwest along the Harnett-Moore County line to its junction with the Moore-Harnett-Lee County line, then northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett-Cumberland County line and McLeod Creek intersect and extending northwest along said creek to its intersection with State Secondary Road 1117, then northeast, northwest and north along said road to its intersection with Anderson Creek, then southeast along said creek to its intersection with the State Highway 210, then northeast along said highway to its junction with State Secondary Road 2030, then southeast along said road to its junction with State Secondary Road 2031, then southwest along said road to its intersection with the Harnett-Cumberland County line, then southwest and west along said county line to the point of beginning.

The Cook, A. L., farm located on the east side of State Secondary Road 1201 and 1.5 miles southeast of the junction of said road with State Secondary Road 1203.

The Gilchrist, Leonard W., farm located on the southeast side of State Secondary Road 1111, 0.4 mile north of the junction of said road with State Secondary Road 1110.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of the junction of said road with State Secondary Road 1117.

The Womack, E. H., farm located on the east side of State Highway 27, and 1.0 mile north of the junction of said highway with State Highway 24.

Hoke County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects with Hoke-Scotland County line, then northeasterly along said highway to its junction with the Raeford city limits, then southeast and north along said city limits to its junction with Business Highway 401, then east and northeast along said highway to its junction with U.S. Highway 401, then easterly along said highway to its intersection with the Cumberland-Hoke County line, then southeast along said county line to its junction with the Hoke-Robeson County line, then southwest and west along said county line to its junction with the Hoke-Scotland County line, then northerly along said county line to the point of beginning.

The Beckwith, W. L., farm located on the west side of U.S. Highway 401 Business and

0.8 mile south of the junction of said highway with U.S. Highway 401 bypass.

The Blue, W. A., farm located to the north of State Secondary Road 1302 and 0.7 mile west of the junction of said road with State Secondary Road 1303.

The Bronson, Amos, farm located on the north side of State Secondary Road 1302 and 0.8 mile west of the junction of said road with State Secondary Road 1303.

The Burke, Will, Estate farm located to the southeast of State Secondary Road 1233 and 0.2 mile south of the junction of said road with State Secondary Road 1218.

The Cameron, Hermon, farm located on the east side of State Secondary Road 1212 and 0.1 mile south of the junction of said road with State Secondary Road 1211.

The Cameron, W. W., farm located on both sides of State Secondary Road 1215 and 1 mile southwest of the junction of said road with State Highway 211.

The Chandler, Charlie Henry, farm located on the east side of State Secondary Road 1218 and 1 mile south of the junction of said road with State Secondary Road 1219.

The Ellis, W. H., farm located on both sides of State Secondary Road 1200 and 0.2 mile south of the junction of said road with State Secondary Road 1203.

The Flowers, Effie Lee, farm located on the north side of State Secondary Road 1203 and 0.1 mile northeast of the junction of said road with State Secondary Road 1207.

The Flynn, Charlie, farm located on the east side of State Secondary Road 1218 and 1 mile south of the junction of said road with State Secondary Road 1219.

The Fowler, Arne, farm located on the north side of the State Secondary Road 1203 and 0.2 mile northeast of the junction of said road with State Secondary Road 1207.

The Gainey, Marvin, farm located on the west side of State Secondary Road 1200 and 0.5 mile south of the junction of said road with State Secondary Road 1203.

The Gainey, Marvin, farm located on the east side of State Secondary Road 1200 and 0.5 mile south of the junction of said road with State Secondary Road 1203.

The Graham, William, farm located on the north side of State Secondary Road 1316 and 0.5 mile east of the junction of said road with State Highway 211.

The Johnson, George, farm located on the south side of State Secondary Road 1219 and 0.3 mile east of the junction of said road with State Secondary Road 1218.

The Leslie, Dora N., farm located north of the junction of State Secondary Roads 1200 and 1203.

The Lewis, Emory, farm located on both sides of State Secondary Road 1215 and 1.2 miles north of the junction of said road with State Secondary Road 1214.

The Lewis, Woodrow, farm located on the west side of State Secondary Road 1215 and 1 mile north of the junction of said road with State Secondary Road 1214.

The McDuffie, Cleo, farm located on the south side of State Secondary Road 1203 and 0.1 mile northeast of the junction of said road with State Secondary Road 1202.

The McPhatter, Tom, farm located on the east side of State Secondary Road 1202 and 0.1 mile south of the junction of said road with State Secondary Road 1203.

The McRae, Annie, farm located on the west side of State Secondary Road 1302 and 0.1 mile north of the junction of said road with U.S. Highway 401 bypass.

The McRae, Ervin, farm located on the north side of State Secondary Road 1302 and 1 mile west of the junction of said road with State Secondary Road 1303.

The Moon, Leonard, farm located on the west side of State Highway 211 and 0.3 mile north of the junction of said highway with State Secondary Road 1228.

The Pandure, Ralph, farm located on the north side of State Secondary Road 1211 and 0.5 mile south of the junction of said road with State Secondary Road 1212.

The Ray, Howard, farm located on the north side of State Secondary Road 1203 and 0.1 mile west of the junction of said road with State Secondary Road 1240.

The Ray, Howard, farm located on the north side of State Secondary Road 1203 and 0.2 mile east of the junction of said road with State Secondary Road 1200

The Ray, Neil, farm located on the west side of State Secondary Road 1320 and 0.1 mile west of the junction of said road with State Secondary Road 1304.

The Williams, Alex, farm located in the southeast junction of State Secondary Roads 1202 and 1203.

The Winecroff, Lee, farm located on both sides of State Secondary Road 1215 and 0.4 mile east of the junction of said road with State Secondary Road 1216.

Johnston County. The Holt, Dorothy C., farm located on the west side of State Secondary Road 2542 and 0.1 mile south of its junction with State Secondary Road 1007.

The Johnson, Wade, farm located on both sides of State Secondary Road 1144 and 0.2 mile west of the junction of said road with State Secondary Road 1138.

The Martin, John L., farm located on the west side of State Secondary Road 1201 and 0.3 mile north of the junction of said road with State Secondary Road 1200.

The Massengill, R. T., farm located on the south side of State Secondary Road 1145 and 0.2 mile west of its junction with State Secondary Road 1144.

Lee County. The McGilvary, Aquilla, farm located north of State Secondary Road 1188 and 0.6 mile east of the junction of said road with State Secondary Road 1001.

Lenoir County. The Barwick, Charles H. and Evelyn Sutton, farm located on the north side of State Secondary Road 1324 and 0.1 mile east of its junction with State Secondary Road 1308.

The Braxton, Clyde, Estate located on both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road 1802 and State Highway 11.

The Brown, Nannie H., farm located in the southwest junction of State Secondary Roads 1152 and 1309.

The Carey, Jack, farm located on both sides of State Secondary Road 1906 and 1 mile east of its junction with U.S. Highway 285.

The Dawson, Wayne, farm located on the east side of State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and 0.5 mile east of its junction with State Secondary Road 1720.

The Foss, Reginal D., farm located on the north side of State Secondary Road 1316 and 0.6 mile northwest of its junction with State Secondary Road 1318.

The Hamilton, C. W., farm located on the southeast side of State Secondary Road 1802 and 1.2 miles northeast of its junction with State Highway 11.

The Herring, Ben D., No. 1, farm located on both sides of State Secondary Road 1330 and 0.2 mile west of the junction of State Secondary Roads 1330 and 1331.

The Herring, Ben D., No. 2, farm located on the west side of State Secondary Road 1310 and 0.3 mile south of its junction with State Secondary Road 1311.

The Herring, Frances F., farm located on the west side of State Secondary Road 1310 and 0.6 mile south of its junction with State Secondary Road 1311.

The Herring, Jack A., farm located on both sides of State Secondary Road 1310 and 0.4 mile south of its junction with State Secondary Road 1311.

The Jarman, F. R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Jones, Edward S., farm located on the west side of U.S. Highway 258 and 0.3 mile north of its junction with State Secondary Road 1116.

The Joyner Farms, Inc., farm located on both sides of State Secondary Road 1324 and 0.5 mile east of its junction with State Secondary Road 1335.

The Parrott Farms, Inc., farm located on the northwest side of State Secondary Road 1157 and 0.7 mile northwest of its intersection with State Highway 55.

The Rouse, Forrest, farm located on the northeast side of State Secondary Road 1143 and 2.9 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Jim W., farm located on the northeast side of State Secondary Road 1143 and 2.8 miles northwest of its intersection with State Secondary Road 1154.

The Sutton, Curtis, Estate located on the west side of State Secondary Road 1324 and 0.5 mile north of its junction with State Secondary Road 1309.

The Sutton, Harvey, farm located on the west side of State Secondary Road 1331 and 0.2 mile south of its junction with State Secondary Road 1330.

The Sutton, John W., farm located on the southwest junction of State Secondary Road 1333 and State Secondary Road 1330.

The Sutton, M. L., farm located on the southeast side of State Secondary Road 1311 and 0.8 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Nancy, farm located on the south side of State Secondary Road 1330 and 0.5 mile east of its junction with State Secondary Road 1331.

The Sutton, Nathan, farm located on the southeast side of State Secondary Road 1311 and 0.6 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Prentice, farm located on the south side of State Secondary Road 1503 and

0.3 mile southeast of its intersection with State Secondary Road 1327.

The Sutton, Robert H., farm located on the south side of State Secondary Road 1324 and 0.2 mile east of its junction with State Secondary Road 1327.

The Sutton, Woodrow W., farm located on the north side of State Secondary Road 1331 and 0.5 mile west of its junction with State Secondary Road 1333.

The Walters, H. F., farm located on both sides of State Secondary Road 1335 and 0.4 mile north of its junction with State Secondary Road 1324.

The Waters, Thomas, Estate located on both sides of State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1317.

Moore County. The Burwell, Sam, farm located on the south side of State Secondary Road 2023 and 0.4 mile southwest from the junction of said road and State Secondary Road 1853.

The Marks, E. M., farm located on the south side of State Secondary Road 2019 and 2.5 miles east of the junction of said road and State Secondary Road 2018.

Onslow County. The Cox, Robert B., farm located on the southeast side of State Secondary Road 1224, and 0.7 mile northeast from the junction of said road and State Secondary Road 1222.

The Hancock, Sally, farm located on a dirt road 0.2 mile northeast of the junction of State Secondary Road 1206 and State Secondary Road 1001.

The Henderson, Charlie, farm located on the east side of State Secondary Road 1528, and 0.2 mile north of the junction of said road with State Secondary Road 1518.

The Lanier, Larry, farm located on the north side of State Secondary Road 1223 and 0.5 mile east from the junction of said road and State Secondary Road 1222. Said junction being located 1.2 miles north of junction of State Secondary Roads 1222 and 1001.

The Marshburn, James B., farm located on the southeast side of State Secondary Road 1224, and 0.8 mile from the junction of said road and State Secondary Road 1222.

The McAllister, Henry, farm located on both sides of State Secondary Road 1316 and 1 mile southwest of said road and its junction with State Secondary Road 1308.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along said county line to its junction with Black River, then southeast along said river to its intersection with State Highway 210, then southwest along said highway to its junction with State Secondary Road 1103, then southeast along said road to its junction with State Secondary Road 1104, then southwest and northwest along said road to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along said highway to its intersection with Walker Swamp, then northeast along said swamp to its junction with Pike Creek, then southeast along said creek to its junction with the Northeast Cape Fear River, then south along said river to its intersection with State Highway 210, then southwest along said highway to its junction with State Secondary Road 1518, then southeast along said road to its junction with State Secondary Road 1517, then westerly along said road to the point of beginning.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and 0.9 mile northwest of the junction of said road and State Secondary Road 1107.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Corbett, W. M., farm located on both sides of State Secondary Road 1201 at its junction with State Secondary Road 1200.

The Dees, Betty B., farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F. P., farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Kea, Leo, farm located 0.5 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of said road and State Secondary Road 1104.

The McCallister, Mary K., farm located 0.2 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Newkirk, M and F, farm located on the south side of State Secondary Road 1131 and 0.7 mile west of its junction with State Secondary Road 1121.

The Stringfield Estate, John, located on the southwest side of State Secondary Road 1517 and 1.4 miles east of the junction of said road and U.S. Highway 117.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Ward, Mary Alice, farm located on a field road 0.9 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

Pitt County. That area bounded by a line beginning at a point where State Secondary Road 1919 intersects the Pitt-Craven County line, then southwest along said county line to its intersection with State Highway 118, then westward along said highway to its intersection with State Secondary Road 1753, then northward along said road to its junction with State Secondary Road 1919, then eastward to the point of the beginning.

The Gardner, Charlie D., farm located on both sides of State Secondary Road 1910 at junction of said road and State Highway 118.

The Garris, Bruce E., farm located in the south junction of State Highway 118 and State Secondary Road 1916.

The Hodges, M. B., farm located on the east side of State Secondary Road 1907 and 1.1 miles north of State Highway 118.

Richmond County. The Dumas, Reba, farm located on the northeast side of State Secondary Road 1083 and 0.3 mile northwest of said intersection of State Highway 38.

The Godfrey, J. R., farm located on the northwest side of State Secondary Road 1318 and 0.2 mile north of its junction with State Secondary Road 1310.

The Ingram, Rome, farm located on the southwest side of State Secondary Road 1003 and 1.8 miles northwest of its junction with State Secondary Road 1475.

The Poe, William, farm located 0.6 mile on unnumbered road off State Road 1475 and 0.2 mile southeast of its junction with State Road 1486.

The Sorenzen, Gladys, farm located on the southwest side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and State Highway 38.

The Steele, Thomas, farm located on the northwest side of State Road 1442 and 0.4 mile southwest of its junction with State Road 1489.

The Terry, Ruth, farm located on both sides of State Secondary Road 1442 and 0.2 mile northeast of its junction with State Secondary Road 1477.

The Thomas, Walter, farm located on both sides of U.S. Highway 220 and 0.4 mile northeast of its junction with State Secondary Road 1433.

The Wall, Ben, farm located on the northeast side of the State Secondary Road 1440 and 0.4 mile southeast of its junction with State Secondary Road 1433.

The Waters, Will, farm located on both sides of State Secondary Road 1623 and 0.4 mile southwest of its junction with State Secondary Road 1607.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

Robeson County. The entire county.

Sampson County. The entire county.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 74 intersects the Robeson-Scotland County line, then west along said highway to its intersection with the Laurinburg city limits, then northerly and westerly along said city limits to its junction with U.S. Highway 15, 401, and 501, then southwest along said highway to its intersection with State Secondary Road 1300, then northwesterly along said road to its junction with State Secondary Road 1105, then northwesterly along said road it its junction with State Secondary Road 1324, then northerly along said road to its intersection with State Secondary Road 1345, then northwesterly along said road to its intersection with State Secondary Road 1341, then northeasterly along said road to its junction with State

Secondary Road 1328, then northerly along said road to its intersection with the Southern boundary of the Sandhills Game Management Area, then easterly along said boundary to its intersection with U.S. Highway 15–501, then north along said highway to its intersection with the Scotland-Hoke County line, then southeasterly along said county line to the Scotland-Robeson County line, then southwest along said county line to the point of beginning.

The Bowen, J. J., farm located on the northeast side of State Secondary Road 1625 and 0.1 mile southeast of the junction of said road with State Secondary Road 1622.

The Bullard, B. W., farm located on the southeast side of State Secondary Road 1612 and 0.7 mile northeast of the junction of said road with State Secondary Road 1619.

The Butler, Luther, farm located on the south side of State Secondary Road 1154 and 0.2 mile east of the junction of said road with State Secondary Road 1155.

The Harris, Wardell, farm located on the east side of State Secondary Road 1613 and 0.6 mile north of the junction of said road with State Secondary Road 1619.

The James, Marshall P., farm located on the east side of State Secondary Road 1612 at the junction of said road with State Secondary Road 1619.

The Jones, R. D., farm located on the northeast side of State Secondary Road 1601 and 0.2 mile northwest of its junction with State Secondary Road 1609.

The Locklear, Hollis, farm located on both sides of State Secondary Road 1623 and 0.3 mile northwest of the junction of said road with Scotland-Robeson County line.

The McArthur, C. S., farm located on both sides of State Secondary Road 1614 at its intersection of said road with State Secondary Road 1615.

McCoy, R. F., farm located on the east side of State Secondary Road 1346 and 0.4 mile north of its junction with State Secondary Road 1343.

The McNair Investment Company, farm located on the southwest side of State Secondary Road 1615 and 0.1 mile northwest of the junction of said road with State Secondary Road 1624.

The Morgan, J. D., farm located on the east side of State Secondary Road 1346 and 0.5 mile north of the junction of said road with State Secondary Road 1343.

The Morgan, J. D., farm located on both sides of State Secondary Road 1345 and 0.1 mile northwest of its junction with State Secondary Road 1342.

The Sharpe, Preston, farm located on the south side of U.S. Highway 74 and 0.2 mile west of the junction of said highway with State Secondary Road 1153.

The Steele, J. D., farm located on both sides of State Secondary Road 1351 and 0.9 mile northwest of the junction of said road with State Secondary Road 1346.

The Stewart, Claude, farm located on the northwest side of State Secondary Road 1612 and 0.7 mile northeast of the junction of said road with State Secondary Road 1619.

Wayne County. That area bounded by a line beginning at a point where the State Highway 111 and State Secondary Road 1744 intersect, then westerly along said road to its junction with State Secondary Road 1948, then southerly along said road to its intersection with State Secondary Road 1745, then westerly along said road to its junction with State Secondary Road 1915, then northerly along said road to its intersection with State Secondary Road 1744, then westerly along said road to its intersection with State Secondary Road 1937, then northerly on said road to its junction with State Secondary Road 1932, then northerly on said road to its intersection with State Secondary Road 1120, then easterly along said road to its junction with State Secondary Road 1915, then easterly from said junction along an imaginary line to the junction of Sleepy Creek and Neuse River, then easterly along said river to its intersection with State Highway 111, then southerly along said highway to the point of beginning.

The Bowden, B. J., farm located on the west side of State Secondary Road 1931 and 0.2 mile south of intersection of said road and State Secondary Road 1120.

The Carraway, Ethel, farm located on the east side of State Secondary Road 1915 and 0.1 mile north of the junction of said road and State Secondary Road 1120.

The Crawford, William P., farm located on the south side of State Secondary Road 1330 and 0.9 mile west of State Highway 581.

The Dawson, L. A., farm located on west side of State Highway 111 and 0.5 mile south of the junction of said highway and State Secondary Road 1730.

The Grady, Gertrude W., farm located on the south side of State Secondary Road 1741 and 0.7 mile east of its junction with State Secondary Road 1740.

The Grant, Charlie, farm located on the south side of State Secondary Road 1745 and 0.4 mile west of its junction with State Secondary Road 1952.

The Grant, Maggie, Estate located on the west side of State Highway 111 and 1.9 miles south of the junction of State Secondary Road 1730 with said highway.

The Green, Bessey, farm located at the southern end of the State Secondary Road 1741 and 1.3 miles east of its junction with State Secondary Road 1740.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Herring, Charles F., farm located on the south side of State Secondary Road 1741 and 0.3 mile east of its junction with State Secondary Road 1740.

The Herring, Harmon, farm located on the south side of State Secondary Road 1734 and 0.4 mile east of its junction with State Secondary Road 1731.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its juction with U.S. Highway 70A.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Ivey, W. H., farm located on the south side of State Secondary Road 1734 and 0.3 mile east of its junction with State Secondary Road 1731.

The Jackson, Major, farm located on the east side of State Secondary Road 1731 and 0.6 mile north of the Neuse River.

The Jones, Mary, farm located on both sides of State Secondary Road 1730 and its junction with State Secondary Road 1731.

The Lane, Alfred, farm located on the south side of State Secondary Road 1730 and 0.4 mile east of its junction with State Highway 111.

The Lofton, Burt & Davis, King, farm located on the east side of State Secondary Road 1739 and 0.3 mile south of its junction with State Highway 55.

The McClenny, G. A., farm located on the south side of State Secondary Road 1007 and 0.1 mile west of the junction of said road with State Highway 581.

The Parks, Robert, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Price, James, farm located in the southeastern intersection of State Highway 111 and State Secondary Road 1745.

The Price, Jessie W., farm located on the east side of State Secondary Road 1948 and 0.7 mile south of the junction of said road and State Secondary Road 1744.

The Ray, Cora Pate, farm located on both sides of State Secondary Road 1730 and 0.8 mile west of its junction of State Secondary Road 1731.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 2, farm located on the north side of State Secondary Road 1101 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Raynor, Elester, farm located on the east side of State Secondary Road 1105 and 0.8 mile south of its intersection with U.S. Highway 13.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Sasser, Rosa, farm located on both sides of State Highway 111 and 0.1 mile south of its junction with State Secondary Road 1912.

The Smith, Alfred, farm located on the north side of State Secondary Road 1330 and 0.9 mile west of the junction of said road and North Carolina Highway 581.

The Smith, Arnold, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Smith, W. H., farm located on the east side of State Secondary Road 1932 and 1.5 miles southeast of intersection of said road and State Secondary Road 1744.

The Talton, Lillian D., farm located on the south side of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Thornton, S. E., farm located on the southeast junction of State Secondary Roads 1210 and 1209.

The Whitfield, Herman, farm located at the end of State Secondary Road 1729.

The Williams, Eddie, farm located on the north side of State Highway 581 and the east side of State Secondary Road 1236 at the junction of said roads.

South Carolina

(1) *Generally infested area.* None.

(2) *Suppressive areas.*

Darlington County. The Atkinson Farms located on both sides of State Secondary Highway 173 and 0.5 mile west of its intersection with State Secondary Highway 35.

The Flowers, William M., farm located on the north side of State Secondary Highway 14 and 1.4 miles east of its intersection with State Secondary Highway 13.

The Goodson, C. C., farm located on the northeast side of the junction of State Secondary Highway 133 with State Secondary Highway 29.

The Goodson, R. E., farm located on the east side of State Secondary Highway 133 and 0.25 mile north of junction of said highway 133 with State Secondary Highway 29.

The Green, M. L., farm located on the east side of State Secondary Highway 133 and 0.75 mile north of junction of said highway 133 with State Secondary Highway 29.

Dillon County. The entire county.

Florence County. That area bounded by a line beginning at a point where State Secondary Highway 925 and State Secondary Highway 24 junction and extending east and southeast along State Secondary Highway 24 to its junction with State Secondary Highway 13, then along a line projected due east from said junction to its intersection with the Great Pee Dee River, then south along said river to its junction with Barfield's Old Mill Creek, then northwest and west along said creek to its intersection with State Secondary Highway 57, then north along said highway to its junction with State Secondary Highway 893, then west and southwest along State Secondary Highway 893 to its junction with State Secondary Highway 70, then northwest along said highway to its junction with State Secondary Highway 897, then southwest and south along said highway to its junction with State Primary Highway 51, then west and northwest along said highway to its intersection with State Primary Highway 327, then northwest and west along said highway to its junction with State Secondary Highway 552, then north along said highway to its junction with State Secondary Highway 551, then northwest along a dirt road to its junction with a second dirt road, said junction being 0.1 mile east of Goodland School, then northeast along said second dirt road to its junction with State Secondary Highway 57, then southeast along said highway to its intersection with the Seaboard Coast Line Railroad, then northwest along said railroad to its intersection with State Secondary Highway 13, then east along said highway to its junction with State Secondary Highway 918, then north and northeast along said highway to its junction with State Primary Highway 327, then north along said highway to its intersection with U.S. Highway 76, then west along said highway to its junction with State Secondary Highway 925, then north along said highway to the point of beginning, excluding the area within the unincorporated limits of the town of Hyman.

That area bounded by a line beginning at a point where State Secondary Highway 794 and State Secondary Highway 72 junction and extending south along State Secondary Highway 72 to its intersection with State Secondary Highway 46, then northeast along said highway to its intersection with State Secondary Highway 34, then southeast along said highway to its junction with State Secondary Highway 360, then northeast along said highway to its junction with a dirt road, said junction being 1.6 miles northeast of the junction of State Secondary Highways 34 and 360, then southeast along said dirt road for a distance of 1.2 miles to its junction with a second dirt road, then southwest along said dirt road to its junction with State Secondary Highway 34, then south along said highway to its junction with U.S. Highway 378, then west along said highway to its junction with State Secondary Highway 47, then northwest and west along said highway to the corporate limits of the town of Scranton, then north and west along the east and north perimeter of said corporate limits to its intersection with the Seaboard Coast Line Railroad, then north along said railroad to the corporate limits of the town of Coward, then north along the east perimeter of the town of Coward to its intersection with State Secondary Highway 794, then northeast along said highway to the point of the beginning.

That area bounded by a line beginning at a point where State Secondary Highway 66 and the Seaboard Coast Line Railroad intersect and extending southeast along said railroad to its intersection with State Secondary Highway 57, then south along said highway to its junction with U.S. Highway 378, then west along said highway to its intersection with Deep Creek, then southwest along said creek to its junctions with Lynches River, then west along said river to its junction with Little Swamp, then north along said swamp to its intersection with State Secondary Highway 66, then east along said highway to the point of the beginning.

The Braddy, Elnoreah, farm located on the west side of State Secondary Highway 633 and 0.15 mile south of its intersection with State Secondary Highway 58.

The Canal Timber Company, farm located at the junction of State Secondary Highway 57 and State Secondary Highway 791. Said farm being on all sides of said junction.

The Carroway, Hayward, farm located on the south side of State Secondary Highway 72 and 1 mile southwest of its intersection with U.S. Highway 52.

The Carroway, Luther, farm located on both sides of State Primary Highway 51 and 0.1 mile northwest of the intersection of said highway and State Secondary Highway 46.

The Georgia Pacific Paper Company, farm located on the south side of the junction of two dirt roads, said junction being 0.8 mile east of its junction with State Secondary Highway 461, said junction being 0.8 mile north of the intersection of said highway and State Secondary Highway 85.

The Hall, James, farm located on both sides of a dirt road and 0.6 mile south of its junction with State Secondary Highway 501, said junction being 1.5 miles southeast of the junction of said highway and U.S. Highway 301.

The Ham, Ralph, farm located on the east side of a dirt road and 1.7 miles northwest of its junction with U.S. Highway 301, said junction being 0.7 mile northeast of the junction of said highway and State Secondary Highway 45.

The Hannah, Bert, farm located on the south side of a dirt road and 1 mile west of its junction with State Secondary Highway 633, said junction being 0.1 mile south of the junction of said highway and State Secondary Highway 58.

The Kelly, Boyd, Estate farm located on the west side of State Secondary Highway 136 and 1.2 miles northwest of its intersection with State Secondary Highway 35.

The Lyde, Mamie, farm located on the east side of State Secondary Highway 72 and 0.5 mile south of its junction with State Secondary Highway 794.

The McAllister, Armstrong, farm located at the end of a dirt road and 0.4 mile northwest of its junction with another dirt road, then south along said dirt road to its junction with another dirt road, then westerly along said dirt road to its junction with State Secondary Highway 34, said junction being 1.1 miles southeast of the junction of State Secondary Highway 149 with State Secondary Highway 34.

The Melton, Jeanette P., farm located on both sides of State Secondary Highway 150 and 1.3 miles southeast of its junction with State Secondary Highway 460.

The Poston, Charlton, farm located on the south side of State Primary Highway 378 and 0.1 mile west of its junction with State Secondary Highway 596.

The Turner, V. A., farm located on the west side of State Secondary Highway 633 and 0.1 mile south of its junction with State Secondary Highway 58.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along said highway to its intersection with State Secondary Highway 306, then west along said highway to its intersection with State Secondary Highway 142, then south along said highway to its junction with State Primary Highway 9, then northwest along said highway to its intersection with State Secondary Highway 59, then southwest and south along said highway to its junction with State Primary Highway 917, then southwest along said highway to its intersection with State Secondary Highway 19, then south and southeast along said highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along said highway to its intersection with State Primary Highway 9, then southeast and south along said highway to its intersection with the Waccamaw River, then northeast along said river to its intersection with South Carolina-North Carolina State line, then southeast along said State line to its intersection with U.S. Highway 17, then southwest along said highway to its junction with State Primary Highway 90, then west along said highway to its intersection with a dirt road known as Telephone Road, said intersection being 1.3

miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along said swamp to its junction with the Waccamaw River, then west along said river to its intersection with Stanley Creek, then north along said creek 1.6 miles then northwest along said creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of said creek, and extending north to the junction of said line with State Primary Highway 905, then southwest along said highway to its junction with State Secondary Highway 19, then north along said highway 2.4 miles to its junction with a dirt road.

Then southwest along said road to its intersection with Maple Swamp, then north along said swamp to its intersection with State Secondary Highway 65, then southwest along said highway to its junction with U.S. Highway 701, then south along said highway to its intersection with U.S. Highway 501, then northwest along said highway to its intersection with State Secondary Highway 548, then west along said highway to its junction with a dirt road, then west along said dirt road to its junction with State Secondary Highway 78, then north along said highway to its junction with State Secondary Highway 391, then northeast along said highway to its junction with U.S. Highway 501, then southeast along said highway to its junction with State Secondary Highway 591, then north along said highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along said dirt road to its junction with State Primary Highway 319, then northwest along said highway to its junction with State Secondary Highway 131, then east and north along said highway to its intersection with Loosing Swamp, then west and northwest along said swamp to its intersection with State Secondary Highway 45, then southwest along said highway to its junction with State Secondary Highway 129, then northwest along said highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection with Little Pee Dee River, then northwest along said river to its junction with the Lumber River, then northeast along said river to its intersection with the South Carolina-North Carolina State line, then southeast along said State line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles southwest and west of the junction of said dirt road and State Secondary Highway 99, said junction being 1.75 miles north of the junction of said highway and State Secondary Highway 97.

The Barnhill, Edgar, farm located on both sides of a dirt road and 0.4 mile east of its junction with State Primary Highway 90, said junction being 0.1 mile northeast of the junction of said highway and State Secondary Highway 377.

The Edge, Nina L., farm located on the west side of a dirt road and 0.8 mile southeast of its junction with a second dirt road, said junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, said second junction being 0.8 mile southwest of the junction of said highway and State Secondary Highway 31.

Tlhe Fowler, O. R., farm located on both sides of a dirt road and 0.1 mile north of the intersection of said dirt road and State Primary Highway 9, said intersection being at Goretown.

The Gore, Sumpter, farm located on both sides of a dirt road and 0.75 mile north of the intersection of said dirt road and State Primary Highway 9, said intersection being at Goretown.

The Hucks, Edd, farm located on the north side of a dirt road and 1 mile west of its junction with State Secondary Highway 109, said junction being 1.5 miles northeast of the junction of said highway and State Secondary Highway 79.

The Jordan, Blease, farm located on the north side of a dirt road and 0.6 mile east of its junction with State Secondary Highway 78, said junction being 1.9 miles northwest of the junction of said highway and U.S. Highway 378.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of said highway and State Secondary Highway 377.

The Milligan, O. L., farm located on both sides of a dirt road and 0.1 mile southwest of its junction with the South Carolina-North Carolina State line, said junction being 1.6 miles northeast of a second junction with said dirt road and State Secondary Highway 420.

The Page, Cordie, farm located on the north side of State Secondary Highway 128 and 0.4 mile west of the junction of said highway and U.S. Highway 501, said junction being at Aynor.

The Richardson, Talmage, farm located on the north side of a dirt road and 1 mile southwest of the junction of said dirt road and State Secondary Highway 99, said junction being 1.75 miles north of the junction of said highway and State Secondary Highway 97.

The Williamson, Vide, farm located on both sides of a dirt road and 0.4 mile from the junction of said dirt road and State Primary Highway 410, said junction being 0.7 mile northeast of the intersection of State Primary Highway 410 and State Secondary Highway 19.

Marion County. The entire county.

Marlboro County. That portion of the county lying south and east of U.S. Highway 15, excluding the area within the corporate limits of the towns of Bennettsville, McColl, and Tatum.

The Bowman, Cecil, farm located on both sides of a dirt road and 0.5 mile northeast of junction of said dirt road and State Secondary Highway 257, said junction being 0.4 mile north of junction of said highway and State Secondary Highway 165.

The Quick, B. F., farm located on the south side of a dirt road 1 mile southwest of its junction with State Secondary Highway 257, said junction being 1.75 miles northeast of the intersection of said highway and State Secondary Highway 165.

The Strong, Marvin, farm located on the south side of the South Carolina-North Carolina State line and 1.3 miles east of its intersection with State Primary Highway 177.

(Sec. 8, 9, 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 37 FR 28464, 28477; 38 FR 19141; 7 CFR 301.80)

Done at Washington, D.C., this 27th day of October 1982.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-30020 Filed 10-29-82; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 92

[Docket No. 82-072]

Importation of Cattle From the Republic of Ireland

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the import requirements for cattle from the Republic of Ireland to require additional herd history, animal isolation and tests for brucellosis, a contagious, infectious, and communicable disease of cattle. This action is necessary to prevent the introduction and dissemination of brucellosis in the United States through cattle imported from the Republic of Ireland. The intended effect of this action is to decrease the probability of the introduction of brucellosis through cattle imported from the Republic of Ireland.

DATE: Effective December 1, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. M. R. Crane, USDA, APHIS, VS, Import/Export Staff, Room 819, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8170.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This action has been reviewed in conformance with Executive Order 12291 and has been classified as not a "major rule." The rule will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises, in domestic or export markets.

Alternatives

The following alternatives were considered in making this decision:

1. To make no change in the regulation. Alternative 1 would continue to require that all cattle offered for importation from any part of the world, except for immediate slaughter, be accompanied by a certificate showing that the cattle have been tested for tuberculosis and brucellosis with negative results within 30 days of the date of their exportation. This alternative was not selected because the Deputy Administrator, Veterinary Services, has determined that, cattle imported from the Republic of Ireland have been associated with the introduction of brucellosis into the United States. Under Alternative 2, the importation requirements relating to brucellosis testing of cattle from the Republic of Ireland will be amended to increase the number of brucellosis tests and increase the length of time it will take to certify cattle as eligible for importation from the Republic of Ireland. This alternative was adopted because it provides greater protection for the livestock of the United States against the introduction of brucellosis through cattle imported from the Republic of Ireland.

Regulatory Flexibility Act

Dr. Harry C. Mussman, Administrator of the Animal and Plant Health Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action will require that an importer of cattle from the Republic of Ireland comply with additional procedures to ensure the brucellosis free status of the cattle before exportation from the Republic of Ireland. Department records for the last three years show there were only two shipments of cattle from Ireland totaling 146 head of cattle imported by two persons. Additionally, it is not anticipated that the number of shipments of cattle from Ireland to the United States will increase in the future.

Background

On Thursday, May 27, 1982, a document was published in the **Federal Register** (47 FR 23172–23174) which proposed to amend the import requirements for cattle from the Republic of Ireland by requiring the cattle to be: (1) Accompanied by an Irish certificate showing that all the cattle are from a herd which has special, i.e., brucellosis qualified for export, herd status; (2) maintained as a herd for a minimum of 2 years prior to importation and the herd would not be permitted to contain cattle born to or nursed by brucellosis reactors or animals raised in a brucella affected herd because of persistent infection characterized by long incubation periods in approximately 5 percent of such animals; (3) tested twice and found negative for brucellosis by the Plate or Tube agglutination test, Brucellosis card test (Rose Bengal test) and the Complement Fixation (CF) test procedures conducted not less than 60 days nor more than 120 days from the date of export; (4) placed in isolation on separate premises a minimum of 500 yards from other livestock not destined for export to the United States and such isolation maintained for at least 60 days prior to export; and (5) conveyed from the isolation facilities directly to the port of export without contact with other cattle not eligible for export to the United States.

A 60 day comment period was provided for receipt of comments which expired on July 26, 1982. Two comments were received. One comment was favorable. The second comment was in favor of the proposal as published; however, was opposed to the added cost for their organization, which would be approximately $300 per head for 20 head equaling $6,000.

The Department, in deciding to amended the regulations as proposed, did consider the added cost to persons importing cattle from the Republic of Ireland. However, this action is necessary to provide greater protection for the livestock of the United States against the introduction of brucellosis through cattle imported from the Republic of Ireland.

Based on the reasons set forth in the proposal and in this document, the provisions set forth in the proposal are being adopted without change.

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock & livestock products, Mexico, Poultry & poultry products, Quarantine, Transportation, Wildlife.

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

Accordingly, Part 92, Title 9, Code of Federal Regulations, is amended as follows:

1. The first sentence in § 92.6(a) is amended to read as follows:

§ 92.6 Diagnostic tests.

(a) *Tuberculosis and brucellosis tests of cattle.* Except as provided in §§ 92.20, 92.35 (b) and (c), and 92.43, all cattle offered for importation from any part of the world, except for immediate slaughter, shall be accompanied by a satisfactory certificate of a salaried veterinary officer of the national government of the country of origin showing that the animals have been tested for tuberculosis and brucellosis with negative results within 30 days of the date of their exportation: *Provided,* That the brucellosis test will not be required for steers, spayed heifers, or any cattle less than 6 months old.

* * * * *

2. Part 92 is amended by adding a new § 92.43 to read as follows:

§ 92.43 Cattle from the Republic of Ireland.

(a) All cattle to be imported from the Republic of Ireland shall be accompanied by a certificate issued or endorsed by a salaried veterinarian of the Republic of Ireland showing that the cattle originated from a herd which is officially certified by the Republic of Ireland as a brucellosis qualified for export herd and that the cattle meet the requirements in § 92.43(c).

(b) A brucellosis qualified for export herd is a herd in which all of the cattle have been maintained as a herd unit for at least two years prior to importation and all of the test eligible cattle in the herd (i.e., cattle over 6 months of age, except steers and spayed heifers) have been tested annually for brucellosis and found negative in accordance with Republic of Ireland requirements for at least two years prior to importation. The most recent negative herd test must have been conducted within 12 months of the date of importation. In addition:

(1) Such herd unit may include cattle which were born and raised within such herd unit during the two year period, or cattle which were moved directly to the herd from another herd unit of like status; or

(2) Such herd unit may include other cattle (except brucellosis reactors, suspects and animals listed in § 92.43(c)(1)) if:

(i) Such other cattle have been tested for brucellosis and found negative within 30 days prior to entry into the herd unit and all eligible cattle in the herd unit have been tested for brucellosis and found negative not less than 90 days following the date when the last of the other cattle had been added to the herd unit; or

(ii) All eligible cattle in the herd unit have been tested negative for

brucellosis no less than 180 days nor more than 12 months (365 days) following the date when the last of the other cattle had been added to the herd unit.

(c) The certificate accompanyng cattle offered for importation from the Republic of Ireland shall show that the cattle are from a brucellosis qualified for export herd and that they meet the following requirements:

(1) The cattle to be exported were not born to or nursed by brucellosis reactors and they were not born in a herd at the time the herd was under quarantine due to brucella infection.

(2) The cattle were placed in an isolation facility approved by a full-time, salaried, Government of Ireland veterinary official, on separate premises a minimum of 500 yards from other livestock not destined for export to the United States for at least 60 days prior to export.

(3) The cattle were negative to the following tests conducted not less than 60 nor more than 120 days from the date of export and a second set of tests conducted within 30 days of the date of export:

(i) Plate or Tube agglutination test conducted in dilutions to detect reactions at 30, 60, 120, and 240 International Units per milliliter (IU/ml);

(ii) Brucellosis card test (Rose Bengal test); and

(iii) Complement Fixation (CF) test conducted in dilutions to detect prozone reactions, when present.

(4) Cattle are eligible for entry only if classified as negative at 30 IU to the Plate or Tube agglutination test, negative to the brucellosis card test and negative to the CF test as performed and interpreted by standard methods at the Republic of Ireland Brucellosis Diagnostic Laboratory. Any animal exhibiting a prozone serological reaction is ineligible for export to the United States.

(5) Cattle showing a serological titer more than 60 IU to the Plate or Tube agglutination test, or a reaction to the Brucellosis card test (Rose Bengal) or CF test that would be interpreted to be an infected animal (reactor) under the Republic of Ireland brucellosis control program. Animals form that herd of origin and all other cattle having the opportunity for contact with the reactor animal shall not be eligible for export to the United States. Brucellosis bacteriologically positive animals, if known, regardless of serologic reactions, are not eligible for importation nor are any animals in contact with such animals.

(6) The cattle were moved directly to the port of export from the isolation facility without contact with any other cattle which are not qualified for export to the United States.

(d) The certificate accompanying the cattle offered for importation must also show the dates and places of testing, names of the consignor and consignee, and descriptions of the cattle, including breed, ages, markings, and tattoo and eartag numbers.

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

Done at Washington, D.C., this 26th day of October 1982.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 82-29859 Filed 10-29-82; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 97

[Docket No. 82-080]

Overtime Work at Laboratories, Border Ports, Ocean Ports, and Airports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulation which establishes charges for overtime work at laboratories, border ports, ocean ports, and airports. Veterinary Services inspectors of the United States Department of Agriculture are charged with performing inspection duties relating to imports and exports at laboratories, border ports, ocean ports, and airports. Such services may be performed outside the regular tour of duty of the inspector when requested by a person, firm, or corporation and the charge for such overtime is recoverable from those requesting the services. The following amendments increase the hourly rates for such services performed on a Sunday or holiday, or at any other time outside the regular tour of duty. These increases are commensurate with salary increases provided Federal employees in accordance with the Federal Pay Comparability Act of 1970 (Pub. L. 91-656), and Executive Order 12387 dated October 8, 1982.

EFFECTIVE DATE: November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Dr. E. R. Mackery, USDA, APHIS, VS, Room 870, Federal Building, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final action has been reviewed under Executive Order 12291, and has been determined to be exempt from those requirements. Mr. Nicholas E. Bedessem, Special Assistant to the Administrator, made this determination because the hourly rate for overtime services and of the commuted traveltime allowances depends entirely upon facts within the knowledge of the Department of Agriculture. The Agency has no alternatives to raising the overtime rate. By law, importers/exporters are required to reimburse the Agency for its costs associated with services rendered. Unless the rate is raised, it will not cover the pay raise which commences October 3, 1982.

Accordingly, pursuant to the Administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and public procedure on these amendments are impracticable, unnecessary, and contrary to the public interest and good cause is found for making these amendments effective less than 30 days after publication in the Federal Register.

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

Pursuant to the authority conferred by the Act of August 28, 1950 (64 Stat. 561; 7 U.S.C. 2260), and the Airports and Airways Development Act Amendments of July 12, 1976 (90 Stat. 882; 49 U.S.C. 1741), the first sentence of § 97.1(a) and the last sentence of § 97.1(b) are amended to read:

§ 97.1 Overtime work at laboratories, border ports, ocean ports, and airports.[1]

(a) Any person, firm, or corporation having ownership, custody or control of animals, animal byproducts, or other commodities subject to inspection, laboratory testing, certification, or quarantine under this subchapter and subchapter G of this chapter, and who requires the services of an employee of Veterinary Services on a holiday or Sunday or at any other time outside the regular tour of duty of such employee, shall sufficiently in advance of the period of overtime or holiday or Sunday service request the Veterinary Services inspector in charge to furnish inspection, laboratory testing, certification or quarantine service during such overtime

or holiday or Sunday period, except as provided in paragraph (b) of this section, shall pay the Administrator of the Animal and Plant Health Inspection Service at a rate of $26.84 per man hour per employee on a Sunday and at a rate of $19.40 per man hour per employee for holiday or any other period; except that for any services performed on a Sunday or holiday, except as provided in paragraph (b) of this section for inspection or quarantine services requested by an owner or operator of an aircraft at an airport on a Sunday or holiday which are performed within regularly established hours of service, or at any time after 5 p.m. or before 8 a.m. on a weekday, in connection with the arrival in or departure from the United States of a private aircraft or vessel, the total amount payable shall not exceed $25 for all inspectional services performed by the Customs Service, Immigration and Naturalization Service, Public Health Service, and the Department of Agriculture. * * *

(b) * * * When services are performed outside of the regularly established hours of service on a Sunday or holiday or any other day, the rate to be charged owners or operators of aircraft shall be $22.44 per hour on a Sunday and $15.00 per hour on a holiday or any other day, which charges exclude administrative overhead costs.

(64 Stat. 561 (7 U.S.C. 2260))

Done at Washington, DC, this 26th day of October 1982.

K. R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 82-29858 Filed 10-29-82; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 31

[Docket No. 82-22]

Extensions of Credit to Executive Officers, Directors and Principal Shareholders of National Banks and to Their Related Interests

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Garn-St Germain Depository Institutions Act of 1982 deleted the limits of $10,000 and $25,000 on insider loans which limits were previously contained in the Federal Reserve Act (12 U.S.C. 375a(4) and 375b(2)). Instead, it authorized the appropriate Federal banking agencies to prescribe new limits on insider lending. Pending interagency action to set such limits, this regulation states that national banks must continue to observe the relevant loan limits stated in Regulation O, 12 CFR Part 215. Regulation O currently sets these limits at $10,000 and 25,000, respectively.

DATE: This regulation will be effective November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Raija H. Bettauer, Senior Attorney, Legal Advisory Services Division, (202) 447-1880, Office of the Comptroller of the Currency, Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The Garn-St Germain Depository Institutions Act of 1982 ("Act") amended, among other things, paragraph (4) of section 22(g) of the Federal Reserve Act (12 U.S.C. 375a(4)) by striking out the general aggregate limit of $10,000 for extensions of credit by a bank to its executive officers. Pub. L. No. 97-320 section 421(b) (Oct. 15, 1982). It also amended paragraph (2) of section 22(h) of the Federal Reserve Act (12 U.S.C. 375b(2)) by striking out the general aggregate limit of $25,000 (unless approved in advance by a disinterested majority of the board of directors) for extensions of credit by a bank to its executive officers, directors or principal shareholders or their related interests. *Id.* section 422. Instead, the Act authorized the appropriated Federal banking agencies to prescribe by regulation new limits for the purposes of these provisions.

The Office of the Comptroller of the Currency ("Office"), together with the other Federal banking agencies, will issue regulations establishing new loan limits for the purposes of 12 U.S.C. 375a(4) and 357b(2). The Office of the Comptroller of the Currency will issue its regulation by April 15, 1983. In the meantime, the Office has determined that national banks must continue to observe the provisions of Regulation O, 12 CFR Part 215, in this respect. Regulation O currently sets these limits at $10,000 (12 CFR 215.5(c)(3)) and $25,000 (12 CFR 215.4(b)), respectively.

12 CFR Part 31 is being published to comply with the mandate of the Act for the Federal banking agencies to issue by regulation applicable loan limits. In light of the technical nature of the revisions, the lack of the imposition of any substantive new requirements, and the immediate effective date of the Act, the Office for good cause finds that the procedures prescribed by 5 U.S.C. 553 relating to notice, public hearing and comment, and deferred effective date are unnecessary and would serve no useful purpose.

Special Studies

Because the notice and comment procedure under 5 U.S.C. 553 is not used for the reasons discussed above, the Regulatory Flexibility Act does not apply in this instance. This regulation does not constitute a "major rule" under E.O. 12291 and, therefore, a Regulatory Impact Analysis will not be performed. The regulation will not require national banks to expend any funds, will not cause an increase in their prices or costs, and will not adversely affect foreign or domestic competition.

List of Subjects in 12 CFR Part 31

National banks, Lending limits, Credit.

Consequently, the Office is adding to 12 CFR the following new Part 31:

PART 31—EXTENSIONS OF CREDIT TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF NATIONAL BANKS AND THEIR RELATED INTERESTS

Sec.
31.1 Authority.
31.2 Loan limits.

§ 30.1 Authority.

This part is issued by the Comptroller of the Currency pursuant to 12 U.S.C. 375a(4) and 375b(2), as amended by Pub. L. No. 97-320.

§ 31.2 Loan limits.

The Comptroller adopts by reference the loan limits ($10,000 and $25,000, respectively) contained in Regulation O, Part 215, of the Board of Governors of the Federal Reserve System as the loan limits for national banks under 12 U.S.C. 375a(4) and 375b(2), as amended by Pub. L. No. 97-320.

Dated: October 19, 1982.

William E. Martin,

Acting Comptroller of the Currency.

[FR Doc. 82-30015 Filed 10-29-82; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 215

[Docket No. R-0428]

Regulation O; Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule with clarification.

SUMMARY: The Board of Governors of the Federal Reserve System is amending

its Regulation O (12 CFR Part 215), which governs loans by a member bank to its executive officers, directors and principal shareholders, to implement certain amendments to sections 22 (g) and (h) of the Federal Reserve Act (12 U.S.C. 375a and 375b), included in the Garn-St Germain Depository Institutions Act of 1982. The amendments to the Regulation relate to the limitations on loans by a member bank to its executive officers. In addition, the rule confirms the dollar amount above which the prior approval of the bank's board of directors is required for loans by a member bank to its executive officers, directors, and principal shareholders and their related interests.

EFFECTIVE DATE: November 1, 1982.

FOR FURTHER INFORMATION CONTACT: James V. Mattingly, Jr., Associate General Counsel (202/452-3430), or Jennifer J. Johnson, Senior Attorney (202/452-3584), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: Prior to enactment of the Garn-St Germain Depository Institutions Act of 1982 ("DIA"), section 22(g) of the Federal Reserve Act prescribed certain dollar limitations on loans by a member bank to its executive officers. These limits were $60,000 for a home mortgage, $20,000 for the education of the executive officer's children, and $10,000 for all other purposes. Section 421(a) of the DIA eliminated the dollar limitations on home mortgage and education loans. Accordingly, the attached rule amends Regulation O to eliminate the $60,000 and $20,000 limits for such loans that are currently specified in the regulation.

Section 421(b) of the DIA eliminated the $10,000 limitation on "other" loans and substituted therefor "an amount prescribed in a regulation of the member bank's appropriate Federal banking agency." The attached rule specifies that, until the Board adopts a new lending limit for loans by a State member bank to its executive officers under section 22(g) of the Federal Reserve Act, the $10,000 limit currently found in section 215.5(c)(3) of Regulation O continues to be the limit for such loans by a State member bank to any of its executive officers.

Section 22(h)(2) of the Federal Reserve Act provides that no member bank shall make any loan to any executive officer, director or principal shareholder of the bank, or to any related interest of such a person, in an amount that, when aggregated with all other loans or extensions of credit of the bank to that person and person's related interests, exceeds $25,000 unless such loan or extension of credit is approved in advance by a majority of the bank's entire board of directors with the interested party abstaining from the vote. Section 422 of the DIA eliminates the $25,000 amount in section 22(h)(2) and substitutes therefor "an amount prescribed in a regulation of the appropriate Federal banking agency." Accordingly, until the Board adopts a new dollar amount above which the prior board of director's approval for loans to executive officers, directors and principal shareholders and their related interests is required under section 22(h)(2) of the Federal Reserve Act, the current $25,000 amount specified in section 215.4(b) of Regulation O continues in effect.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq*), the Board of Governors of the Federal Reserve System certifies that the amendment will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation. The amendment would liberalize existing regulations and would not have any particular effect on small entities that would be subject thereto.

The provisions of section 553(b) of Title 5, United States Code, with respect to notice, public participation and deferred effective date, have not been followed because these amendments implement statutory changes. Moreover, because of the lack of a deferred effective date in sections 421 and 422 of the DIA, it is necessary for the Board to act immediately to reaffirm the continued effectiveness of the $10,000 lending limit for State member bank loans to their executive officers and the $25,000 prior board of directors' approval requirement currently specified in the Board's Regulation O. Without such action by the Board, every extension of credit by a State member bank to an executive officer, director or principal shareholder would require the prior approval of the board of directors of the bank and no State member bank could extend any credit to its executive officers for other than education or home mortgage purposes.

List of Subjects in 12 CFR Part 215

Banks, banking, Credit, Reporting and recordkeeping requirements, Federal Reserve System.

PART 215—[AMENDED]

Accordingly, pursuant to its authority under sections 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. 375a and 375b), the Board of Governors amends Regulation O (12 CFR Part 215) by revising § 215.5(c) to read as follows:

§ 215.5 Additional restrictions on loans to executive officers.

* * * * *

(c) A member bank is authorized to extend credit to any executive officer of the bank:

(1) In any amount to finance the education of the executive officer's children;

(2) In any amount to finance the purchase, construction, maintenance, or improvement of a residence of the executive officer, if the extension of credit is secured by a first lien on the residence and the residence is owned (or expected to be owned after the extension of credit) by the executive officer; and

(3) In an aggregate amount not to exceed $10,000 outstanding at any one time for a purpose not otherwise specifically authorized under this paragraph.

* * * * *

Board of Governors of the Federal Reserve System, October 26, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-29925 Filed 10-29-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-CE-30-AD; Amdt. 39-4484]

Beech Models 65-90, 65-A90 and B90; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule, superseding Airworthiness Directive (AD).

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Models 65-90, 65-A90 and B90 airplanes, superseding AD 71-14-04, Amendment 39-1241 (36 FR 12842, July 8, 1971), which required inspection and repair of Beech Model B90 airplanes and those Model 65-A90 airplanes having elevator balance horns installed per Beech Kit No. 90-4029. This AD continues in effect these inspection and repair requirements on Beech Model B90 airplanes and extends them to all Beech Models 65-90 and 65-A90 airplanes. A cracking condition which was believed to have been associated with the elevator overhang balance horn installation on the airplanes to which AD 71-14-04 was applicable has been found on other airplanes which do not have this installation. These cracks, if

not detected and corrected by repair, modification or change of parts, could result in the failure of the elevator spar and loss of support of the elevator at the outboard hinge location. Further deterioration could cause loss of elevator control.

DATES:

Effective November 8, 1982.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Beechcraft Service Instructions Nos. 0423–133 and 0450–133, Revision I, and 0333–131, Revision II, applicable to this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201; Telephone (316) 681–7261. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Don Campbell, Aerospace Engineer, Wichita Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 260–7005.

SUPPLEMENTARY INFORMATION: The FAA issued AD 71–14–04, Amendment 39–1241, effective July 8, 1971 (36 FR 12842), to detect and correct cracking of elevator spars at the outboard hinge location on Beech Model B90 and Model 65–A90 airplanes incorporating a 9.5-inch overhang elevator balance horn installed at manufacture or per Beech Service Instructions No. 0423–133. On the basis of information available at the time, the manufacturer and the FAA concluded that the cracking problem was limited to spars in elevators having this 9.5 inch overhang balance horn installation. Subsequently, service reports of cracking of elevators without the overhang balance horn have been received. It is now apparent that the overhang balance horn installation is not the only contributor to the cracking problem and that this balance horn installation only accelerated the onset of the cracking problem. Thus, the cracking condition on airplanes to which AD 71–14–04 is applicable may be expected to occur on all Beech Models 65–90, 65–A90 and B90 airplanes as time-in-service accumulates on these airplanes. The manufacturer has issued Service Instructions No. 0450–133, Revision I, containing instructions for inspections to detect cracks on these airplanes. The FAA concludes that since cracks are now being reported on the airplanes without the overhang balance horn, the inspections recommended by the manufacturer should be made mandatory as soon as practical.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued superseding AD 71–14–04 and extending the requirement for the inspections and corrections, if necessary, required by this AD to all Beech Model 65–90, 65–A90 and B90 airplanes. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Beech.—Applies to Models 65–90 and 65–A90 (S/Ns LJ–1 through LJ–317) and B90 (S/Ns LJ–318 through LJ–501), except those airplanes having reinforced elevators per Beech Service Instructions No. 0333–131, Revision II, or P/N 50–610000–349 LH and –350 RH aluminum elevators (reference Kit Nos. 90–4061 S, 90–4062 S, 90–4062–1 S).

Compliance: Required as indicated, unless already accomplished. To prevent elevator spar failures and possible loss of elevator control, accomplish the following:

(a) On all affected Models 65–90 and those 65–A90 airplanes which do not have elevator overhang balance horns installed per Beech Kit No. 90–4029 (9.5-inch outboard end overhang, part of Kit Nos. 90–4031 M, 90–4031–1 M, and 90–4035 M) prior to attaining 2,100 hours time-in-service (TIS) on airplanes having less than 2,000 hours TIS, or within 100 hours TIS after the effective date of this AD on airplanes having 2,000 or more hours TIS and at intervals not exceeding 500 hours TIS thereafter:

(1) Incorporate an inspection port, check the elevator hinge point alignment, and, if necessary, correct it in accordance with Beech Service Instructions No. 0450–133, Revision I (initial inspection only).

(2) Visually inspect the elevator spar at the outboard hinge point for cracks in accordance with Beech Service Instructions No. 0450–133, Revision I (initial and recurring inspection).

(b) On all affected Model B90 and those Model 65–A90 airplanes which have elevator overhang balance horns per Beech Kit No. 90–4029 (see (a) above for description) prior to attaining 600 hours TIS on airplanes having less than 500 hours TIS, or within 100 hours TIS after the effective date of this AD on airplanes having 500 or more hours TIS and at intervals not exceeding 200 hours TIS thereafter:

(1) Incorporate an inspection port, check the elevator hinge point alignment, and, if necessary, correct it in accordance with Beech Service Instructions No. 0423–133 (initial inspection only).

(2) Visually inspect the elevator spar at the outboard hinge point for cracks in accordance with Beech Service Instruction No. 0423–133 (initial and recurring inspection).

(c) Prior to further flight, repair or replace with serviceable parts any components found cracked during the inspections specified in paragraph (a) or (b).

(d) Airplanes may be flown in accordance with FAR 21.197 to a base where the inspections and repair/replacement can be performed.

(e) Intervals between repetitive inspections required by this AD may be increased up to 10 percent to allow them to coincide with other scheduled maintenance on the airplane.

(f) An equivalent method of compliance with this AD may be used if approved by the Manager, Wichita Aircraft Certification Office, Room 238, Terminal Building 2299, Mid-Continent Airport, Wichita, Kansas 67209, Telephone (316) 269–7000.

This AD supersedes AD 71–14–04, Amendment 39–1241 (36 FR 12842, July 8, 1971).

This amendment becomes effective on November 8, 1982.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(a)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89))

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on October 21, 1982.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 82–29876 Filed 10–29–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 82-ASW-70; Amdt. 39-4480]

Airworthiness Directives; Boeing Vertol Model 234 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action adopts a new airworthiness directive (AD) that was previously made effective for all known owners and operators of Boeing Vertol Model 234 series helicopters by telegraphic AD. This amendment requires a one-time inspection and repair as necessary of the forward, aft and combiner transmissions. The AD is needed to prevent possible in-flight failure of the transmission which could result in loss of helicopter control.

DATES: Effective November 5, 1982.

Compliance required as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Boeing Company, Vertol Division, Boeing Center, P.O. Box 16858, Philadelphia, Pennsylvania 19142. A copy of the referenced Service Bulletin may be reviewed at FAA Headquarters, Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591, or Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106.

FOR FURTHER INFORMATION CONTACT: Mr. P. Perrotta or Mr. M. Schoenberger, Propulsion Section, ANE-174, New York Aircraft Certification Office, New England Region, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581, telephone No. 516 791-7421.

SUPPLEMENTARY INFORMATION: Telegraphic AD T82-20-52 was issued on September 24, 1982, requiring removal, inspection and repair or replacement as necessary of Boeing Vertol Model 234 series helicopters forward, aft and combiner transmissions assembled prior to September 1, 1982. The AD was issued as a result of a report of a lubrication system failure in the forward tramsmission drive system of a military CH-47C helicopter. The telegraphic AD exempted transmissions assembled after September 1, 1981, from the inspection requirements. Subsequently it was found that due to vendor manufacturing processes, all transmissions, regardless of assembly date, are suspect.

Since this condition was likely to exist on all helicopters of the same type, immediate corrective action was required. Notice and public procedure thereon were impractical and contrary to the public interest and good cause existed for making the AD effective immediately to all known owners and operators of Boeing Vertol Model 234 helicopters by telegraphic AD dated September 24, 1982. These conditions still exist and in addition all Boeing Vertol Model 234 transmissions regardless of assembly date should be subject to the AD. Therefore, the applicability is being expanded by deleting any reference to transmission assembly or overhaul date, thereby including all transmissions. Transmissions previously inspected in accordance with Boeing Vertol Bulletin 234-65-1027, Revision 2, are in compliance with the AD and are not subject to further inspection. The AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations.

Since immediate adoption of the amendment is necessary, notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing Vertol: Applies to Boeing Vertol Model 234 series helicopters, Manufacturer's Serial Numbers MJ001 through MJ006, equipped with forward transmission, P/N 234D1200-2; aft transmission, P/N 234D2200-2M and combiner transmission, P/N 234D5200-5, certificated in all categories.

Compliance is required prior to further flight, after the effective date of this AD, unless already accomplished.

To prevent possible hazards in flight associated with transmission drive component failure, due to lubrication system contamination, accomplish the following:

a. Remove the forward transmission, aft transmission and combiner transmission, disassemble, inspect and repair in accordance with the accomplishment instructions of Boeing Vertol Bulletin 234-65-1027, Revision 2 contained in Boeing Vertol TWX Nos. 8-1420-3-4264, 4267, and 4273, respectively dated September 23, 24, and 25, 1982, or FAA approved equivalent.

b. An equivalent method of compliance with this AD must be approved by the New York Aircraft Certification Office, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This amendment becomes effective November 5, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct unsafe condition on aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

This rule is final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas on October 18, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-29854 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-CE-29-AD; Amendment 39-4483]

Airworthiness Directives; Piper Models PA-24, PA-24-250, PA-24-260, PA-30, and PA-39 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Piper Models PA-24, PA-24-250 and PA-24-260 airplanes, modified per Robertson Supplemental Type Certificate (STC) SA 2495WE, and PA-30 and PA-39 airplanes, modified per Robertson STC SA 2312WE. This AD requires installation of a temporary

placard limiting flap extension to 15° and a Flight Manual Supplement containing asymmetrical flap condition emergency procedures for these airplanes. An asymmetrical flap condition which occurred on a Model PA-30 airplane incorporating STC SA 2312WE resulted in an accident which destroyed the airplane. Flight tests have shown that Models PA-24 Series, PA-30 and PA-39 airplanes modified per the above-cited STCs are controllable with a maximum asymmetrical flap extension to 15° when appropriate procedures are used. The AD will reduce the possibility of an accident by limiting the flap extension to 15° and providing Emergency Procedures which will enable the pilot to safely operate the airplane with an asymmetric flap condition up to this limit.

EFFECTIVE DATE: November 8, 1982.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Information pertaining to this rulemaking action is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Owen Schrader, Airframe Branch, ANM-120S, Seattle Area Aircraft Certification Office, FAA, Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, Telephone: (206) 767-2516.

SUPPLEMENTARY INFORMATION: An asymmetrical retraction of the flaps occurred at low altitude on a Piper Model PA-30 airplane modified per Robertson STC SA 2312WE when the flaps were retracted following takeoff. The flight terminated in an accident which destroyed the airplane. Part of the modification incorporated on the airplane links the flaps and ailerons such that flap extension causes the aileron neutral position to deflect downward as the flaps are extended. The linkage correlates the change in each aileron neutral axis to the position of the adjacent flap, thus causing the aileron to increase the tendency of an asymmetrical flap to roll the airplane. Flight tests conducted by the STC holder and the FAA have established that Piper Models PA-24, PA-24-250, PA-24-260, PA-30 and PA-39 airplanes, modified per the applicable Robertson STCs, can be controlled at the critical condition of one flap retracted and the other extended 15° maximum if appropriate emergency procedures are used.

If asymmetrical flap retraction or extension is experienced at a flap extension greater than 15°, or if proper emergency procedures are not followed at lesser extensions, loss of airplane control may result.

Since the FAA has determined that the unsafe condition described herein is likely to exist or develop in other airplanes of the same type design, an AD is being issued applicable to Piper Models PA-24, PA-24-250 and PA-24-260 airplanes, modified per Robertson Supplemental Type Certificate (STC) SA 2495WE and PA-30 and PA-39 airplanes modified per Robertson STC SA 2312WE. It requires installation of a placard on the instrument panel, limiting flap extension to 15° and a Flight Manual Supplement containing Asymmetrical Flap Emergency Procedures be placed in the existing Airplane Flight Manuals. Because an emergency condition exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

Piper: Applies to Piper Models PA-24, PA-24-250 and PA-24-260 airplanes, modified per Robertson Supplemental Type Certificate (STC) SA 2495WE, and PA-30 and PA-39 airplanes, modified per Robertson STC SA 2312WE, certificated in any category.

Compliance: Required within 25 hours time-in-service after the effective date of this AD unless already accomplished.

To prevent possible loss of airplane control due to an asymmetrical flap extension or retraction, accomplish the following:

(a) Install a temporary placard on the panel near the flap actuator which reads:

"Do Not Extend Flaps Beyond 15° (Takeoff Position)" and operate the airplane in accordance with this limitation.

(b) Insert a copy of Figure 1 of this AD in the Airplane Flight Manual (AFM).

(c) The installation of the placard and insertion of Figure 1 of this AD in the AFM may be accomplished by the owner/operator of the airplane. This person shall make an appropriate entry in the airplane's maintenance record indicating compliance with this AD.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Seattle Area Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington 98108.

Note.—The FAA anticipates this AD will be amended or superseded in the near future to require airplane design changes which will make the operating restriction imposed unnecessary.

This amendment becomes effective on November 8, 1982.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket under the caption "ADDRESSES" at the location identified.

Issued in Kansas City, Missouri, on October 20, 1982.

John E. Shaw,

Acting Director, Central Region.

Figure 1, AD 82-CE-29-AD

Airplane Flight Manual Supplement

Temporary Flap Restriction and Asymmetrical Flap Emergency Procedures

Limitations

Maximum flap extension is limited to 15° under all conditions.

Emergency Procedures

Flap Operation: If the airplane begins a pronounced roll, in either direction, upon flap *extension* or *retraction*, immediately cease flap operation and reverse the action. That is, if flaps are being retracted, and pronounced roll begins, cease retracting the flaps and initiate extension back to the maximum of 15°. If flaps are being extended, and a pronounced roll begins, cease extending flaps and return flaps to the retracted position. Leave the flaps in the last position found to permit aileron neutral flight and return to a suitable landing field. If flaps are retracted; consider the need for additional landing field length. If flaps are extended, limit airspeed to maximum flaps extended speed (125 m.p.h.—108K).

Landing Performance—Flaps 15°

There is no published landing distance for 15° of flaps. Allow at least 15 percent additional distance over the applicable distance obtained for 27° of flaps.

Description

The restriction of flap extension to a maximum of 15° is necessitated because of the potential for asymmetric flaps under certain conditions. A case has been reported where one flap remained extended when flaps "UP" was selected.

The potential also exists for an extension cable breakage that could cause only one flap to extend when flaps "DOWN" is selected.

With one flap extended to 15°, the airplane is controllable by coordinated use of ailerons and rudder. The EMERGENCY procedures listed above should be followed if pronounced roll is encountered when flaps are moved. This will restore balanced lift to each wing, permitting normal aileron authority for maneuvering the airplane.

These procedures and limitations are considered only temporary measures until a permanent modification can be developed.

[FR Doc. 82-29855 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-72]

Alteration of Control Zones; Gage, OK and Ponca City, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the control zones at Gage and Ponca City, OK. This amendment will return to public use airspace no longer required for the protection of aircraft arriving/departing the foregoing airports. The amendment is necessary due to the possibility of continued part-timing of the Gage and Ponca City Flight Service Stations (FSS's). If the facility operational hours are less than a 24-hour status, there will be no weather reporting and/or communications available when the facilities are nonoperational. Therefore, the airports will not meet the requirements for a control zone during this period.

DATES: Effective December 23, 1982. Comments on the rule must be received before December 10, 1982.

ADDRESSES: Send comments on the action in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region: Docket No. 82-ASW-72, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

Federal Aviation Regulation Part 71, Subpart F § 71.171 as republished in Advisory Circular AC 70-3 dated January 29, 1982, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the control zone descriptions at Gage and Ponca City, OK, will necessitate an amendment to this subpart. A statement at the end of each current description must be inserted in order to have the capability of part-timing the control zone by use of a Notice to Airmen (NOTAM) when the FSS is not operational.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR 71) amends the descriptions of the Gage and Ponca City, OK, control zones. Because this action reduces a burden on the public by releasing controlled airspace, I find that notice and public procedure and publication 30 days before the effective date are unnecessary; however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation.

List of Subjects in 14 CFR Part 71

Control zones, Transition areas, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 G.m.t., December 23, 1982, by adding the following to each airport:

Gage and Ponca City, OK

The control zone shall be effective during the specific dates and times established in advance by a NOTAM. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11/61(c))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 1103; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) it is certified that the rule will not have a significant ecomonic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on October 20, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-29875 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 23396; Amdt. No. 1228]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO-730), Aircraft Programs Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4 and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date of at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, or contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 G.m.t. on the dates specified, as follows:

1. By amending Part 97.23 VOR-VOR/DME SIAPs identified as follows:

* * * *Effective December 23, 1982*

Kremmling, CO—Kremmling, VOR/DME-A, Original
Benton Harbor, MI—Ross Field, VOR Rwy 9, Amdt. 6
Benton Harbor, MI—Ross Field, VOR Rwy 27, Amdt. 15
Wentzville, MO—Wentzville, VOR/DME-A, Original
Hobart, OK—Hobart Muni, VOR Rwy 35, Amdt. 6
Waller, TX—Skylake, VOR/DME Rwy 17, Original

* * * *Effective December 9, 1982*

Delano, CA—Delano Muni, VOR Rwy 32L, Amdt. 3
Upland, CA—Cable, VOR Rwy 6, Amdt. 4
Detroit/Grosse Ile, MI—Grosse Ile Muni, VOR-A, Amdt. 2
International Falls, MN—Falls Intl, VOR Rwy 13, Amdt. 11
International Falls, MN—Falls Intl, VOR Rwy 31, Amdt. 14
International Falls, MN—Falls Intl, VOR/DME or TACAN Rwy 31, Amdt. 3
Belzoni, MS—Belzoni Muni, VOR/DME Rwy 21, Amdt. 4
Odessa, TX—Odessa-Schlemeyer Field, VOR-A, Amdt. 3

* * * *Effective November 25, 1982*

Durango, CO—Durango-LaPlata County, VOR/DME Rwy 2, Amdt. 2
Helena, MT—Helena, VOR-A, Amdt. 13
Helena, MT—Helena, VOR/DME B, Amdt. 5
Lincoln, NE—Lincoln Muni, VOR Rwy 17R, Amdt. 8
Cody, WY—E E Faust Regional, VOR-A, Amdt. 4

* * * *Effective October 8, 1982*

Grand Island, NE—Hall County Regional, VOR Rwy 13, Amdt. 15
Grand Island, NE—Hall County Regional, VOR Rwy 17, Amdt. 19
Grand Island, NE—Hall County Regional, VOR/DME Rwy 31, Amdt. 3
Grand Island, NE—Hall County Regional, VOR/DME Rwy 35, Amdt. 11

* * * *Effective October 7, 1982*

Newton, KS—Newton-City-County, VOR/DME Rwy 35, Amdt. 8

Note.—The FAA published an amendment in Docket No. 23382, amdt. No. 1227 to part 97 of the Federal Aviation Regulations (Vol. 47, FR No. 201, Page 46258; dated October 18, 1982) under section 97.23 effective November 11, 1982, which is hereby amended as follows: Farmerville, LA—Famerville, VOR/DME-A, Amdt. 1, change effective date to November 25, 1982.

2. By amending Part 97.25 SDF-LOC-LDA SIAPs identified as follows:

* * * *Effective December 23, 1982*

Yakutat, AK—Yakutat, LOC/DME BC Rwy 29, Original
Columbus, GA—Columbus Metropolitan, LOC BC Rwy 23, Amdt. 11
Benton Harbor, MI—Ross Field, LOC BC Rwy 9, Amdt. 6
Marshfield, WI—Marshfield Muni, SDF Rwy 34, Original

* * * *Effective December 9, 1982*

International Falls, MN—Falls Intl, LOC BC Rwy 13, Amdt. 7

* * * *Effective November 25, 1982*

Lake Charles, LA—Lake Charles Muni, LOC BC Rwy 33, Amdt. 12
Lawrence, MA—Lawrence Muni, LOC Rwy 5, Amdt. 4, cancelled
Helena, MT—Helena, LOC/DME BC-C, Amdt. 1

* * * *Effective October 8, 1982*

Grand Island, NE—Hall County Regional, LOC/DME BC Rwy 17, Amdt. 5

3. By amending Part 97.27 NDB/ADF SIAPs identified as follows:

** * * Effective December 23, 1982*

Paragould, AR—Paragould Muni, NDB Rwy 4, Original
Paragould, AR—Paragould Muni, NDB Rwy 4, Amdt. 7, cancelled
Benton Harbor, MI—Ross Field, NDB Rwy 27, Amdt. 7
Grant, NE—Grant Muni, NDB Rwy 14, Original
Medford, OK—Medford Muni, NDB Rwy 17, Original
Littlefield, TX—Littlefield Muni, NDB Rwy 1, Original
Marshfield, WI—Marshfield Muni, NDB Rwy 4, Amdt. 10
Marshfield, WI—Marshfield Muni, NDB Rwy 16, Amdt. 6

** * * Effective December 9, 1982*

International Falls, MN—Falls Intl, NDB Rwy 31, Amdt. 7
Durant, OK—Eaker Field, NDB Rwy 35, Amdt. 2
Odessa, TX—Odessa-Schlemeyer Field, NDB Rwy 20, Amdt. 1

** * * Effective November 25, 1982*

Lake Charles, LA—Lake Charles Muni, NDB Rwy 15, Amdt. 15
Lawrence, MA—Lawrence Muni, NDB Rwy 5, Amdt. 3
Helena, MT—Helena, NDB-D, Amdt. 1

** * * Effective October 7, 1982*

Belleville, KS—Belleville Muni, NDB Rwy 18, Amdt. 2
Belleville, KS—Belleville Muni, NDB Rwy 36, Amdt. 2

4. By amending Part 97.29 ILS-MLS SIAPs identified as follows:

** * * Effective December 23, 1982*

Benton Harbor, MI—Ross Field, ILS Rwy 27, Amdt. 4
Dallas, TX—Addison, ILS Rwy 15, Amdt. 5

** * * Effective December 9, 1982*

International Falls, MN—Falls Intl, ILS Rwy 31, Amdt. 7

** * * Effective November 25, 1982*

Durango, CO—Durango-LaPlata County, ILS/DME Rwy 2, Original
Atlanta, GA—The William B. Hartsfield Atlanta Intl, ILS Rwy 8, Amdt. 54
Lake Charles, LA—Lake Charles Muni, ILS Rwy 15, Amdt. 15
Lawrence, MA—Lawrence Muni, ILS Rwy 5, Original
Helena, MT—Helena, ILS Rwy 26, Amdt. 6
Lincoln, NE—Lincoln Muni, ILS Rwy 17R, Amdt. 2
Spokane, WA—Spokane Intl, ILS Rwy 3, Amdt. 1

5. By amending Part 97.31 RADAR SIAPs identified as follows:

** * * Effective December 23, 1982*

Beaumont-Port Arthur, TX—Jefferson County, RADAR-1, Amdt. 7

** * * Effective December 9, 1982*

Madison, WI—Dane County Regional-Truax Field, RADAR-1, Amdt. 9

** * * Effective November 25, 1982*

Lake Charles, LA—Lake Charles Muni, RADAR-1, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.49(b)(3)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. The FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on October 22, 1982.

John M. Howard,
Manager,
Aircraft Programs Division.

[FR Doc. 82-29853 Filed 10-29-82; 8:45 am]
BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 8954]

Equifax Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: The FTC, in accordance with a decision rendered by the Court of Appeals for the Eleventh Circuit on June 18, 1982, has modified its Final Order In the Matter of Equifax Inc., issued on December 15, 1980 (46 FR 12479). The modified order, effective October 18, 1982, deletes Paragraphs C and D of Part I of the Order, eliminating references concerning the amount of adverse information the company's employees generate about consumers.

DATES: Final Order issued Dec. 15, 1980. Modified Order issued Oct. 18, 1982.

FOR FURTHER INFORMATION CONTACT: FTC/GC, Bruce G. Freedman, Washington, D.C. 20580. (202) 523-3865.

SUPPLEMENTARY INFORMATION: In the Matter of Equifax Inc., a corporation (formerly Retail Credit Company, a corporation). Codification appearing at 46 FR 12479 remains unchanged.

List of Subjects in 16 CFR Part 13

Consumer credit reports.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 84 Stat. 1128-36; 15 U.S.C. 1681-1681t)

The Modified Order to Cease and Desist is as follows:

Modified Order To Cease and Desist

In the matter of Equifax Inc., a corporation (formerly Retail Credit Company, a corporation), Docket No. 8954.

Respondent having filed in what is now the United States Court of Appeals for the Eleventh Circuit a petition for review of the Commission's cease and desist order issued on December 15, 1980; and the Court having rendered its decision setting aside in part the Commission's order:

Now, therefore, it is hereby ordered that the aforesaid order to cease and desist be, and it hereby is, modified in accordance with the decision and judgment of the Court of Appeals to read:

I

It is ordered that respondent Equifax Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the collection, preparation, assembly, sale, or distribution of consumer reports, investigative consumer reports, and files, as "consumer report," "investigative consumer report," and "file" are defined in Section 603 (d), (e) and (g) of the Fair Credit Reporting Act (Pub. L. No. 91-508, 15 U.S.C. 1681 *et seq.*) ("the Act") and interpreted in the opinion of the Commission which accompanied the cease and desist order issued on December 15, 1980 (except credit reports prepared by Credit Bureau, Inc. of Georgia, Credit Bureau of Montreal, Ltd., and Credit Marketing Services), shall cease and desist from:

A. Representing, directly or by implication, during the preparation of any report, that investigative personnel employed by Equifax are agents or employees of the company to which the consumer who is the subject of the report has applied for a benefit.

B. Submitting consumer report information to any of its customers who has previously received a consumer

report regarding the same consumer, unless: in response to the order of a court having jurisdiction to issue such an order; in accordance with the written instructions of the consumer to whom it relates; or respondent has reason to believe the requester intends to use the information for a permissible purpose as set out in Section 604 of the Act.

C. Including in a consumer report concerning employment at an annual salary of less than $20,000 any notice or other statement that indicates directly or indirectly by means of boilerplate language the existence of items of adverse information, the disclosure of which is prohibited by Section 605 of the Act; *Provided, however,* That language notifying the customer of the statutory limitations on the reporting of adverse information may be included in the type of consumer report to which this paragraph applies if it is included in all such reports, regardless of whether a particular consumer's file contains adverse information which the statute prohibits from being reported; and *Provided further,* That it is accompanied by an explanation that the notification is included in all reports of the type to which this paragraph applies and is not intended to imply the existence of obsolete adverse information which may not be reported.

D. Misrepresenting to any consumer who requests information concerning himself or herself in respondent's files, the consumer's rights to obtain disclosure by telephone under Section 610 of the Act.

E. Failing:

1. To make available to any consumer who requests information concerning himself or herself in respondent's files, in person or by mail, at the consumer's option, all forms which he or she must execute in connection with the requirements of Section 610 of the Act to receive disclosure to which the consumer is entitled under the Act and this order; and

2. To inform the consumer: that he or she has the right to disclosure upon proper identification, by telephone if he or she pays any toll charge, or in person, at the consumer's option; and what constitutes proper identification.

F. Failing to give disclosure required by Section 609 of the Act to any consumer who has requested disclosure, has provided proper identification as required by respondent under Section 610 of the Act, and has paid or accepted any charges which may be imposed under Section 612 of the Act.

G Failing, when giving consumers disclosure, to disclose the nature and substance of all information (excluding medical information as defined in Section 603(i) of the Act) in its files on the consumer at the time of the request, as required by Section 609 of the Act.

H. Requiring a consumer, as a prerequisite to disclosing information from the consumer's file pursuant to Section 609 of the Act, to fill out or sign a form which authorizes respondent to conduct a reinvestigation of any item the consumer may dispute, or to transmit the results of such reinvestigation to persons to whom it has previously reported the disputed information or which authorizes any business, organization, professional person or anyone else to give full information and records about said consumer to respondent; or interposing any other similar condition or requirement which exceeds those specified in Section 610 of the Act.

I. Failing within a reasonable period of time to reinvestigate any item of information in a consumer's file, the completeness or accuracy of which is disputed by the consumer, unless it has reasonable grounds to believe the dispute is frivolous or irrelevant, as required by Section 611(a) of the Act.

J. Furnishing, directly or indirectly, other than for reports prepared solely for use in the business of insurance, medical information, as defined in Section 603(i) of the Act, obtained in response to a written authorization signed by a consumer, unless the authorization clearly identifies respondent as a recipient of the medical information.

II

It is further ordered that respondent deliver a copy of this order to all present and future employees who are engaged in the preparation of consumer reports and investigative consumer reports or who are engaged in the disclosure or reinvestigation of information required by the Act.

It is further ordered that respondent distribute a copy of this order to each of its operating divisions and subsidiaries.

III

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the order.

IV

It is further ordered that respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Issued: October 18, 1982.

Carol M. Thomas,

Secretary.

[FR Doc. 82-29908 Filed 10-29-82; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144

[T.D. 82-204]

Customs Regulations Amendments Relating to Customs Bonded Warehouses

AGENCY: Customs Service, Treasury.

ACTION: Final rule; Notice of fee schedule.

SUMMARY: To reduce costs to the public and reduce Customs staffing at bonded warehouses, this document extensively revises the Customs Regulations relating to the control of merchandise in Customs bonded warehouses by establishing an audit-inspection program. The document (1) authorizes Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measurer, regarding the quantity of goods entered or withdrawn from a warehouse; (2) provides for release of merchandise directly to the proprietor by Customs officers at the customhouse rather than at the warehouse; and (3) provides district directors with the authority to allow warehouse proprietors to affix and break Customs seals. In addition, the document (1) provides fees to establish, alter, or relocate a bonded warehouse and an annual fee to reimburse the Customs appropriation for services rendered to the warehouse community; (2) provides procedures for the granting of the right to operate a bonded warehouse based on the qualifications, character, and experience of the applicant; and (3) provides procedures for the suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

EFFECTIVE DATES: This rule is effective on December 1, 1982. The fees to establish, alter, or relocate a bonded warehouse, § 19.5, are effective on November 1, 1982. The annual fee to

reimburse the Customs appropriation for services rendered to the warehouse community is effective on December 1, 1982.

FOR FURTHER INFORMATION CONTACT:

Audit aspects: Joseph Palmer, Regulatory Audit Division (202-566-2812)
Operational and fee aspects: John Holl, Office of Inspection (202-566-5354)
Bonding aspects: William Rosoff, Carriers, Drawback and Bonds Division (202-566-5856)
Legal aspects of entry: Benjamin Mahoney, Entry Procedures and Penalties Division (202-566-5765)
Economic aspects: George Deyman, Duty Assessment Division (202-566-8121).
U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Through the years procedures adopted by Customs have changed dramatically in an attempt to keep pace with cargo carrying jets, millions of entering passengers, and a workload of 4.5 million commercial transactions per year. Clearly Customs has adjusted, in many ways, to challenges posed by increases in population, commerce, and the breakthroughs in modern technology relating to the processing of cargo.

Although many changes have taken place, one segment of Customs operations has not changed since the time of sailing ships. This segment is the Customs bonded warehouse operation.

A Customs bonded warehouse is a building or other secured area in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of duty. Authority for establishing bonded warehouses is set forth in sections 311, 312, 555, and 556, Tariff Act of 1930, as amended (19 U.S.C. 1311, 1312, 1555, 1556). Part 19, Customs Regulations (19 CFR Part 19), sets forth the provisions relating to Customs bonded warehouses and the control of merchandise in these warehouses.

Upon the entry of goods into a bonded warehouse, the importer and warehouse proprietor are subject to liability under their Customs bond. This liability is cancelled when the goods are:

1. Exported;
2. Withdrawn as supplies for a vessel or aircraft in international traffic;
3. Destroyed under Customs supervision; or
4. Withdrawn for consumption in the United States after the payment of duty.

The following eight different types or classes of Customs bonded warehouses are authorized under section 19.1, Customs Regulations (19 CFR 19.1).

Class 1. Premises owned or leased by the Government and used for the storage of merchandise undergoing Customs examination, under seizure, or pending final release from Customs custody. Unclaimed merchandise stored in such premises is held under "general order." When these premises are not sufficient or available for the storage of seized or unclaimed goods, they may be stored in a warehouse of class 3, 4, or 5.

Class 2. Importer's private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of Class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it is also known as a private bonded warehouse.

Class 3. Public bonded warehouses used exclusively for the storage of imported merchandise.

Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk.

Class 5. Bonded bins or parts of buildings or elevators to be used for the storage of grain.

Class 6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to Internal Revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

Class 7. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

Class 8. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under Customs supervision, and at the expense of the proprietor.

All imported merchandise may be entered for warehousing except perishables and explosive substances other than fire-crackers.

Full accountability for all merchandise entered into a Customs bonded warehouse must be maintained and merchandise must be inventoried on a regular basis.

Merchandise in a Customs bonded warehouse may, with certain exceptions, be transferred from one bonded warehouse to another in accordance with the provisions on §§ 19.15, 19.20, 19.24 and 144.34, Customs Regulations (19 CFR 19.15, 19.20, 19.24, 144.34).

Basically, merchandise placed in a Customs bonded warehouse, other than Class 6 or 7, may be stored, cleaned, sorted, repacked, or otherwise changed in condition but not manufactured (19 U.S.C. 1562).

Articles manufactured in a Class 6 warehouse must be exported under Customs supervision. Waste or byproducts from a Class 6 warehouse may be withdrawn for consumption upon payment of applicable duties.

Imported merchandise may be stored in a Customs bonded warehouse for a period of 5 years (19 U.S.C. 1557(a)).

Customs present and past operations for controlling bonded warehouses are based on the premise that effective control requires the physical presence of a Customs officer.

According to an October 1980, Customs Headquarters study, this method of operation costs the economy of the United States $10 million in annual recurring costs. The study indicated the annual recurring cost is comprised of the following:

a. Approximately $8.4 million in reimbursable charges assessed against the warehouse owners, operators, and proprietors by Customs;

b. Approximately $1.6 million in non-reimbursable Customs appropriation funding.

Additionally, according to the study, this method of operation was determined to require 509 authorized positions (390 reimbursable, 119 non-reimbursable) which represented 3.5% of the Customs employment ceiling. These 390 reimbursable positions could not be converted to non-reimbursable positions to fulfill Customs responsibilities in other higher priority areas.

The development of an alternative approach for controlling warehouse operations is not new to Customs. In December 1964, a report titled *An Evaluation of: Mission Organization Management*, more commonly known as the "Stover Report," commented on the organization and management of the Bureau of Customs and recommended some actions which affected warehouse operations. These recommendations were extensively reviewed within Customs following the issuance of the Report. However, no action was taken at that time to implement the recommendations.

In a report dated December 16, 1974, issued to the Commissioner of Customs, the General Accounting Office stated:

The U.S. Customs Service employs warehouse officers to maintain physical custody of goods in bonded warehouses. We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses. The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present.

After an extensive review of the control of merchandise in bonded warehouses, and a pilot test conducted in Philadelphia, Pennsylvania, and Baltimore, Maryland, Customs was of the opinion that the system for controlling merchandise should be changed to one adopting a system of annual reporting by the warehouse proprietor with periodic inventory, spot checks, and audits by Customs. Accordingly, by notice published in the **Federal Register** on March 4, 1982 (47 FR 9225), Customs proposed such a system and invited public comments on the proposal.

It is Customs opinion that the audit-inspection program will provide relief to the private warehouse community by alleviating an extensive cost burden and provide increased flexibility of operations for warehouse proprietors since they need not await arrival of Customs officers to conduct supervision. This is a particularly important consideration to the warehouse proprietors if removals must be made on a weekend, holiday, or after normal business hours.

The regulation will apply only to control of merchandise within bonded warehouses. It will not apply to warehouse related transactions outside warehouses, such as supervision of exportations. Those transactions will be supervised under current procedures as they have been in the past. Duty-free stores are an example of an area where Customs procedures for transactions outside the warehouse remain unchanged.

With respect to duty-free shops, merchandise will continue to be examined and inspected as necessary for entry into the warehouse and to close out in-bond movements. After merchandise has been removed from a warehouse for exportation, delivery to the purchaser and exportation will be physically supervised to the extent required under Customs duty-free shop procedures.

These procedures call for Customs to supervise all exportations from duty-free shops located on U.S. borders. Supervision of exportations from airport duty-free shops will be conducted at the discretion of the district director. Export supervision will continue to be reimbursable by the duty-free shops separate from and in addition to the annual renewal fee (through which Customs would accept reimbursement to the Customs appropriation for costs related to audits, spot checks, etc. within warehouses).

There will be no physical supervision, except on a spot check basis, of the deposit, withdrawal, or removal of goods in or from duty-free shop warehouses, or of manipulation that occurs within the warehouse. The proprietor will be responsible under the Customs Regulations and its bond for everything any other Class 2 warehouse proprietor would be responsible for under its bond.

The authority to change from the existing warehouse officer system to the audit-inspection system is contained in section 646a, Tariff Act of 1930, as amended (19 U.S.C. 1646a).

The changes proposed by the notice published in the **Federal Register** on March 4, 1982, set forth numerous amendments to Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, 144), to:

1. Authorize Customs to accept a joint determination by the warehouse proprietor and the carrier, cartman or lighterman, or weigher, gauger or measurer, regarding the quantity of goods entered or withdrawn from the warehouse'
2. Provide for release of merchandise directly to the proprietor of the warehouse by Customs officers at the custom-house rather than at the warehouse;
3. Provide district directors with the authority to allow warehouse proprietors to affix and break Customs seals;
4. Provide a fee to establish, alter, or relocate a bonded warehouse and an annual fee thereafter to reimburse the Customs appropriation for services rendered to the warehouse community;
5. Provide procedures for the granting of the right to operate a warehouse based on the qualifications, character, and experience of the applicant; and
6. Provide procedures for suspension or revocation of the right to operate a warehouse or to receive or release goods from a warehouse.

Numerous comments, both in favor of and opposed to the proposed amendments, were received in response to the notice of March, 4, 1982. A detailed discussion of the comments is set forth following the next two sections which provide the fee schedule for establishing, altering, or relocating a bonded warehouse, the annual fee to reimburse the Customs appropriation for services rendered to the warehouse community and the inapplicability of the delayed effective date provisions.

Notice Of Fee Schedule

On July 10, 1980, Customs published a notice in the **Federal Register** (45 FR 46442), relating to the fees for processing applications for bonded warehouses. As a part of the notice published in the **Federal Register** on March 4, 1982 (47 FR 9225), Customs proposed modification to the fee schedule.

The Independent Offices Appropriation Act 1952 (31 U.S.C. 483a), the so-called "User Charges Statute", requires Federal agencies to be as self-sustaining as possible. This statute authorizes the head of each Federal agency to establish fees for services provided to identifiable members of the public. The fees must be fair and equitable, taking into consideration the direct and indirect costs to the Government, the value to the recipient, the public policy or interest served, and other pertinent facts.

Section 19.2, Customs Regulations (19 CFR 19.2), provides, in part, that an owner or lessee desiring to establish a bonded warehouse shall file a written application with the district director which, among other things, describes the premises, gives the location, and states the class of warehouse. A fee of $80 has been required to accompany the application.

Before an application may be approved, Customs must:

(1) Determine that the application is in proper form:

(2) Survey the premises to determime that all physical security requirements are met;

(3) Perform a background investigation of the applicant and the applicant's officers and employees;

(4) Prepare a report of that investigation; and

(5) Review the application, survey, and background investigation report and prepare a response to the applicant.

Section 19.3, Customs Regulations (19 CFR 19.3), relates to alterations and relocations of existing bonded warehouses. Before an application to alter or relocate an existing bonded warehouse is approved. Customs must perform the same functions as are required in connection with an application to establish a bonded warehouse, except that a background investigation of the applicant and the applicant's officers and employee is not

required. However, no fee presently is required to accompany an application to alter or relocate an existing bonded warehouse.

A review of the costs involved in performing these functions revealed that the $80 fee is inadequate. The current processing costs to Customs for initial applications is $820 and the cost to Customs of processing an application to alter or relocate an existing bonded warehouse is $356.

In light of the foregoing, the fee schedule for establishing, altering, or relocating a bonded warehouse will be as follows:

1. Establish a Bonded Warehouse, $820.
2. Alter in Existing Bonded Warehouse, $356.
3. Relocate an Existing Bonded Warehouse, $356.

The new fees to establish, alter, or relocate a bonded warehouse are effective immediately.

As a part of the March 4, 1982, notice, Customs proposed an annual fee to reimburse the Customs appropriations for services rendered to the warehouse community. Customs has determined that it is necessary and appropriate for warehouse proprietors to bear the costs of the Customs supervision, including audit, inspection, and related administrative costs. This decision is predicated upon sections 312, 555, and 646, Tariff Act of 1930, as amended (19 U.S.C. 1312, 1555, 1646a). Section 555 provides that compensation for Customs employees appointed to supervise the movement of merchandise into and out of a bonded warehouse shall be reimbursed to the Government by the proprietor of the warehouse. Section 646 provides that when actions are required to be performed under the supervision of Customs officers, the degree of supervision shall be determined by the Secretary of the Treasury by regulation, or in the absence of such regulations, as the principal Customs officer concerned shall direct.

The Secretary of the Treasury has determined that the supervision of warehouse transactions required by the Tariff Act of 1930, as amended, should be performed by Customs on the basis of audits, periodic inventories, and occasional inspections. Therefore, the compensation of the Customs officials performing these functions are properly borne by proprietors of the regulated warehouses.

Customs has determined that the annual cost to each warehouse proprietor to reimburse the Customs appropriation for services rendered to the warehouse community is $650. The annual fee will be due from each warehouse facility on December 1, 1982, and annually thereafter beginning January 1, 1984.

The fee itself is based on an estimated total first year cost for the program of $1.0 million, which is allocated among the 1538 existing warehouses.

The fee structure for subsequent calendar years of the audit-inspection program will be projected on the basis of the actual annual cost to Customs in the preceding fiscal year plus adjustments for any October Federal salary increases.

During the course of Customs review of the comments submitted and the total program, certain additional direct costs of the warehouse program were identified. Customs believes that these additional costs are properly reimbursable. Customs will be publishing a notice of proposed rulemaking and provide the public with an opportunity to comment with respect to these additional costs.

Inapplicability of Delayed Effective Date Provision

Because the fee schedule for establishing, altering, or relocating a bonded warehouse merely reflects the actual cost to Customs for the processing of an application and the services rendered result in conferring a benefit upon an identifiable member of the public, Customs believes it to be in the public interest not to continue to subsidize one segment of the public by charging less than the fair cost for the services rendered. Accordingly, pursuant to 5 U.S.C. 553(d)(3), good cause is found for dispensing with the delayed effective date for the fee schedule for establishing, altering, or relocating a bonded warehouse.

Discussion of Comments

In response to the notice of March 4, 1982, one commenter stated that it believed Customs proposed to revise the bonded warehouse regulations should have been the subject of an advanced notice of proposed rulemaking (ANPRM).

An ANPRM is used at an early stage in the regulatory process when an agency is unsure of the approach to take in a particular area and various alternative approaches are viable. An ANPRM provides an early opportuntiy for public participation in the regulatory process. As was stated in the background portion of this document, the bonded warehouse system has been extensively studied by various groups for several years. The most recent report completed in 1980 contained several alternatives to the current method of operation. A pilot test of the proposed system has been successfully concluded. Based upon the foregoing, it was believed by Customs that an ANPRM was not necessary.

Security Concerns

Several commenters expressed concern that the removal of the Customs warehouse officer would have an adverse effect upon the security of the warehouse facility and merchandise in the warehouse and affect the enforcement of laws other than those relating to revenue collection. These commenters believe the warehouse officer helps prevent the entry into the United States through the bonded warehouse of contraband and narcotics. Indeed, many warehouse proprietors apparently are convinced that the warehouse officer, being a Government official and representing Government presence at the warehouse, serves as a deterrent to crime in general and theft of dutiable merchandise in particular.

While recognizing that some benefit may flow to the warehouse proprietor in the area of security of the warehouse, Customs does not believe the presence of the Customs officer materially adds to the security of the warehouse. The functions of the Customs officer generally relate to recordkeeping and approving of documentation for merchandise entering or being removed from the warehouse. He does not patrol the facility. Further, the presence of the officer inside the warehouse militates against him detecting crime on the outside. A criminal would have to enter the warehouse facility before he would, in fact, be aware of the officer's presence. In addition, while some warehouses have a full-time officer, a great many warehouses only require the presence of an officer for an hour or two each day and in some cases only an hour or two each week. In these cases the impact of the officers presence as deterrent to crime would be negligible. Further, and unarmed officer is in no better position to prevent crime than the warehouse proprietor or his employees.

With respect to crime in the warehouse resulting from illegal activity by Customs and warehouse personnel, this is more likely to occur between persons who know each other such as under the present system with an officer who has a long relationship with a warehouse proprietor and his employees than under the new system where warehouse personnel and a Customs officer will meet only on a random basis in the course of a specific inspection or audit. Moreover, since inspections and audits may be done by a team, the possibility of illegal activity is remote.

With respect to smuggling being conducted in a warehouse, it is unrealistic to believe that an officer can be at all places in a warehouse simultaneously. The movement of an officer in a warehouse is predictable, a factor which necessarily reduces deterrent value. Unannounced spot checks and audits by a team are unpredictable. In Customs view, this unpredictability more than offsets whatever deterrent value exists with an officer present in the warehouse.

Finally, normal investigations into the backgrounds of warehouse proprietors and their employees who have access to bonded merchandise has reduced, and will continue to reduce, the possibility of having persons with criminal involvement in the warehouse.

Because of the warehouse officer's limited presence at the facility and restricted functions while there, many warehouse proprietors do not consider the officer's presence as a deterrent to criminal activity. One commenter stated that "these times necessitate a guard on our facility during nonbusiness hours and a security alarmed building as well as normal security measures." The commenter continued that "actually, security is enhanced by the ability of the warehouse proprietor to have immediate access to all area (sic) of his facility in the event of fire, break-in, or response to security alarms, rather than waiting several hours in the middle of the night for a Customs officer with keys, as has happened to us."

In light of the foregoing, Customs does not believe that the minimal security benefits to a segment of the warehouse community warrant retention of the warehouse officer at the facility.

One commenter stated that the warehouse officer's presence at a bonded warehouse is perceived on an international level as assuring the integrity of the warehouse system.

Other countries employ the same controls embodied in the system adopted by this document and find them to provide satisfactory control and security without the physical presence of a warehouse officer. It is Customs opinion that the conversion from the old system to the new system will not cause alarm to countries conducting business with the United States and will result in no impact on this nation's international commerce.

Recordkeeping Concerns

Several commenters stated that the recordkeeping system maintained by their businesses do not duplicate the records maintained by Customs warehouse officers. They indicated that to assume the task of preparing information previously maintained by the warehouse officer would result in additional costs to the warehouse proprietor. In addition, the commenters contend that to prepare the annual warehouse proprietor submission would be a clerical nightmare. They believe that if the system were computerized, it would require extensive programming costs and if a manual system were used it would be difficult to develop.

Based upon the pilot test of the system which was conducted in Baltimore, Maryland, and Philadelphia, Pennsylvania, Customs found that certain aspects of the warehouse officer functions (e.g., recordkeeping) were easily absorbed by the administrative staff of the warehouse proprietor and resulted in no or minimal additional costs. Further, these additional recordkeeping tasks could be merged with the proprietor's inventory control system to achieve economy in operations that were not available to Customs.

During the pilot test one proprietor employed an individual to assume the duties of a warehouse officer. Customs found the new employee was paid less than half the cost of the warehouse officer and performed the recordkeeping task in a more efficient and effective manner. All warehouse proprietors under the revised system will be able to negotiate directly for the wages of any new employee rather than being required to reimburse 100% of the salary of a Federal employee plus the 37% fringe benefit surcharge. In addition, Customs officers will normally not be needed on weekends, holidays, or after normal business hours. This will eliminate the necessity of warehouse proprietors reimbursing the Government for overtime services. In addition, it should be noted that warehouse proprietors are presently obliged to maintain systems which essentially duplicate the warehouse officer's record to determine their liability for bonding purposes. While it is true that the new regulations require the maintenance of the entry folders, Customs believes that this can be done at a lower cost by the proprietors than they are paying Customs to do it under the present system.

The pilot test also indicated that warehouse proprietors were capable of preparing the annual warehouse proprietor submission from records normally maintained without imposing any significant problems. It is noted that all submissions prepared during the pilot test were prepared manually.

It should be noted that the words "entry folder" used in the NPRM have been changed in the final rule to "permit file folder". This change was made because many Customs field personnel believed that all entry documentation would be maintained by the warehouse proprietor. This is not the case. Customs will retain the original entry documentation (i.e., CF 7502, Warehouse or Rewarehouse Entry). The following documentation will be maintained by the warehouse proprietor in the permit file folder:

Custom Form 7505—Warehouse Withdrawal for Consumption

Custom Form 7506—Warehouse Withdrawal—Conditionally Free of Duty and Permit

Custom Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit

Custom Form 5931—Discrepancy Report and Declaration

Custom Form 3461—Immediate Delivery Application

Custom Form 7521—Entry for Bonded Manufacturing Warehouse and Permit

Custom Form 3499—Application and Permit to Manipulate, Examine, Sample or Transfer Goods in Customs Custody

Custom Form 7519—Combined Rewarehouse and Withdrawal for Consumption.

Certain proprietary information is listed on the above documents. In order to prevent the unauthorized disclosure of this proprietary information, a new paragraph (7) has been added to § 19.12(a). In addition, a new paragraph (8) has been added to § 19.3(e) relating to the grounds for suspension or revocation of the bonded status of a warehouse to allow suspension or revocation for unauthorized disclosure of proprietary information.

One commenter stated that preparation of the warehouse proprietor submission would result in clerical and inventory cost aggregating $3,000 and $3,500, respectively.

Customs agrees that some costs will be incurred. However, the pilot test disclosed that preparation of the submission could be absorbed by the administrative staff without incurring significant additional costs. Also, a majority of businesses make at least one physical inventory count each year. The purpose of tying the warehouse proprietor submission to the proprietor's business year was to avoid the necessity of making a separate inventory for Customs purposes. Customs is of the opinion that any additional costs incurred will be more than offset by savings by virtue of not paying the salary of a Customs warehouse officer.

One commenter stated that it believes that recordkeeping requirements may hinder the movement of merchandise.

Customs disagrees. The methods and procedures of filing warehouse documentation have remained essentially the same with two exceptions. First, the warehouse proprietor, instead of the warehouse officers, will be responsible for recording entry transactions. Second, the proprietor will be responsible for filing an annual submission with Customs. Neither of these changes should result in a hindrance to cargo movement.

Not all commenters viewed the recordkeeping requirements as an onerous burden. One commenter states "we currently perform recordkeeping, duplicating the task of our warehouse officer. However, may we point out that we feel our recordkeeping is superior to that of our warehouse officer because it is performed by trained clerical personnel proficient in this area rather than someone unschooled in accounting/bookkeeping procedures. Furthermore, our receiving and shipping personnel are more experienced and qualified in noting quantity, exceptions, and damage to merchandise received and delivered than our warehouse officer."

One commenter believes that Customs personnel conducting spot checks and inventories will disrupt the warehouse operations and require the presence of warehouse personnel.

Customs personnel who conduct spot checks and audits will, in Customs opinion, quickly gain the experience to enable them to locate merchandise from the proprietor's locator system without requiring a significant amount of assistance from warehouse employees. While Customs officers conducting spot checks will invite warehouse officials to accompany them if they so desire, Customs will not require them to do so except in unusual situations.

Part 10—Comments

Two commenters indicated that § 10.62a relating to blanket withdrawals for certain merchandise should be expanded to allow use of the Customs Form 7512 in addition to Customs Form 7506 in making the blanket withdrawals.

The change in § 10.62a, as proposed, did not contemplate any modification of the regulations with respect to the authorization of blanket withdrawals of vessel supplies for transportation in bond and lading at a port other than the port where withdrawn. Authorizing the use of a Customs Form 7512 would expand the use of the blanket withdrawal to allow transportation to another port. While the change suggested may ultimately prove to be beneficial, it would be necessary for Customs to conduct a study of its implications. In any case, it is outside the scope of this proposal, and would have to be considered in a separate rulemaking action.

To make it clear that merchandise may only be withdrawn and transported for lading at the port of withdrawal, specific language to this effect has been included in §§ 10.62 and 10.62a.

Part 19—Comments

One commenter stated that some warehouses operations are foreign owned and should not be granted permission by Customs to operate bonded warehouses in the United States.

Customs has no statutory authority to implement the request. It is a subject for legislative action.

Several commenters have stated that the removal of the warehouse officer will result in a loss of an arbiter in case of loss, shortage, or damage to goods.

The warehouse officer's use as an arbiter was never authorized by Customs and is not sanctioned. The Customs officer should only be a witness to agreements reached by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse regarding loss, shortage, or damage to goods.

One commenter proposed that the definition of a Class 2 warehouse in § 19.1(a)(2) be changed to authorize merchandise to be entered which belongs to another importer at the same address sharing a common ownership of at least 25% with the proprietor. Apparently, the owners of the Class 2 warehouse have an ownership interest in another corporation.

The second sentence of 19 U.S.C. 1555, in pertinent part, states that private warehouses "may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors" of the warehouse. Section 19.1(a)(2) merely paraphrases that statutory provision. In Customs opinion, authorizing a corporate entity different from the one which owns the warehouse to use the warehouse, even though the corporation has common owners, would be violative of the statutory provisions.

One commenter believed that the requirement that merchandise transported within the port limits be transported by a bonded cartman was an unnecessary expense and source of paperwork.

Section 565, Tariff Act of 1930, as amended (19 U.S.C. 1565), provides that "the cartage of merchandise entered for warehouse shall be done by cartmen to be appointed and licensed by the appropriate customs officer and who shall give a bond * * * for the protection of the Government against any loss of, or damage to, such merchandise while being so carted." Customs has no authority to modify the statute. Any change would be the subject of legislative action.

One commenter recommended that all existing bonded warehouses be "grandfathered" under present regulations.

Customs is unable to adopt this recommendation since it would eliminate all of the benefits to be gained through adoption of the proposal. It would increase costs because of the necessity of maintaining two sets of bonds and regulations plus auditor-inspector teams in addition to warehouse officers. The indefinite existence of two sets of regulations with two sets of bonds and procedures causes administrative and legal problems. Further, the indefinite retention of all existing warehouse officers, which is implicit in the request, would eliminate the expected cost-saving benefits of the proposal.

One commenter suggested that the proposal be expanded to permit the storage of unbonded merchandise in the bonded warehouse or in the bonded portion of a warehouse that has both bonded and unbonded areas. Another commenter indicated that warehouse operations which have effective security and contain low risk merchandise, should be allowed to segregate merchandise by computerized records.

Sections 555, 557, 558, and 559, Tariff Act of 1930, as amended (19 U.S.C. 1555, 1557, 1558, 1559), contemplate that only merchandise in bond is to be placed in a bonded warehouse, or in the bonded area of a warehouse that has both bonded and nonbonded areas. Further, since under the audit-inspection system Customs will exercise less physical control over the bonded warehouse, Customs is of the opinion that adoption of the suggestion would be unwise.

One commenter suggested that the port directors, instead of the district directors, be given authority to handle routine matters relative to Customs bonded warehouses. Another suggested that they have joint responsibility.

These suggestions relate to internal Customs operating procedures involving delegations of authority which Customs believes should not be the subject of regulations. However, under existing

delegations of authority, a district director is authorized to designate a port director to act on his behalf on routine matters. The amendments adopted by this document have no effect on the exercise of that discretion. With respect to the second comment, numerous operational and administrative problems would be created by vesting joint responsibility in a supervisor (i.e., district director) and his subordinant (i.e. port director).

One commenter requested that warehouse proprietors be authorized to use their premises as Customs bonded warehouses pending completion of a background investigation, provided the premises meets Customs requirements and the application documents are correct and complete. The stated reason for this request is that background investigations require 3 to 4 months to complete.

Customs cannot adopt this requested change. The background investigation is necessary to provide information the district director needs in deciding whether to approve the application. A temporary or interim approval cannot be given since the proprietor would acquire a property right to operate the warehouse which Customs believes could only be removed through a formal hearing to discontinue the temporary approval. Further, information from the background investigation is even more important now than in the past to the district director's decision concerning the application, since the proprietor is given much more responsibility and flexibility under this new concept and Customs physical presence at the warehouse is reduced. However, Customs recognizes that there are delays caused by background investigations and is currently undertaking administrative measures to reduce the delays.

Several commenters requested that all proprietors be educated in the procedures, rules, and responsibilities under the new system.

Customs will make every effort to educate proprietors regarding the new warehouse system. In addition, the warehouse community is invited to call the Customs Office of the Regional Director, Regulatory Audit, or the Office of Inspection, in their area to obtain solutions for any problems that may arise. Assistance can also be obtained from the individuals listed in the "For Further Information Contact" section of this documant.

Commenters have expressed concern over the possible proliferation of bonded warehouses resulting in so-called "fly by night" operators competing against existing warehouse proprietors.

Under the new system, as was done in the past, Customs will conduct an investigation into the background of the applicant as well as any employee before approving the application. If an applicant does not possess the qualifications to provide adequate service to the importing community, the application will not be approved.

One commenter indicated that the proposed rule to allow warehouse proprietors to affix and break Customs seals has nothing to do with the warehouse operation, but deals with the movement of merchandise in-bond, a bond in which a warehouse proprietor has no interest. The commenter further states that it is doubtful Customs could support a claim for liquidated damages against a carrier's bond for shortages in manifested quantities if the Customs seal is affixed or broken by other than a Customs employee.

In Customs opinion, the affixing and breaking of seals does have something to do with a warehouse operation. The interface with the warehouse operation occurs in the agreement between the carrier and the proprietor as to the quantity and condition of goods delivered or picked up at a warehouse. Further, Customs does not believe that its ability to support a claim for liquidated damages is affected by authorizing a warehouse proprietor to affix and break seals.

In the opinion of one commenter, allowing total control of general order, abandoned, and seized goods to be in the warehouse proprietor and the cartman could place Customs in a bad position in the event of a loss.

Customs is not allowing total control of general order, abandoned, and seized goods to be in the warehouse proprietor or the cartman. Customs will order goods to and from warehouses, and hold the proprietor responsible for the storage and handling thereof under the conditions of its bond. There will always be certain articles (e.g., narcotics, cash, firearms, seized records) which will never be sent to bonded warehouses for storage, but rather retained on Customs-owned premises. The selection of which goods should be sent to a bonded warehouse or stored on Customs premises will be, as it presently is, at the discretion of Customs.

One commenter indicated it was unnecessary to perpetuate the archaic provisions of proposed §19.1 relating to the construction of bonded yards.

Section 19.1(a), as modified by this document, does not provide very detailed requirements for bonded yards. Most of the detail was deleted in the NPRM. Further, Customs does not agree that the regulation is archaic.

With respect to proposed §19.1(c), it is stated that the warehouse should be constructed in a manner to render it impossible for unauthorized persons to enter. One commenter asks who is an unauthorized person.

An unauthorized person would be any person not authorized by Customs or the proprietor to be in the warehouse, or any person not entitled by law or regulation to be in the warehouse.

One commenter states that it assumes that the procedures for establishing a warehouse set forth in proposed §19.2 relate only to warehouses seeking to operate as Customs bonded warehouses after the effective date of the rule and that existing warehouses need not file new applications.

The commenter is correct. Existing warehouses need not file new applications, however, all warehouses will be required to pay the annual fee and file new bonds.

In the NPRM it was indicated that in approving an application to establish a warehouse facility under proposed §19.2(a), Customs would determine whether the facility meets the following conditions: (i) The entry transaction level or dollar value of merchandise, or both, is of sufficient volume to warrant establishment of the facility; (ii) the warehouse facility is located 35 miles or less from the port of entry; and (iii) Customs has personnel resources available to adequately control all warehouse operations including the operation of the applicant warehouse facility within the district. If the above conditions are not met, it was indicated that the application would not be approved.

Several comments were received which objected to the 35 mile limitation. The 35-mile limit was intended only as a guide in approving applications. It was not a regulation change. Nor should it be construed as a mandatory requirement. It was only cited as one of many factors which could cause an application for a warehouse to be denied. Depending on the resources available for spot checks and audits of warehouses in a given port, it may be necessary from time to time to deny applications for warehouses distant from ports of entry. Some such applications will doubtless be approved. Customs staffing is not infinite, and geography must play a part in Customs decision whether to approve a warehouse application.

The 35-mile figure was not arbitrary. It represents the estimated distance a Customs officer in an average port, travelling through city traffic to the port

limits, can travel beyond those limits in 1 hour. Thus, an average round trip to such a warehouse represents 2 hours of time lost from the productive workday of the officer. Customs must take such a loss into consideration in determining whether to approve the application. In approving applications, Customs will look at all the facts and circumstances, including the business considerations which dictate that a warehouse operation be located a substantial distance from the port.

In commenting on the provisions of proposed § 19.2(f) relating to an investigation of the qualifications, character, and experience of the applicant, one commenter stated it knows of no situation in which Customs has been able to deny a person the right to make a living for any of the reasons set forth in the proposed section.

There is a difference between a vested and an unvested right. An applicant for the right to operate a warehouse has an unvested right. There are court cases supporting the denial of a license to individuals or organizations based on qualifications, character, and experience. Customs has in the past been able to deny applications for bonded warehouses based on the qualifications, character, and experience of the applicant. The proposed change merely spells out in the regulations Customs current practice of conducting an inquiry into character, qualifications, and experience before an application is approved.

Section 19.2(a) as proposed did not include a provision prescribing when the annual fee set forth in § 19.5 must be paid. Customs has added a paragraph to 19.2(a) and to each of the bonds in the Appendices to require payment within 14 days of the due date.

A commenter requested that the provision in section 19.3(c), relating to discontinuance of warehouses, which allows the discontinuance of one warehouse without affecting the bonded status of any other warehouse covered by a general bond, be retained. This provision, which was not in the NPRM, would relate only to bonded smelters or refiners who are specifically authorized by statue to have multiple warehouses owned by one proprietor on one general bond. Customs agrees with the commenter as to a bonded smelter or refiner and has retained the provision in § 19.17(c) of the final rule.

One commenter objected to the requirement in proposed § 19.3(d) for a proprietor to provide the district director with an employee list and to keep it updated.

The requirement for an employee list is not new. It is contained in current § 19.3(d). The list must be supplied only when requested by the district director. Customs does not believe that district directors often request such lists, and has no record of any complaint from a proprietor that supplying such a list has been an onerous burden. The list is needed by Customs from time to time to ensure the integrity of the warehouse operation.

One commenter believes that inactivity in a warehouse for 2 years should not be a cause for revoking or suspending its right to operate since business requirements may dictate that the warehouse remain inactive.

The ground for suspension or revocation in proposed § 19.3(e)(7) is that bonded merchandise has not been stored in the warehouse for 2 years, not that there has been inactivity with respect to the warehoused goods for 2 years.

An action to suspend or revoke under the provisions of § 19.3(e)(7) would lead to a "show cause" proceeding wherein the proprietor may state its case against suspension or revocation. The district director would consider arguments by the proprietor that the economic conditions of the trade require continuance of the warehouse. For example, in the case of a bonded smelting and refining warehouse the proprietor could show that metals are theoretically charged against the bond of the warehouse. The purpose of proposed § 19.3(e)(7) is to provide Customs with a means of closing a warehouse that the proprietor does not use and to force the proprietor to make a positive choice as to whether the warehouse is worth continuing.

Also, a suspension of a bond under the provisions of proposed § 19.3(b) for a stated period, whether requested by the proprietor or done by Customs, does not require reapplication for reinstatement of bonded status under proposed § 19.2. There is nothing to preclude a suspension by Customs until a time when the need arises to once again place bonded merchandise in the warehouse, providing the bond is still sufficient to safeguard the revenue.

The NPRM indicated that under revised § 19.6, each warehouse proprietor would be charged a fee to establish or relocate a warehouse facility and an annual fee thereafter which would be determined under the provisions of 19 U.S.C. 1555 and 31 U.S.C. 483a. This proposal envisioned aggregating substantially all costs associated with Customs supervision including audit, inspection, investigative, and administrative costs. These costs would then be equally divided among the total warehouse locations at the beginning of the fiscal year to determine the annual fee. The fees would be revised annually to reflect current costs and the fee would be published in the **Federal Register** for the next calendar year. Another alternative considered was to bill warehouse proprietors individually for the costs of services incurred by Customs at each individual warehouse.

Both the proposal and the alternative approach were the subject of numerous comments. Many commenters felt it would be unfair for them to pay a share of the total cost for an audit type system if they are not, in fact, audited. Several commenters indicated that individual billings to specific warehouse proprietors for services rendered is more equitable than using an annual fee.

Customs recognizes the validity of the commenters argument but does not believe that this method is in the best interests of the warehouse community as a whole. Because of limited Customs resources, only a fraction of the entire warehouse community will be audited each year. However, the entire warehouse community will be benefiting by saving substantial sums because of the elimination of the reimbursable warehouse officer positions.

Under the old system, in 1980 reimbursable warehouse officer costs paid by the warehouse community aggregated $8.4 million. In addition, Customs paid $1.6 million to non-reimbursable warehouse administrative support positions. The total cost of the old program was approximately $10 million. Under that system, the average cost to each warehouse proprietor was approximately $6,000 per year. The new program is estimated to cost approximately $1 million. Since there are approximately 1500 warehouse facilities operating in the United States, its territories and possessions, the annual fee will be $650. The cost of the new system will cover only those costs to conduct audits and spot check inventories. It will not cover the cost to conduct investigations of warehouses in which fraudulent activity has been identified (i.e., if in the course of an audit fraud is discovered, the audit will be terminated and a report forwarded to the Customs Office of Investigations setting forth audit findings and requesting an investigation). The warehouse proprietors will not be charged for investigative costs.

The new warehouse program will require intense audits of warehouse facilities on a random basis. To provide for the least disruption to the warehouse facility operation, audits will be coordinated with the warehouse

proprietor. To assure Customs that warehouse operations are in accordance with regulatory requirements, inspectional teams will make unannounced visits to all warehouse premises and perform spot check inventory counts and limited reviews of warehouse proprietor records. Although these reviews will not be as intense as an audit, they will provide Customs an opportunity to view warehouse proprietor compliance with the regulations. Any questionable practices uncovered during an inspectional visit may be used by the Customs Regulatory Audit Division to initiate an audit of the warehouse proprietor.

Based upon the above programs' methodology, it is clear that if Customs were to bill proprietors on an individual basis for service specifically rendered, it would result in some warehouse proprietors reimbursing Customs large sums of money to cover audit costs while other companies which were not audited would pay minimal costs for inspectional visits. Customs believes the method of equally dividing the cost to reimburse the Customs appropriation for services rendered among the entire warehouse community is the most equitable method.

However, since the fees will be revised annually based upon actual costs for the previous fiscal year, and because of the substantial concern of the warehouse community, Customs intends to evaluate the method of calculating the fees as experience is gained with the new system. In light of the foregoing, Customs is adopting the annual fee calculation method proposed in the NPRM (i.e., aggregating the costs associated with the program and dividing the costs equally among the warehouse community) in the amount of $650 for each warehouse.

One commenter stated that the annual renewal fee requirement would place every warehouse proprietor under a cloud since there would be uncertainty as to whether it would be allowed to continue its operations in the next year.

The commenter has misinterpreted the purpose of the annual fee. Customs only purpose in establishing the proprietor annual fee was to provide a means to collect reimbursement for the services rendered by Customs to the warehouse community during the previous year. A proprietor's warehouse operation could not be terminated by Customs at the time the fee is collected. If Customs believes a proprietor's right to operate should be suspended or revoked, it would follow the procedures set forth in § 19.3(f). To eliminate this source of confusion the word "renewal" has been deleted from the regulatory language.

One commenter believes that cost was the sole factor Customs considered in establishing a new system to control warehouse operations. In addition, the commenter indicated a willingness to reimburse Customs for all costs incurred to control its warehouse, including costs not presently reimbursed, so long as the warehouse officer remains on the premises.

While it is true that cost is one of the Government's primary and current concerns, Customs initiated the warehouse study over 3 years ago. The purpose of the study was to develop a new system which was both cost efficient and mission effective, i.e., a system that would provide protection to the revenue which was equal to or greater than the present system at a reduced cost. In addition, the new system would provide Customs with personnel savings which could be reallocated to higher priority areas. A great many warehouse proprietors apparently do not realize that the warehouse officer positions, although fully reimbursable, are counted against Customs overall personnel ceiling. Because large numbers of Customs personnel are performing warehouse functions, it is not possible to assign these personnel to tasks in other areas which have a higher priority and represent a greater threat to the revenue or to the country (e.g., interdiction of narcotics).

One commenter, citing language from the NPRM which indicated that the notice proposed to provide for release of goods directly to the warehouse proprietor by Customs officers at the customhouse, rather than at the warehouse, objected, because it believed it would be necessary to have all withdrawals "signed off" at the customhouse.

Under § 19.6(a) a warehouse officer may release goods to a proprietor only upon a permit signed by the district director. Since no warehouse officer will be present at the warehouse under the revised system, the permit of the district director extends directly to the proprietor. The purpose of the permit is to assure the district director that all duties and taxes are paid and all laws and regulations are complied with before the goods are removed from Customs custody in the warehouse.

Goods which are free of duty may be issued a blanket permit to withdraw for delivery at the same port, and removed in partial releases under § 19.6(d) without further Customs approval. It will not be necessary to travel to the customhouse to present a document each time a partial release occurs. The new system does not substantially change existing procedures on duty-free merchandise or impose any additional burden.

Several commenters believe that the realities in the transportation of cargo very often do not allow a joint determination of quantities to be made at the time of deposit of goods in, or removal of goods from, a bonded warehouse.

It must be stressed that the liability for the quantity of goods deposited in a warehouse is based on the quantity reported in the entry documentation, not on a joint discrepancy report. The joint discrepancy report is significant only as a means of reducing or adjusting the proprietor's liability from the quantity reported in the entry documentation.

However, Customs accepts the legitimacy of the comment concerning the difficulty of jointly resolving discrepancies at the time of entry or removal, and is therefore changing the language of proposed § 19.6 to allow a period of 15 days after deposit of goods in, or removal of goods from, a warehouse for the filing of a joint discrepancy report.

Based upon its own review, Customs has added a new paragraph (c) in proposed § 19.6 which indicates that when a Customs officer supervises the entry or removal of goods, the Customs officer's report of goods deposited in, or removed from, a warehouse shall determine the proprietor's (and therefore the carrier's) liability for the quantity and condition of goods so deposited or removed.

In addition, Customs has added a new subparagraph (2) to § 19.6(a) to specify that the liability of a warehouse proprietor may be modified after the deposit of goods in the warehouse by several actions which result in a change in the duty liability of the importer of the goods, including concealed shortages, casualty loss, destruction, and manipulation. The reason for allowing these modifications is that the liability for duty has been changed through various provisions of law by the decrease (and occasionally an increase in the case of manipulations) in the quantity of goods, and that the proprietor's liability for safeguarding the goods has been correspondingly changed.

Customs has also added a sentence to § 19.6(b)(1) to specify that the proprietor must obtain a signed receipt from the carrier upon removal or withdrawal of merchandise from the warehouse to gain relief from liability. The purpose of the addition is to assure that the carrier has accepted liability for the transportation of the merchandise from the warehouse.

Further, Customs has added a subparagraph (2) to § 19.6(b) to describe more clearly the status of goods for which a permit to withdraw has been issued but are not yet removed from the warehouse. In such cases, the goods must be segregated or marked to show they have already been withdrawn to permit ready identification during Customs spot checks and audits. Such goods which are duty-paid or unconditionally duty-free are deemed to be no longer in Customs custody and released to the warehouse proprietor. Other goods which have been withdrawn are deemed to be at least conditionally dutiable and therefore still in Customs custody. This subparagraph is added to draw a distinction between goods withdrawn in partial releases in proposed § 19.6(d) and goods which have been duty-paid but remain in the warehouse.

In line with this clarification, § 127.14(c)(1) is also amended to conform with § 19.6(b)(2) by deleting the words "beyond the 5-year warehouse period".

One commenter suggests that proposed § 19.6(e), which indicates that the district director may authorize a warehouse proprietor to break Customs in-bond seals, should be directive and not permissive.

Customs does not agree. The district director has the right to have Customs personnel supervise the unlading as a part of his responsibility of protecting the revenue. Accordingly, the regulation must be permissive in nature to protect the district directors authority in this area.

One commenter states that it should be allowed to put into computers the data previously maintained by the warehouse officer.

The warehouse proprietors submission may be computerized if the report generated by the computer duplicates the information contained in the warehouse officers report (CF 5213-Ledger Book) and is set forth in the same manner.

One commenter suggested that proprietors be authorized to unlade goods which arrive in a container with a broken seal before notifying the district director, as set forth in proposed § 19.6(e). The commenter believes this may be necessary to protect the goods from adverse weather conditions.

The proprietor must report the unsatisfactory condition of the seal so the district director has the option of inspection of the seal and container before unlading. In many cases, the district director may choose not to inspect the seal, and will accept a joint report of the carrier and the proprietor in lieu of physical inspection. The district director's decision will depend on many factors, including any financial threat faced by the proprietor or carrier or any damage to the goods. Since the district director can be telephoned, Customs sees no reason to authorize unlading when seals are found to be broken without or before obtaining approval of the district director.

One commenter suggests that reports of extraordinary shortages or damages be submitted to the port director rather than to the district director, as set forth in proposed § 19.6(e). The commenter indicates that allowing the port director to receive this information would be in the interest of an efficient operation.

Primary responsibility for receiving this information will be vested in the district director. However, the district director can, under existing delegations of authority, authorize the port director to receive this information and take appropriate action.

One commenter suggests that the language in proposed § 19.6(d)(4) to the effect that "partial releases may not be removed in a quantity of less than an entire package" be interpreted to allow the removal of single bottles from a full case.

The proposed language is based on current § 144.33, Customs Regulations (19 CFR 144.33), which, in turn, implements the first sentence of section 562, Tariff Act of 1930, as amended (19 U.S.C. 1562). That section indicates that unless the Secretary of the Treasury specially authorizes a lesser amount, no merchandise shall be withdrawn from a bonded warehouse in less quantity than an entire bale, case, box, or other package. Inasmuch as no reasons were given by the commenter why the exception should be made, there is no basis on which to authorize a change in the current procedures.

One commenter indicated that as it reads proposed § 19.6, it would not be able to enter goods for warehouse and repack them into sets which are packaged in individual cartons and then subsequently withdraw the repackaged goods from warehouse.

Customs believes the commenter is misreading the proposed regulations. They do not, in any way, prohibit an importer from entering goods in one packed condition, performing a repacking operation, and withdrawing then in another packed condition. The regulations only require that (1) the repacking be done on an individual or blanket permit to manipulate, and (2) that the records required in proposed § 19.12 reflect the operation.

Several commenters requested that a "first in-first out" inventory accounting system be used in lieu of specific indentification of goods in a warehouse.

Customs believes this recommendation, although beyond the scope of this regulation change, has merit. After further study and consideration, it may be the subject of future action.

One commenter requests that Customs authorize the warehouse proprietors to apply overages of imported goods to shortages of similar goods.

Customs is required by law to collect duty on imported goods and is without authority to authorize a warehouse proprietor to offset overages against shortages.

One commenter requests clarification concerning the procedure for recording transactions and recordkeeping responsibilities.

Section 19.6 sets forth the procedure for a warehouse proprietor to obtain approval from the district director to deposit, withdraw, obtain partial release, and seal goods in a warehouse. Section 19.12 relates to the proper recording of the transaction to provide Customs with a historical record to review in order to be in a position to determine warehouse proprietor compliance with regulations. In the proper sequence of events, the warehouse proprietor would first obtain approval from the district director to deposit, withdraw, etc. goods at a warehouse, as set forth in § 19.6. He would next record the district director's approval and any related action in the company records, as required by § 19.12. Recording approval of entry and withdrawal documentation must take place at the customhouse before the movement of the merchandise.

One commenter points out that under proposed § 19.8 importers must make application for sampling, examination, or repacking of goods which must be approved by the district director. The commenter notes that in proposed § 19.11, the district director may approve a blanket application to manipulate. The commenter indicates that blanket applications should be the rule.

The blanket permit to manipulate, in proposed § 19.11, extends to a manipulation under proposed § 19.8, if it is continuous or repetitive, and the proprietor maintains the required records. Blanket permits can be approved only when the manipulation described is uniform over the period of the permit. If this were otherwise the application would not be descriptive of what the applicant is actually doing, and the applicant would be in violation of its bond. The district director must

understand what the applicant will actually be doing before the application can be approved. Once a permit is given, either blanket or specific, the district director may authorize the manipulation to be performed in a warehouse without physical supervision by a Customs officer. Because of less on-site inspection, blanket permits should not be the rule but the exception. On either a blanket or specific permit, the district director has discretion to physically supervise the operation.

One commenter believes that the requirement in § 19.12(b)(2) that permit file folders be maintained in a secure area should define the security standard, and that Customs inspection of those records should be limited to regular office working hours.

The standard for a secure area for permit file folders is the same as that for goods as set forth in specification #5, Customs Standards of Cargo Security, T.D. 72-56. The purpose of the requirement is to assure that access to the folders is limited, even within a facility, to those officers and employees having a need and a right to use the folders, so that opportunities for fraud, misuse of documentation, and negligence are limited. As discussed earlier in this document, a requirement has been set forth in § 19.12(a)(7) which indicates that proprietary information in, or proprietary information contained on, documents to be included in the permit file folders can only be disclosed to authorized persons. Section 19.3(e)(8) has been modified to provide that unauthorized disclosure is a ground for suspension or revocation of the bonded status of the warehouse.

With respect to the second part of the comment, Customs does not expect to conduct spot checks and audits of records outside the normal business day.

One commenter has suggested that flexibility be introduced in proposed § 19.12(d)(6) with respect to the marking of packages. The commenter specifically suggests that the entry number be placed on only one case on each corner of a pallet rather than on every case. Customs is of the opinion that the district director may use his discretion in this area and if he believes the revenue is adequately protected and administrative problems will not be created, he can authorize a warehouse proprietor to mark the cases as requested. However, because each situation is unique, we do not believe it is appropriate to address the question in the regulations.

One commenter stated that manipulation in warehouse should not be included on the warehouse proprietor submission.

Customs did not intend to require a listing of manipulation transactions on the warehouse proprietor submission.

Part 24—Comment

One commenter believes that proposed § 24.17(d) should clearly indicate the services for which Customs officers may receive reimbursement.

The commenter appears to believe that this section relates only to warehouses. This is not the case. This section relates to the determination of the fee for any reimbursable service rendered to the public whether it be clearance of aircraft, vessels, or warehouse operations. The services for which the fees are collected are so numerous and varied it is not possible to include a complete listing.

Part 113—Comment

One commenter recommends that the provision for approval by the Commissioner of Customs of the General Bond for Smelting and Refining Warehouses in present § 113.13(a), Customs Regulations (19 CFR 113.13(a)), be retained. Under the provisions of section 311, Tariff Act of 1930, as amended (19 U.S.C. 1311) more than one warehouse, in more than one customs district, may be covered by one smelting and refining bond. The commenter states that only the Commissioner is in a position to determine whether warehouses in more than one district are adequate.

The present practice requires district directors to report to Customs Headquarters on the suitability of the proposed bonded smelter or refiner for bonded warehouse status. Since there is no provision for Headquarters personnel to conduct an on-site inspection of each of the premises to be bonded, reliance must be placed on the reports of the individual district directors. There is no practical reason why such reports cannot be sent to the district director with whom the bond is to be filed. Essentially similar discretion has already been given to district directors in the case of bonds for bonded carriers and importers that transact business in several districts and use the General Term Bond for Entry of Merchandise, Customs Form 7595. Actual supervision of a warehouse operation would be done by the district director in the district where the warehouse is located and coordinated with the district director who approved the bond.

Part 132

Present § 132.15, Customs Regulations (19 CFR 132.15), relates to withdrawals from warehouse prior to opening of any quota. The section was intended to cover the situation in which merchandise was physically removed from a warehouse at a date subsequent to the presentation of the warehouse withdrawal. In such a situation, the date of presentation, not the date of physical removal, governs any quota status or benefit. Present §§ 132.11, 132.11a, and 141.68(d), Customs Regulations (19 CFR 132.11, 132.11a, 141.68(d)) fully explains the significance of the date of presentation. In light of the foregoing it is Customs opinion that § 132.15 is unnecessary. Accordingly, it is removed.

Part 144—Comments

A commenter indicates that as the proprietor has complete control over goods entering or being withdrawn from warehouse, it is logical to assume that the responsibility for determining the satisfaction of liens and other charges must also be that of the proprietor since Customs would have no control over the time of release.

Determining the satisfaction of liens will be done by Customs at the time of filing the withdrawal from the warehouse, as specified in § 144.32(c). Control will be exercised at the time of filing the withdrawal rather than at the time of removal from the warehouse.

One commenter requested clarification of the language in the NPRM which, while discussing the merits of the proposed system, indicated that the proprietor would not have to wait for a Customs warehouse officer before making a withdrawal. The commenter asked whether Customs was proposing a period of time after withdrawal for the deposit of duties.

Customs was not proposing that duties could be deposited after withdrawal. Under proposed § 144.38(e), it is clearly indicated that "when the duties and other charges have been paid, a permit * * * shall be issued and delivered to the person making the warehouse withdrawal." Once the permit is issued the proprietor would be in a position to release the goods from warehouse without a Customs officer present to supervise the removal.

During the course of reviewing the proposed regulations and comments, it was felt some additional narrative clarification was needed in the area of withdrawal versus removals. In situations where a warehouse proprietor files a blanket withdrawal and subsequently removes the goods piecemeal, the warehouse proprietor must be aware of its responsibilities in this area under the audit-inspection program. Once a blanket withdrawal is

filed for all the goods , and the permit file folder is forwarded to Customs, it will still be necessary for the warehouse proprietor to accurately and fully account for all goods covered by the withdrawal but not removed from the warehouse. Further, the warehouse proprietor will be held responsible for the ultimate and proper disposition of the goods until removed from the warehouse in the manner reported to Customs.

Comments on Bond Forms

One commenter believes that paragraph 2(a) of the smelting and refining bond should be modified by eliminating the requirement that records be maintained in accordance with the regulations and substitute a requirement for maintenance of records in a manner ordinarily recorded in the industry.

Customs disagrees. A proprietor's records must be maintained in accordance with the regulations. To permit records to be maintained in a manner ordinarily recorded in the industry could result in an assortment of recordkeeping practices which would require Customs to specifically tailor its compliance check program for each business. The tailoring of the program would result in excessive audit and inspection time which would increase the reimbursable charges to the warehouse community collected each year through the annual fee.

One commenter recommends that paragraph 2(g) of the smelting and refining bond, which relates to filing with Customs a report listing an inventory of all metal in warehouse, should indicate that the report is required monthly. Customs agrees and has modified the bond accordingly.

A bonded smelting and refining warehouse proprietor recommends that paragraph 2(b) of the smelting and refining warehouse bond exempt smelters who operate under Headnote 4(b), Part 1, Schedule 6, Tariff Schedules of the United States (TSUS), from the requirement of furnishing an annual statement or require an annual statement only from smelters which claim deductions under Headnote 4(c), Part 1, Schedule 6, TSUS. The commenter pointed out that T.D. 67-139 eliminated a requirement in § 19.19, for an annual submission.

Headnote 4(b) sets absolute deductions for ores and metal-bearing materials of copper, lead, or zinc content to be determined by chemical analysis. Headnote 4(c) sets deductions for ores and metal-bearing materials to be used instead of the absolute deductions. Headnotes 4 (d), (e), and (f) set procedures for claiming those deductions, procedures for establishing plant losses in excess of the absolute deductions, and requirements for retention of plant records to support such claims. Under T.D. 67-139, § 19.19 was amended to eliminate the annual report since the tariff schedules established absolute allowances. The annual statement was, at that time, used to establish wastage requirements. The present need for an annual submission is not for the wastage factor, but for auditing purposes. In light of the foregoing, Customs believes the annual submission is necessary.

Two commenters questioned whether Customs has the authority to demand bonds which provide for reimbursement of any loss or expense connected with the discontinuance or suspension of the bonded status of a warehouse (see condition 1, Proprietors Warehouse Bond for Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8, Appendix B, NPRM; and condition 2, Proprietors Manufacturing Warehouse Bond, Class 6, Appendix C, NPRM) or for reimbursement of any cost based on Customs supervision of a bonded smelting and refining warehouse and indemnification for any loss connected with a bonded smelting and refining warehouse (see condition 1, General Bond for Smelting and Refining Warehouses, Appendix D, NPRM).

Customs believes the language proposed was overly broad in scope. Customs intention was to limit liability to any expense caused by the transfer of merchandise on the discontinuance or suspension of the warehouse facility. Accordingly, Customs has now modified all three bonds to include this restrictive language.

One commenter noted that the proposed bond generally provides for liquidated damages of $100 for each infraction. The commenter indicated that the amount was excessive for what could in some cases be minor violations and should be reduced to $25. Two commenters were of the opinion that the bond should clearly state that assessments of liquidated damages are subject to mitigation.

Customs believes that $25 is an insufficient liquidated damage assessment for recordkeeping and other infractions of the regulations since daily on-site supervision over the activities of a warehouse proprietor have been relinquished. With respect to the second comment, by virtue of section 623(c), Tariff Act of 1930, as amended (19 U.S.C. 1623(c)), and Part 172, Customs Regulations (19 CFR Part 172), which clearly provides for mitigation or cancellation of claims assessed against a bond, Customs is of the opinion there is no need to provide in the bonds for the mitigation of assessments of liquidated damages.

On May 26, 1981, Customs published an ANPRM in the **Federal Register** (46 FR 28172), soliciting comments on a proposal to substantially change the Customs bond structure. One commenter suggested that the warehouse bonds be rewritten in the format proposed in that notice.

The project to modify the Customs bond structure is still in the developmental stage and has not yet been the subject of a NPRM. In addition, the bond format under development in that project is fundamentally different from the current bond format. To try at this point to implement a part of that project without public participation by means of comment on a NPRM would be unwise. However, because some form of revision of the bond structure will inevitably occur in the near future, and to avoid unnecessary printing costs to the public and the Government, Customs will allow the required bond forms which are set forth as appendices A through C of this document to be incorporated by reference in a manner similar to that used for the Air Carrier Blanket Bond (Customs Form 7605). The form to be used is set forth as Appendix F to this document.

Comments on Other Agency Requirements

One commenter expressed concern about the impact the elimination of the warehouse officer would have on the requirements of the Bureau of Alcohol, Tobacco and Firearms (ATF) which indicate that a Customs officer must certify the receipt of certain goods into warehouse.

Regulations contained in 27 CFR Part 252 require the Customs officer in charge of a Customs bonded warehouse or Customs manufacturing bonded warehouse to certify receipt of distilled spirits or wine transferred to such warehouses from a distilled spirits plant or bonded wine cellar. ATF regional offices currently clear a proprietor's (distilled spirits plant or bonded wine cellar) or exporter's bond covering untaxed distilled spirits or wine, or allow drawback of tax on distilled spirits, on the basis of such certification. Customs has been advised that ATF will modify its procedures to conform to the changes in this document.

The proprietor of a Customs bonded warehouse or Customs manufacturing bonded warehouse will be required to certify that distilled spirits or wines have been received at his installation. Until transaction forms can be modified

by ATF, the proprietor should use the spaces on the forms which are presently completed by Customs officers.

The transaction forms applicable to this new procedure are as follows:

1. ATF F 5100.11, Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

2. ATF F 1582 (5110.30), Drawback on Distilled Spirits Exported.

Beer, whether taxpaid or untaxpaid, may not be transferred to either a Customs bonded warehouse or a Customs manufacturing bonded warehouse, so the proposed change will not alter present exportation procedures relating to beer.

Executive Order 12291

The regulation is not a major regulation as defined in section 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required under E.O. 12291.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this proposal. An initial regulatory flexibility analysis was prepared and attached to the NPRM. The final regulatory flexibility analysis is attached to this document as Appendix E.

Drafting Information

The principal author of this document was John E. Elkins, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Exports, Imports, Petroleum.

19 CFR Part 18

Customs duties and inspection, Common carriers, Freight forwarders, Imports, Motor carriers, Railroads, Surety bonds.

19 CFR Part 19

Customs duties and inspection, Exports, Freight, Surety bonds, Tobacco, Warehouse.

19 CFR Part 22

Customs duties and inspection, Claims, Imports.

19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Imports, Taxes, Wages.

19 CFR Part 113

Customs duties and inspection, Imports, Surety bonds.

19 CFR Part 125

Common carriers, Customs duties and inspection, Imports.

19 CFR Part 127

Customs duties and inspection, Freight, Imports.

19 CFR Part 132

Customs duties and inspection, Imports, Quotas.

19 CFR Part 142

Customs duties and inspection, Imports.

19 CFR Part 144

Customs duties and inspection, Imports, Warehouses.

Amendments to the Regulations

Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, and 144, Customs Regulations (19 CFR Parts 10, 18, 19, 22, 24, 113, 125, 127, 132, 142, 144), are amended as set forth below

William von Raab,

Commissioner of Customs.

Approved: October 22, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. Section 10.62 is amended by revising paragraph (a) and paragraph (c)(2) to read as follows:

§ 10.62 Bunker fuel oil.

(a) *Withdrawal under section 309, Tariff Act of 1930, as amended.* When all the bunker fuel oil in a Customs bonded tank is intended only for lading duty free as supplies on vessels under section 309 of the Tariff Act of 1930, as amended, at the port where the tank is located, delivery of the oil, by Customs bonded carrier, cartman, or lighterman (including bonded pipelines), under withdrawals on Customs Form 7506, either single or monthly (blanket), may be made without the presence of a Customs officer. When a blanket withdrawal is filed and a partial release takes place, the partial release procedure set forth in § 19.6(d) of this chapter shall be followed for each partial release. However, each abstract copy of Customs Form 7506 shall include the following additional information:

(1) Type of oil withdrawn.

(2) Number or other identification of sales order therefor.

(3) Name of bonded carrier, date it received oil.

(4) Receipt signed by master or other person in charge of delivering conveyance identified by number, or name, and if Customs bonded lighterman or cartman, by the carrier's license number.

(5) Name is location of vessel obtaining oil.

(6) Quantity and identification of each type of oil received with date, and signature and title of receiving officer. If all the oil is laden on the receiving vessel at the port of withdrawal via pipeline from the bonded storage tank, paragraphs (a) (3) and (4) of this section shall be deemed to be inapplicable.

* * * * *

(c) * * *

(2) *Delivering transferer receipt.* The receipt of the delivering carrier on a copy of Customs Form 7506 for fuel oil which has been blended under paragraph (c)(1) of this section with components classifiable at different rates of duty shall show, for each warehouse entry number and withdrawal number involved, the types and quantity of oil received.

* * * * *

2. Section 10.62 is further amended by removing the last sentence of paragraph (e).

3. Section 10.62a is revised to read as follows:

§ 10.62a Blanket withdrawals for certain merchandise.

(a) *Generally.* Under this section, a blanket withdrawal on Customs Form 7506 may be filed for all or part of any merchandise withdrawn from warehouse except fuel oil covered under § 10.62, for use on qualified vessels. Such a withdrawal shall be made only for lading on board vessels at the port where the warehouse is located. The procedure for the blanket withdrawal and partial releases after the initial release are the same as those provided in § 19.6(d) of this chapter, except as noted in paragraph (b).

(b) *Partial release.* A partial release on Customs Form 7506, in duplicate, or in triplicate if an extra copy is required by the district director, shall be presented to the warehouse proprietor and placed in the proprietor's permit file folder under the partial release procedure set forth in § 19.6(d) of this chapter, as merchandise is needed for delivery to a using vessel. The original of the partial release document shall accompany the merchandise for delivery to the Customs officer who will supervise lading, or if a Customs officer does not physically supervise lading, to

the master of the vessel. The original shall be returned to the proprietor for record purposes after the Customs officer or master of the vessel, as appropriate, has certified lading of the goods described in the document.

4. The second sentence of paragraph (c)(3) and the first sentence of paragraph (c)(4) of § 10.65 are revised to read as follows:

§ 10.65 Cigars and cigarettes.

* * * * *

(c) * * *

(3) * * * In such event, the withdrawal shall be retained by the warehouse proprietor until delivery receipts are obtained for the entire quantity covered by the withdrawal, provided the total period of time prior to delivery to the using vessel or aircraft does not exceed 5 years. * * *

(4) Merchandise for which blanket withdrawals are filed shall be stored in a separate room or enclosure in a bonded warehouse under separate locks, and the merchandise clearly marked to show that it has been withdrawn.

* * * * *

(R.S. 251, as amended, secs. 309, 317, 555, 556, 557, 624, 646a, 46 Stat. 690, as amended, 696, as amended, 743, as amended, 744, as amended, 759, 67 Stat. 520 (19 U.S.C. 66, 1309, 1317, 1555, 1556, 1557, 1624, 1646a))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. Section 18.2 is amended by revising paragraph (a) to read as follows:

§ 18.2 Receipt by carrier; manifest.

(a)(1) *Merchandise other than from warehouse delivered to bonded carrier.* Except as set forth in subparagraph (2) of this section, when merchandise is delivered to a bonded carrier for transportation in bond, the merchandise shall be laden on the conveyance under the supervision of Customs unless the transporting conveyance is not to be sealed with Customs approved seals or the lading inspector accepts the check of the carrier as to the merchandise laden thereon. The carrier's receipt shall be given immediately to the lading inspector on the Customs in bond document covering the merchandise. In the case of a TIR carnet, the receipt shall be given on the appropriate vouchers in the following form:

Received the cargo listed herein for delivery to Customs at the indicated port of destination or exportation, or for direct exportation. ———— Name of Carrier (or Exporter) ———— Attorney or Agent of Carrier (or Exporter) ———— (Date) ————

(2) *Merchandise delivered from warehouse.* When merchandise is delivered from a warehouse to a bonded carrier for transportation in bond, supervision of lading shall be accomplished in accordance with the procedure set forth in § 19.6(b) of this chapter.

* * * * *

2. Section 18.2(b) is amended by inserting a sentence between the third and fourth sentences to read as follows:

§ 18.2 Receipt by carrier; manifest.

* * * * *

(b) * * * Quantities of goods transported in bond from a Customs bonded warehouse shall be accounted for under the procedures set forth in § 19.6 of this chapter.* * *

3. Section 18.3(e) is amended by substituting "Part 125" for "Part 21".

4. A new paragraph (i) is added to § 18.4 to read as follows:

§ 18.4 Sealing conveyances and compartments; labelling packages; warning cards.

* * * * *

(i) *Removal of seals.* Except as provided in § 18.3(d) and section 19.6(e) of this chapter, seals affixed under this section shall be removed only under Customs supervision.

* * * * *

(R.S. 251, as amended, secs. 551, 551a, 555, 556, 557, 624, 646a, 46 Stat. 742, as amended, 743, as amended, 744, as amended, 759, 49 Stat. 1538, 67 Stat. 520 (19 U.S.C. 66, 1551, 1551a, 1555, 1556, 1557, 1624, 16461a))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. Paragraph (a)(4), that portion of paragraph (c) before the colon and paragraph (c)(3) of § 19.1 are amended by revising them to read as follows:

§ 19.1 Classes of Customs warehouses.

(a) * * *

(4) *Class 4.* Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the district director deems it necessary, the yards shall be enclosed by substantial fences with entrances and exit gates capable of being secured by the proprietor's locks. The inlets and outlets to tanks shall be secured by means of seals or the proprietor's locks.

* * * * *

(c) *Construction:* When parts of buildings are used as Customs bonded warehouses, the bonded and nonbonded portions thereof shall be effectively separated by partitions of substantial materials and construction erected in such a manner as to render it impossible for unauthorized personnel to enter the premises without such violence as to make the entry easy to detect. The partitions may be constructed of raised expanded metal (steel), steel chain-link fence fabric, or wood materials and shall comply with the following specifications:

* * * * *

(3) *Wood.* Wood partitions shall be constructed of not less than 1 inch boards (dressed if desired) of uniform length between supports, nailed with not less than ten penny nails to not less than 2 x 4 inch stud framing and held in place by ⅛ x 2 inch metal cover-strips secured over the nailed ends, with carriage bolts through the boards and partition framing. Plywood of not less than ¾ inch thickness may be substituted for the 1 inch thick wood boards providing it is erected in the same manner prescribed for the boards. Gates may be constructed of any of the materials specified for partitions. Depending on their size and swing, the gates shall be constructed in such a manner, and of materials of sufficient strength, to preclude any possible sagging condition. The specifications set forth in this paragraph shall be applicable to all partitions (including gates) constructed, reconstructed, renovated, or otherwise installed or altered on or after October 28, 1978.

2. Section 19.2 is amended by revising paragraphs (a), (c), and (d) and adding new paragraphs (f) and (g) to read as follows:

§ 19.2 Applications to bond; bond; annual fee.

(a) *Application.* An owner or lessee desiring to establish a bonded warehouse facility shall make written application to the district director wherein the warehouse is located, describing the premises, giving its location, and stating the class of warehouse desired. The application shall be accompanied by the fee required by § 19.5 of this chapter to establish a warehouse. If required by the district director, the applicant shall provide a list of names and addresses of all officers and managing officials of the warehouse and all persons who have a direct or indirect financial interest in the operation of the warehouse facility. Except in the case of a class 2 or class 7 warehouse, the application shall state whether the warehouse facility is to be operated only for the storage or

treatment of merchandise belonging to the applicant or whether it is to be operated as a public bonded warehouse. If the warehouse facility is to be operated as a private bonded warehouse, the application also shall state the general character of the merchandise to be stored therein, and provide an estimate of the maximum duties and taxes which will be due on all merchandise in the bonded warehouse at any one time. A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses the two located at one address would be considered as one warehouse facility and the three located at three different addresses would each by considered as separate warehouses facilities. A warehouse facility shall be charged an annual fee as prescribed by section 19.5 of this chapter which will be paid to the Regional Commissioner within 14 days after the due date.

* * * * *

(c) *Bond, generally.* On approval of the application to bond a warehouse of class 2, 3, 4, 5, or 8, a bond shall be executed in the form prescribed by T.D. 82-204.

(d) *Bond for proprietor's manufacturing warehouse, class 6, and bonded smelting and refining warehouse, class 7.* On approval of the application to bond a proprietor's manufacturing warehouse, class 6, a bond shall be executed in the form prescribed by T.D. 82-204. In the case of a bonded smelting and refining warehouse, class 7, the bond shall be executed with the required number of copies and in the form prescribed by T.D. 82-204.

* * * * *

(f) As a condition of approval of the application, the district director may order an inquiry by a Customs officer into the qualification, character, and experience of the applicant (e.g. personal history, financial and business data, credit and personal references), and into the security, suitability, and fitness of the facility.

(g) The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to bond the warehouse. If the application is denied the notification shall state the grounds for denial which need not be limited to those set forth in § 19.3(e). The applicant may seek review of the decision to deny under the provisions of § 19.3(f) of this chapter within 10 days after notification.

3. Section 19.3 is amended by revising it to read as follows:

§19.3 Bonded warehouses; alterations; relocation; suspensions; discontinuance.

(a) *Alterations or relocation.* Alterations to or relocation of a warehouse within the same district may be made with the permission of the district director of the district in which the facility is located. An application to alter or relocate a bonded warehouse shall be accompanied by the fee required by § 19.5 of this chapter.

(b) *Suspensions.* The use of all or part of a bonded warehouse or bonded floor space may be temporarily suspended by the district director for a period not to exceed one year on written application of the proprietor if there are no bonded goods in the area. Upon written application of the proprietor and upon the removal of all nonbonded goods, if any, the premises may again be used for the storage of bonded goods. If the application is approved, the district director shall indicate the approval by endorsement on the application. Rebonding will not be necessary as long as the original bond remains in force.

(c) *Discontinuance.* If a proprietor wishes to discontinue the bonded status of the warehouse, he shall make written application to the district director. The district director shall not approve the application until all goods in the warehouse are transferred to another bonded warehouse without expense to the Government. To reestablish the bonded warehouse, application shall be made and approved under the provision of § 19.2 of this chapter.

(d) *Employee lists.* The district director may make a written demand upon the proprietor to submit, within 30 days after the date of demand, a written list of the names, addresses, social security numbers, and dates and places of birth of all persons employed by the proprietor in the carriage, receiving, storage, or delivery or any bonded merchandise. If a list has been previously furnished the proprietor shall advise the district director in writing of the names, addresses, social security numbers, and dates and places of birth of any new personnel employed by him in the carriage, receiving, storage, or delivery of bonded merchandise within 10 days after such employment. For the purpose of this part a person shall not be deemed to be employed by a warehouse proprietor if he is an officer or employee of an independent contractor engaged by the warehouse proprietor to load, unload, transport, or otherwise handle bonded merchandise.

(e) *Revocation or suspension for cause.* The district director may revoke or suspend for cause the right of a proprietor to continue the bonded status of the warehouse for any ground specified in this paragraph. An action to suspend or revoke the right to operate a bonded warehouse shall be taken in accordance with the procedures set forth in paragraph (f) of this section. If the bonded status is revoked or suspended for cause, the district director shall require all goods in the warehouse to be transferred to a bonded warehouse without expense to the Government. The bonded status of a warehouse may be revoked or suspended for cause if:

(1) The approval of the application to bond the warehouse was obtained through fraud or the misstatement of a material fact;

(2) The warehouse proprietor refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to the operation or administration of a bonded warehouse;

(3) The warehouse proprietor or an officer of a corporation which has been granted the right to operate a bonded warehouse is convicted of or has committed acts which would constitute a felony, or a misdemeanor involving theft, smuggling, or a theft-connected crime;

(4) The warehouse proprietor does not provide secured facilities or properly safeguard merchandise within the bonded warehouse;

(5) The warehouse proprietor fails to furnish a current list of names, addresses, and other information required by § 19.3(d);

(6) The bond required by § 19.2(c) or (d) of this chapter is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with goods and sufficient sureties is not furnished within a reasonable time;

(7) Bonded merchandise has not been stored in the warehouse for a period of 2 year; or

(8) The warehouse proprietor or an employee of the warehouse proprietor discloses proprietary information in, or proprietary information contained on, documents to be included in the permit file folder to an unauthorized person.

(f) *Procedure for revocation or suspension for cause.* The district director may at any time serve notice in writing upon any proprietor of a bonded warehouse to show cause why his right to continue the bonded status of his warehouse should not be revoked or suspended for cause. Such notice shall advise the proprietor of the grounds for the proposed action and shall afford the proprietor an opportunity to respond in

writing within 30 days. Thereafter, the district director shall consider the allegations and responses made by the proprietor unless the proprietor in his response requests a hearing. If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the proprietor's request. The proprietor may be represented by counsel at such hearing, and all evidence and testimony of witnesses in such proceedings, including substantiation of the allegations and the responses thereto shall be presented, with the right of cross-examination to both parties. A stenographic record of any such proceeding shall be made and a copy thereof shall be delivered to the proprietor of the warehouse. At the conclusion of the hearing, the hearing officer shall promptly transmit all papers and the stenographic record of the hearing to the Regional Commissioner together with his recommendation for final action. The proprietor may submit in writing additional views or arguments to the Regional Commissioner following a hearing on the basis of the stenographic record, within 10 days after delivery to him of a copy of such record. The Regional Commissioner shall thereafter render his decision in writing, stating his reasons therefor. Such decision shall be served on the proprietor of the warehouse, and shall be considered the final administrative action.

4. Section 19.4 is amended by revising it to read as follows:

§ 19.4 Customs supervision over warehouses.

The character and extent of Customs supervision to be exercised in connection with any warehouse facility or tranaction provided for in this part shall be in accordance with § 161.1 of this chapter. Independent of any need to appraise or classify merchandise, the district director may authorize a Customs officer to supervise any transaction or procedure at the bonded warehouse facility. Such supervision may be performed through periodic audits of the warehouse proprietor's records, quantity counts of goods in warehouse inventories, spot checks of selected warehouse transactions or procedures or reviews of conditions of recordkeeping, security, or storage in a warehouse facility. The warehouse proprietor shall permit access to the warehouse by any Customs officer.

5. Section 19.5 is revised to read as follows:

§ 19.5 Fees.

Each warehouse proprietor will be charged a fee to establish, alter, or relocate a warehouse facility which shall be determined under the provisions of 31 U.S.C. 483a. Each warehouse proprietor granted the right to operate a warehouse facility shall be charged an annual fee which shall be determined under the provisions of 19 U.S.C. 1555. The fees will be revised annually and published in the **Federal Register** and Customs Bulletin.

6. Section 19.6 is amended by revising it to read as follows:

§ 19.6 Deposits, withdrawals, partial releases and sealing requirements.

(a) (1) *Deposit in warehouse.* The district director may authorize the deposit of merchandise in designated bonded warehouses, without physical supervision by a Customs officer. Goods for which a warehouse or rewarehouse entry has been accepted, according to the procedures in Part 144, Subpart B, of this chapter, shall be examined or inspected at the place of unlading, bonded warehouse, or other location as ordered by the district director. When merchandise is deposited in a proprietor's warehouse the proprietor will be responsible for the quantity and condition of merchandise reflected on entry documentation adjusted by (i) any allowance made under Part 158, Subparts A and B, of this chapter by the district director, and (ii) any discrepancy report made jointly on the appropriate cartage documents as set forth in § 125.31 of this chapter by the warehouse proprietor and the bonded carrier or licensed cartman or lighterman delivering the goods to the warehouse, or an independent weigher, gauger, measurer, and signed by an authorized representative of the above within 15 calendar days after deposit. A copy of any joint report of discrepancy shall be made within two business days of agreement and provided to the district director on the appropriate cartage documents as set forth in § 125.31 of this chapter.

(2) *Allowance after deposit.* After merchandise has been deposited in the warehouse the proprietor's liability may be further modified by any adjustment for duties allowed by the district director for concealed shortages (i.e., §158.5(a)), casualty loss (i.e., Part 158, Subpart C), destruction (i.e., §158.43), or manipulation (i.e, § 19.11, 19 U.S.C. 1562).

(b) (1) *Withdrawal and removal from warehouse.* The district director may authorize the withdrawal and removal of merchandise, without physical supervision or examination by a Customs officer under permit issued under the procedure set forth in § 144.39 of this chapter. When a withdrawal or removal is not physically supervised by a Customs officer, the warehouse proprietor will be relieved of responsibility only for the merchandise in its warehouse in the condition and quantity as shown on the application for withdrawal or removal. In the case of merchandise to be carted or transported in bond from the warehouse, the proprietor will be relieved of responsibility only if it receives the signed receipt on the withdrawal or removal document of the carrier named in the document. The proprietor's responsibility may be adjusted by any discrepancy report made jointly by the warehouse proprietor, and the licensed cartman or lighterman, bonded carrier, weigher, gauger, or measurer and signed by the authorized representative of the above within 15 calendar days after removal from the warehouse. The adjustments shall be noted on the permit copy of the withdrawal or removal document. A copy of any joint report of discrepancy shall be promptly provided to the district director.

(2) *Retention in warehouse after withdrawal.* Merchandise for which a permit for withdrawal has been issued, whether duty-paid or not, need not be physically removed from the warehouse. However, such merchandise must be segregated or physically marked to maintain its identity as merchandise for which a withdrawal permit has been issued. Duty-paid or unconditionally duty-free merchandise which has been withdrawn, but not removed, from a warehouse is no longer deemed to be in Customs custody. All other goods which have been withdrawn, but not removed, remain in Customs custody until the end of the 5-year warehouse entry bond period.

(c) *Customs determination of liability.* When a Customs officer physically supervises the deposit or removal of merchandise under paragraphs (a)(1) or (b)(1) of this section, the Customs officer's report of merchandise received or removed shall be determinative of the quantity and condition of merchandise received or removed from the warehouse for Customs purposes.

(d) *Partial releases.*—(1) *Generally.* Goods in Customs custody may be withdrawn without payment of duty when permitted by law within the same port by blanket withdrawal and thereafter removed from the warehouse in partial releases by the warehouse proprietor. Blanket withdrawals are not authorized for transportation in bond to another port. When a withdrawer desires to use the partial release procedure for all or part of the merchandise covered by a warehouse

entry, he shall submit to the district director a blanket withdrawal on the appropriate withdrawal form. The form shall bear the words "BLANKET WITHDRAWAL" in capital letters conspicuously printed or stamped in the top margin. The summary statement described in § 144.32 of this chapter shall not be included. Merchandise for which a duty-paid withdrawal is required is not eligible for the partial release procedure under this section, except as provided in § 10.62(e) of this chapter.

(2) *Form Distribution.* The blanket withdrawal shall be executed in triplicate, or in quadruplicate if an additional copy is required for control purposes in local administration. Upon approval of the blanket withdrawal by the district director, the original shall be returned to the withdrawer for forwarding to the warehouse proprietor to serve as a permit to withdraw the merchandise covered therein upon the filing of requests for partial release under subparagaph (e) of this section. The original shall be retained in the warehouse proprietor's records, as provided in § 19.12(a)(2). One copy shall be returned to the withdrawer for use in preparing requests for partial release. One copy (statistical) shall be forwarded by Customs to the Bureau of the Census, where applicable. Merchandise for which a blanket withdrawal has been approved may thereafter be released by the warehouse proprietor in the individual partial releases, but the goods are still in Customs custody while physically located in the warehouse.

(3) *Numbering of forms, discrepancy report.* Each partial release shall be documented by the withdrawer through presentation of a copy of the blanket withdrawal document to the warehouse proprietor, or by placing a copy in the proprietor's permit file folder. Each such release shall be consecutively numbered, and the number shall appear immediately after the serial number of the blanket withdrawal. Each copy shall bear the summary statement described in § 144.32 of this chapter. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a partial release shall be made on the copy. A copy of any joint report of discrepancy shall be within two businsess days provided to the district director. A copy of the partial release document shall be retained in the records of the warehouse proprietor, as provided in § 19.12(a)(2). The warehouse proprietor shall account for all goods covered by a blanket withdrawal through individual partial release documents before the permit file folder is transmitted to Customs under §19.12(a)(4).

(4) *Quantity of release.* Partial releases may not be removed in a quantity of less than an entire package or, if in bulk, less than one ton in weight.

(e) *Affixing or breaking of seals.* The district director may authorize a warehouse proprietor to: (1) break Customs in bond seals affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or container of goods entered for warehouse upon arrival of the vehicle or container at the warehouse: or (2) affix Customs in bond seals to any vehicle or container of goods for which a withdrawal document has been approved for movement in bond. The affixing or breaking of seals so authorized, shall be deemed to have been done under Customs supervision. The proprietor shall report to the district director any seal found, upon arrival of the vehicle or container at the warehouse, to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director.

7. Section 19.8 is amended by removing the words "and under the supervision of the Custom warehouse office" from the first sentence.

8. Part 19 is amended by adding a new § 19.9 to read as follows:

§ 19.9 General order, abandoned, and seized merchandise.

(a) *Acceptance of merchandise.* A proprietor of a general order warehouse shall accept general order, abandoned, or seized goods and articles into the warehouse only upon order of the district director on Customs Form 6043 (Delivery Ticket), as presented by the cartman or lighterman. A joint determination shall be made by the warehouse proprietor and the cartman or lighterman of the quantity and condition of the goods or articles so delivered to the warehouse. Any discrepancy between the quantity and condition of the goods and that reported on Customs Form 6043 shall be reported to the district director within two business days of agreement.

(b) *Recording and storing.* General order, abandoned, and seized goods and articles shall be recorded and stored in the warehouse as prescribed by § 19.12.

(c) *Release of merchandise.* Merchandise in general order may be released by the warehouse proprietor, after Customs inspection or examination as ordered by the district director, to the person named in a release order under § 141.11 of this chapter. The release may only be made by the proprietor upon presentation of a permit to release or delivery authorization signed by the appropriate Customs officer on Customs Form 3461, 7501, 5119–A, or other Customs form as designated by the district director. General order goods which have been unclaimed under § 127.11 of this chapter, voluntarily abandoned, or seized and forfeited may be released for transfer to the place of sale upon presentation to the warehouse proprietor of an approved copy of Customs Form 5251 (Order to Transfer Merchandise for Public Auction (Sale)), and an approved copy of Customs Form 6043 (Delivery Ticket). The quantity and condition of the goods so transferred shall be determined jointly by the proprietor and the cartman or lighterman picking up the goods for delivery to the place of sale. Any discrepancies shall be noted on the delivery ticket, a copy of which shall be sent to the district director within two business days of agreement. Seized goods that are released for a purpose other than sale may be released from warehouse only upon such written terms and conditions as directed by the district director.

9. Section 19.10 is amended by revising it to read as follows:

§ 19.10 Examination packages.

Merchandise sent from a bonded warehouse to the appraiser's stores for examination shall be returned by the district director to the warehouse for delivery unless the warehouse proprietor endorses the duty-paid permit to authorize delivery to another person.

10. Section 19.11(d) is amended by adding the following new sentences between the second and third sentences:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

* * * * *

(d) * * * The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and

require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both.* * *

11. Section 19.12 is amended by revising it to read as follows:

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) *Recordkeeping.* The warehouse proprietor shall comply with the following recordkeeping requirements:

(1) *Record transactions.* All merchandise entered, manipulated, manufactured or removed from the bonded warehouse shall be recorded in the warehouse proprietor's accounting and inventory records by bond lot number. The records to be maintained are those which a prudent businessman in the same type of business can be expected to maintain. The records are to be kept in sufficient detail to permit effective and efficient determination by Customs of the proprietor's compliance with these regulations and the correctness of his annual submission;

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, specific removals and blanket removals and the partial release/permit copy for each removal within two business days after the event occurs;

(3) *Extraordinary shortage or damage.* Extraordinary (one percent or more of the value of merchandise in an entry) shortage or damage shall be immediately brought to the attention of the district director; and confirmed in writing within 2 business days after the shortage or damage has been brought to the attention of the district director;

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall (i) review the permit file folder to insure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry and (ii) file the permit file folder with Customs within 10 business days after final withdrawal.

(5) *Warehouse proprietor submission.* Except as provided in § 19.19(b), relating to the manufacturer engaged in smelting or refining, or both, the warehouse proprietor shall file with the Regional Director, Regulatory Audit, within 45 days from the end of his business year, a Warehouse Proprietor's Submission in the form prescribed by T.D. 82-204.

(6) *Merchandise not withdrawn.* The permit file folder for merchandise not withdrawn during the general order period shall be submitted to the district director upon receipt from Customs of the Customs Form 6043.

(7) *Disclosure of information only to authorized personnel.* The warehouse proprietor or his employees shall safeguard and shall not disclose proprietary information contained in, or proprietary information contained on, documents to be included in the permit file folder to anyone other than the importer, importer's transferee, or owner of the merchandise to whom the permit file folder or document relates or their authorized agent. Unauthorized disclosure shall be grounds for suspension or revocation under the provisions of § 19.3(e) of the proprietor's status as a bonded warehouse operator.

(b) *Security and storage.* The warehouse proprietor shall comply with the following security and storage requirements:

(1) *Supervision by warehouse proprietor.* The warehouse proprietor shall supervise all receipts, deliveries, sampling, recordkeeping, repacking, or manipulating of merchandise in a bonded warehouse;

(2) *Inspection and security of permit file folders.* The permit file folders maintained by the warehouse proprietor shall be kept in a secure area and shall be made available for inspection by Customs at all reasonable hours;

(3) *Security of warehouse.* The warehouse proprietor shall maintain its warehouse facility and establish procedures adequate to insure the security of merchandise located in the bonded area. This shall be accomplished by meeting the standards and recommended specifications contained in T.D. 72-56 to the extent those standards and recommendations do not conflict with any local, state or Federal standard for the safe and sanitary storage of merchandise. In the event of a conflict the local, state, or Federal standard, shall control;

(4) *Bonded tanks.* All inlets and outlets to bonded tanks shall be secured with locks or in-bond seals.

(5) *Safe and sanitary storage.* Merchandise in the bonded area shall be stored in a safe and sanitary manner to minimize damage to the merchandise, avoid hazards to persons, and meet local, state, and Federal requirements applicable to specific kinds of goods. All trash and waste shall be promptly removed from the bonded area. No fires shall be permitted in the warehouse except where necessary in connection with manipulating or processing in warehouses of the class 6, 7, or 8 type. Aisles shall be established and maintained, and doors and entrances left unblocked for access by Customs officers and warehouse proprietor personnel.

(6) *Manner of storage.* Packages shall be received in the warhouse according to their marks and numbers. Packages containing weighable or gaugable merchandise not bearing shipping marks and numbers shall be received under the weighers or gaugers numbers. Packages with exceptions due to damage or loss of contents, or not identical as to quantity or quality of contents shall be stored separately. The warehouse proprietor shall mark all shipments for identification, showing the general order or warehouse entry number or seizure number and the date of the general order, entry, or delivery ticket in the case of seizures. All containers covered by a given warehouse entry, general order or seizure shall be stored in the same location and not mixed with goods covered by any other entry, general order or seizure unless approval has been given in writing by the district director for an exception from this requirement. The proprietor must provide, upon request by a Customs officer, a record balance of goods covered by any warehouse entry, general order, or seizure so a physical count can be made to verify the accuracy of the record balance.

12. Section 19.13(a) is amended by substituting "the district director" for "Headquarters, U.S. Customs Service."

13. Section 19.13(d) is amended by removing the words "in duplicate", and in the first sentence, substituting a period for the comma after the words "district director" and by removing the remainder of the sentence.

Section 19.13(g) is revised to read as follows:

§ 19.13 Requirements for establishment of warehouse.

* * * * *

(g) *Secure storage.* Each bonded manufacturing warehouse shall have a secured area separated from the remainder of the premises to be used exclusively for the storage of imported merchandise, domestic spirits, and merchandise subject to internal-revenue tax transferred into the warehouse for manufacture. A like area shall be provided to be used exclusively for the storage of products manufactured in the warehouse. The area shall be secured to prevent any unauthorized person from having access thereto and the goods therein shall be arranged in a manner to assist a Customs officer in making the required examination or taking samples for analysis.

15. Section 19.14 (b), (c), and (d) are amended by revising them to read as follows:

§ 19.14 Materials for use in manufacturing warehouse.

* * * * *

(b) *Bond required.* Before the transfer of the merchandise to the manufacturing warehouse is permitted, a bond on Customs Form 7571 in an amount equal to double the estimated duties shall be required unless the appropriate bond in the form prescribed by T.D. 82-204 has been given.

(c) *Domestic merchandise.* When the proprietor of any bonded manufacturing warehouse desires to receive therein any domestic merchandise, except merchandise subject to internal-revenue tax, to be used in connection with the manufacturer of articles permitted to be manufactured in such warehouse, including packages, coverings, vessels, and labels used in putting up such articles, an application in the following form shall be sent to the district director for approval and after approval retained by the warehouse proprietor:

Application To Receive Free Materials

Port of _____, 19__.

To the District Director:

Application is hereby made to receive into the bonded manufacturing warehouse known as _____, situated at _____ the following described articles and materials:

Marks	Nos.	Description	Quantity	Value

(Signature) _____

Port _____, 19__.

To the warehouse proprietor in charge of the bonded manufacturing warehouse specified above:

The above described articles and materials are hereby permitted to be received into the warehouse in your charge, to be used therein in connection with the manufacture of articles as authorized by law.

District Director _____

(d) *Domestic spirits and wines.* For the transfer of domestic spirits from the bonded premises of a distilled spirits plant to a bonded manufacturing warehouse, or for the transfer of domestic wines from a bonded wine cellar to a bonded manufacturing warehouse, a bond on Customs Form 7571 shall be required unless the warehouse is covered by the appropriate bond in the form prescribed by T.D. 82-204.

* * * * *

16. Section 19.15(a) is amended by substituting the word "Customs" for "a Customs officer" in the last sentence.

17. Section 19.15(j) is amended by substituting the words "certified by the warehouse proprietor" for "verified by the Customs warehouse officer in charge of the warehouse" in the first sentence.

18. The first and last sentences of paragraph (a), paragraphs (b) and (c), the last sentence of paragraph (g)(1), and the "Application and Permit for Transfer of Scraps, Cuttings, and Clippings" in paragraph (h) of § 19.16 are revised to read as follows:

§ 19.16 Cigar-manufacturing warehouses.

(a) *Manufacture of cigars under section 311, Tariff Act of 1930, as amended.* Tobacco to be used in the manufacture of cigars in bond under the provisions of section 311, Tariff Act of 1930, as amended, shall be entered for warehouse but may be transferred directly from the importing vessel or from a bonded warehouse of class 2 or 3 into a bonded manufacturing warehouse of class 6 and stored in separate compartments therein under the warehouse proprietor's locks pending its withdrawal for use in the manufacture of cigars. * * * The cigars so returned shall be verified by the warehouse proprietor against the schedule which shall be certified by him as to the cigars returned, and the original and one copy returned to the taxpayer who returned the cigars.

(b) *Entry of Cigars.* Upon the removal of cigars from the warehouse the proprietor shall make appropriate entry in his records of the quantity and class of the cigars.

(c) *Record.* A record of all tobacco received in a bonded manufacturing warehouse and delivered from storage compartments to the manufacturing department shall be kept by the warehouse proprietor.

* * * * *

(g) * * *

(1) * * * The taxes covered by the return shall be secured by the Proprietor's Manufacturing Warehouse Bond in the form prescribed by T.D. 82-204.

* * * * *

(h) * * *

Application and Permit for Transfer of Scraps, Cuttings and Clippings

Port of _____, 19__.

The District Director.

Sir: Application is hereby made to transfer _____ pounds of scraps, cuttings, and clippings of tobacco upon which duty has been paid from our bonded manufacturing warehouse, class 6, to _____, factory No. _____, district _____, state of _____.

_____

Proprietor of Bonded Manufacturing Warehouse, Class 6.

_____

Port of _____, 19__.

The above application is hereby granted.

_____

District Director

_____

Port of _____, 19__.

I hereby certify that _____ pounds of scraps, cuttings, and clipping of tobacco upon which duty has been paid have been delivered from the bonded manufacturing warehouse, class 6, of _____ for transfer to _____.

_____

Warehouse Proprietor

19. Paragraphs(a), (c), (e) and the first sentence of paragraph (g) of § 19.17 are revised to read as follows:

§ 19.17 Application to establish warehouse; bond.

(a) *Application.* Application for the bonding of a plant of a manufacturer engaged in the smelting or refining, or both, of metal-bearing materials as provided for in section 312, Tariff Act of 1930, as amended,[22] to reduce the metal content thereof to an unwrought metal, or metal in the form of oxides or other compounds which are obtained directly from the treatment of the dutiable materials provided for in Schedule 6, Part 1 or 2, Tariff Schedules of the United States (19 U.S.C. 1202), shall be made by the manufacturer, to the district director of the district in which such plant is situated, giving the location of the premises and setting forth the work proposed to be carried on therein, accompanied by the fee to establish a warehouse as prescribed by section 19.5.

* * * * *

(c) *Discontinuance.* At the request of the proprietor the bonded status of the warehouse may be discontinued at any time provided the district director approves such discontinuance and the proprietor complies with directions of the district director with respect to the disposition of merchandise which may remain in the warehouse. The number of warehouses covered by a blanket smelting and refining bond may be reduced by discontinuance without necessitating a new bond unless the proprietor so desires.

* * * * *

(e) *Bond.* Upon the arrival of imported metal-bearing material in any form for the purpose of being smelted or refined, or both, in bond at a port where a bonded smelting or refining warehouse

is established, it shall be entered for warehouse. A bond on Customs Form 7555 shall be filed with each warehouse entry unless a blanket smelting and refining bond in the form prescribed by T.D. 82-204 has been filed. The district director shall thereupon issue a permit to the inspector to send such metal bearing materials from the importing vessel or vehicle by designated bonded vessels or vehicles to the smelting and refining warehouse named in the entry.

* * * * *

(g) *Statement of inventory and bond charges.* Where two or more smelting and refining warehouses are included under one blanket smelting and refining bond, an overall statement shall be filed by the principal named in the bond with each Regional Director, Regulatory Audit, involved by the 28th of each month, showing the inventory as of the close of the preceding month, of all metals on hand at each plant covered by the blanket bond and the total of bonded charges for all plants * * *.

20. Section 19.19 is amended by revising the third sentence of paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 19.19 Manufacturer's records; annual statement.

(a) * * * If losses are to be claimed under paragraph (c) of said headnote, a record shall be kept which will become a part of the annual statement described in paragraph (b) of this section * * *

(b) Every manufacturer engaged in smelting or refining, or both, shall file with the Regional Director, Regulatory Audit for the district in which the plant is located an annual statement for the fiscal year for the plant involved not later than 60 days after the termination of that fiscal year. The annual statement for the smelting or refining warehouse or both, shall be in lieu of the warehouse proprietors submission required by § 19.12. * * *

21. Section 19.21(b) is modified by adding "§ 19.4 and" before the words "the commercial practice".

22. Section 19.29 is amended by revising it to read as follows:

§ 19.29 Sealing of bins or other bonded space.

The outlets to all bins or other space bonded for the storage of imported wheat shall be sealed by affixing locks or in bond seals to the rope or chain which controls the gear mechanism for opening the outlets, or such other method which will effectively prevent the removal of, or access to, the wheat in the bonded space except under such supervision as required by §§ 19.4 and 181.1 of this chapter.

§ 19.34 [Amended]

23. Section 19.34 is amended by substituting "appropriate Customs officer" for "supervising Customs agent" in the third sentence of the section.

* * * * *

(R.S. 251, as amended, secs. 311, 312, 501, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 65 Stat. 290, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a, 31 U.S.C. 483a))

PART 22—DRAWBACK

Section 22.28(d) is amended by revising it to read as follows:

§ 22.28 Continuous custody.

* * * * *

(d) *Merchandise entered for warehouse.* For purpose of this part, in the case of merchandise entered for warehouse, Customs custody shall be deemed to cease when duty has been paid and the district director has authorized the withdrawal of the merchandise.

* * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, 65 Stat. 290 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1624, 1646a))

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. Section 24.12(a)(1) is amended by removing the paragraph and marking it "Reserved".

2. The first and fourth sentences of paragraph (c) and the first sentence of paragraph (f) of § 24.13 are amended by revising them to read as follows:

§ 24.13 Car, compartment, and package seals; kind, procurement.

* * * * *

(c) *Purchase of seals.* Bonded carriers of merchandise, commerical associations representing the foregoing or comparable organizations approved by the district director under paragraph (f) of this section, and bonded warehouse proprietors may purchase quantity supplies of in-bond and in-transit seals from manufacturers approved under the provisions of § 24.13a. * * * Carriers and bonded warehouse proprietors may purchase small emergency supplies of in-bond and in-transit seals from district directors, who will keep a supply of such seals for this purpose. * * *

(f) *District director approval required.* In-bond seals may be purchased only by a Customs bonded warehouse proprietor, a customs bonded carrier, a nonbonded carrier permitted to transport articles in accordance with section 553, Tariff Act of 1930, as amended (19 U.S.C. 1553) or in the case of red in-bond and high security red in-bond seals, the carrier's commercial association or comparable representative approved by the district director. * * *

3. Section 24.17(d) is amended by revising it to read as follows:

§ 24.17 Other services of officers; reimbursable.

* * * * *

(d) *Computation charge for reimbursable services.* The charge to be made for the services of a Customs officer on a regular workday during his basic 40-hour workweek shall be computed at a rate per hour equal to 137 percent of the hourly rate of regular pay of the particular employee with an addition equal to any night pay differential actually payable under 5 U.S.C. 5545. The rate per hour equal to 137 percent of the hourly rate of regular pay is computed as follows:

	Hours	Hours
Gross number of working hours in 52 40-hour weeks		2,080
Less:		
9 Legal public holidays—New Years Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day	72	
Annual Leave—26 days	208	
Sick Leave—13 days	104	384
Net number of working hours		1,696
Gross number of working hours in 52 40-hour weeks		2,080
Working hour equivalent of Government contributions for employee uniform allowance, retirement, life insurance and health benefits computed at 11½ percent of annual rate of pay of employee		239
Equivalent annual working hour charge to Customs appropriation		2,319

Ratio of annual number of working hours charged to Customs appropriation to net number of annual working hours 2,319/1,696=137 percent.

(1) The charge to be made for the reimbursable services of a Customs officer to perform on a holiday or outside the established basic workweek shall be the amount actually payable to the employee for such services under the Federal Employees Pay Act of 1945, as amended (5 U.S.C. 5542(a), 5546), or the Customs overtime laws (19 U.S.C. 267, 1451), or both, as the case may be. When services of a Customs employee temporarily assigned to act as a Customs officer are performed by an intermittent when-actually-employed employee, the charge for such services shall be computed at a rate per hour equal to 108 percent of the hourly rate of the regular pay of such employee to provide for reimbursement of the

Government's contribution under the Federal Insurance Contributions Act, as amended (25 U.S.C. 3101, *et seq.)*, and employee uniform allowance. The time charged shall include any time within the regular working hours of the employee required for travel between the duty assignment and the place where the employee is regularly employed excluding lunch periods, charged in multiples of 1 hour, any fractional part of an hour to be charged as 1 hour when the services are performed during the regularly scheduled tour of duty of the officer or between the hours of 8 a.m. and 5 p.m. on weekdays when the officer has no regularly scheduled tour of duty. In no case shall the charge be less than $1.

(2) The necessary transportation expenses and any authorized per diem expenses of a Customs employee assigned to perform reimbursable services at a location at which he is not regularly assigned shall be reimbursed by the responsible party..

(3) When a Customs officer is regularly assigned to duty at more than one location, the charge for his compensation and transportation expenses in going from one location to another shall be equitably apportioned among the parties concerned. However, no charge shall be made for transportation expenses when a Customs employee is reporting to as a first assignment, or leaving from as a last assignment, a place where he is regularly assigned to duty.

(4) Upon a failure to pay such charges when due, or to comply with the applicable laws and regulations, the district director shall report the facts to the Regional Commissioner who shall take appropriate action to collect the charges.

* * * * *

(Sec. 5, 36 Stat. 901, as amended, secs. 451, 555, 556, 46 Stat. 715, as amended, 743, as amended, 68A Stat. 416, as amended (5 U.S.C. 5332, 5504, 5542, 5545, 5546, 6101, 19 U.S.C. 267, 1451, 1555, 1556, 26 U.S.C. 3111); R.S. 251 as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 113—CUSTOMS BONDS

§ 113.13 [Amended]

1. Section 113.13 is amended by removing paragraph (a) and marking it "Reserved" and by substituting *"Public gauger bond."* for the paragraph heading in paragraph (b).

2. Section 113.14(a) is amended by revising it and by adding new paragraphs (hh) and (ii) to § 113.14 to read as follows:

§ 113.14 Bonds approved by the district director. * * *

(a) *Proprietor's Warehouse Bond.* Proprietor's Warehouse Bond, in the form set forth in T.D. 82-204 in the amount of $5,000 on each building or area covered, but not to exceed $50,000 on all buildings or areas, unless the district director believes additional security is necessary. Buildings connected by loading platforms or sheds shall be considered as separate buildings. All reports, documents, and drawings submitted in connection with the bonding of the warehouse shall be filed with the bond.

* * * * *

(hh) *Proprietors Manufacturing Warehouse Bond, Class 6.* Proprietors Manufacturing Warehouse Bond, Class 6, in the form prescribed by T.D. 82-204 in such amounts as the district director deems necessary, but not less than $5,000 on each building or area and not more than $50,000 on all buildings or areas.

Buildings connected by loading platforms or sheds shall be considered as separate buildings.

(ii) *Blanket smelting and refining bond.* Blanket smelting and refining bond in the form prescribed by T.D. 82-204 in such amount as the district director deems necessary.

Sufficient copies of the bond shall be submitted to enable the district director to transmit one to each port at which the principal seeks to conduct business.

§ 113.27 [Reserved]

3. Section 113.27 is amended by removing it and marking the section "Reserved".

4. Section 113.39(b) and the "Power of Attorney and Agreement" which appears after the colon in § 113.39(b) are amended by substituting a reference to "Treasury Department Circular No. 154, Revised, dated July 1, 1978" for the reference to "Treasury Department Circular 154 dated October 31, 1969, as amended" in § 113.39(b) and the reference to "Treasury Circular No. 154, dated October 31, 1969, as amended" in the "Power of Attorney and Agreement".

* * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a; 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a))

PART 125—CARTAGE AND LIGHTERAGE OF MERCHANDISE

1. Section 125.31 is amended by revising it to read as follows:

§ 125.31 Documents used.

When merchandise is carted or lightered to and received from a bonded store or bonded warehouse, it shall be accompanied by one of the following tickets or documents:

(a) Customs Form 6043—Delivery Ticket.

(b) Customs Form 7502-A—Warehouse or Rewarehouse Entry (Permit).

(c) Customs Form 7505-A—Warehouse Withdrawal for Consumption (Permit).

(d) Customs Form 7506—Warehouse Withdrawal Conditionally Free of Duty and Permit.

(e) Customs Form 7512—Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit.

2. Section 125.33(b) is amended by revising it to read as follows:

§ 125.33 Procedure on receiving merchandise.

* * * * *

(b) *From bonded warehouse.* In case of withdrawals from bonded warehouse, the merchandise shall be released only to the proprietor of the warehouse, who shall acknowledge such release on the appropriate withdrawal or removal document.

* * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 565, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 747, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1565, 1623, 1624, 1646a))

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Section 127.14(c)(1) is amended by revising it to read as follows:

§ 127.14 Disposition of merchandise in Customs custody beyond time fixed by law.

* * * * *

(c) * * *

(1) Merchandise upon which all duties and charges have been paid.

* * * * *

(R.S. 251, as amended, secs. 311, 312, 555, 556, 557, 623, 624, 646a, 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646a))

PART 132—QUOTAS

§ 132.15 [Removed]

Part 132 is amended by removing § 132.15.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 142—ENTRY PROCESS

§ 142.5 [Amended]

Bond Rider "R" which is set forth in § 142.5 is amended by removing the comma from between the words "default" and "plus" in the third paragraph of the rider.

(R.S. 251, as amended, sec. 623, 46 Stat. 759, as amended (19 U.S.C. 66, 1623))

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

§ 144.1 [Amended]

1. Section 144.1 is amended by removing the paragraph (b) and marking it "Reserved".

2. Section 144.22 is amended by revising it to read as follows:

§ 144.22 Endorsement of transfer on withdrawal form.

Transfer of the right to withdraw merchandise entered for warehouse shall be established by an appropriate endorsement on the withdrawal form by the person primarily liable for payment of duties before the transfer is completed, i.e., the person who made the warehouse or rewarehouse entry or a transferee of the withdrawal right of such person. Endorsement shall be made on whichever of the following withdrawal forms is applicable:

(a) Customs Form 7506 for merchandise to be withdrawn as vessel or aircraft supplies and equipment under § 10.60(b) of this chapter, or other conditionally free merchandise;

(b) Customs Form 7512 for merchandise to be withdrawn for transportion, exportation, or transportation and exportation; or

(c) Customs Form 7505 for (i) a duty paid warehouse withdrawal for consumption or (ii) withdrawal with no duty payment (diplomatic use).

3. Section 144.32 is amended by adding a new paragraph (c) and revising the section heading to read as follows:

§ 144.32 Statement of quantity; charges and liens.

* * * * *

(c) *Charges and liens.* Upon receipt of an application to withdraw merchandise the appropriate Customs officer shall determine whether there are any cartage, storage, labor, or any other charges due the Government in connection with the goods remaining unpaid or whether there is on file any notice of lien filed by a carrier. If there are no charges or liens or all charges and liens have been satisfied, and all other requirements of law or regulations have been met, the proprietors have been met, the proprietors application to withdraw shall be approved.

4. Section 144.34(a) is amended by revising it to read as follows:

§ 144.34 Transfer to another warehouse.

(a) *At the same port.* With the concurrence of the proprietors of the delivering and receiving warehouses, merchandise may be transferred from one bonded warehouse to another at the same port under Customs supervision and at the expense of the importer upon his written request to the district director, who shall issue an order for such transfer on Customs Form 6043. However, the district director may require the filing of a rewarehouse entry under § 144.41 if he determines it necessary for proper control of the merchandise. All charges shall be paid before merchandise is transferred from a warehouse of class 1 (see § 19.1 of this chapter for classes of warehouses). The quantities of goods so transferred shall be subject to the joint determination of the warehouse proprietor and the cartman, lighterman, or private bonded carrier, as provided in §19.6 of this chapter.

5. § 144.38(e) is amended by revising it to read as follows:

§ 144.38 Withdrawal for consumption.

* * * * *

(e) *Permit for release of merchandise.* When the duties and other charges have been paid, and all other requirements of law and regulations have been met, a permit on Customs Form 7505–A shall be issued and delivered to the person making the warehouse withdrawal.

6. Part 144 is amended by adding a new § 144.39 to read as follows:

§ 144.39 Permit to transfer and withdraw merchandise.

If all legal and regulatory requirements are met the appropriate Customs officer shall approve the application to tranfer or withdraw merchandise from a bonded warehouse by endorsing the permit copy and returning it to the applicant. The approved permit shall be presented by the withdrawer to the warehouse proprietor as evidence of Customs authorization of the transfer or withdrawal. The approved permit copy shall thereafter be retained in the warehouse entry file of the proprietor. Goods covered by permit may be retained in the bonded warehouse at the option of the proprietor.

7. Section 144.41(g) is amended by revising it to read as follows:

§ 144.41 Entry for rewarehouse.

* * * * *

(g) *Failure to enter.* If the rewarehouse entry is not filed before the expiration of 5 days after its arrival or any authorized extension, it shall be sent to the general order warehouse but shall not be sold or otherwise disposed of as unclaimed until the expiration of the original warehouse entry bond period.

* * * * *

(R. S. 251, as amended, secs, 311, 312, 555, 556, 557, 623, 624, 646a; 46 Stat. 691, as amended, 692, as amended, 743, as amended, 744, as amended, 759, as amended, 67 Stat. 520 (19 U.S.C. 66, 1311, 1312, 1555, 1556, 1557, 1623, 1624, 1646(a)))

Appendix A.—Proprietor's Warehouse Bond for Storage and Manipulation of Merchandise, Classes 2, 3, 4, 5, and 8

No.————

Know all men by these presents that*———

———————————————————————————

of————, as principal, and *————, of————, and————, of————, as sureties, are held and firmly bound into the United States of America in the sum of———— dollars ($————), for the payment of which we bind ourselves, our heirs, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this———day of————, 19——.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District————, at the place and for the purposes specified below, namely:

Location (number, street, city, and State	Class (specify whether class 2, 3, 4, 5, or 8)	Purpose

Now, therefore, the condition of this obligation is such that—

1. *Agreement to secure against loss.* If the principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, obligors agree to reimburse the United States for any loss or expense connected with or arising from the deposit, storage, manipulation, or removal of merchandise in the facility, including an expense caused by discontinuance or suspension of the bonded status of the facility.

2. *Agreement with respect to the deposit of merchandise.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal acknowledges that Customs may conduct unannounced inventory checks of the facility and agrees to:

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Mark each package with the correct general order number, warehouse entry number, or seizure number and the corresponding date of the order, entry, or seizure delivery ticket;

(c) Store separately any package that has an exception for loss or damage or that has a discrepancy between its contents, its marks and numbers or the marks and numbers on the permit; and

(d) Store together in one place within the facility all merchandise in a general order shipment, in a warehouse entry, or in a seizure unless Customs permits commingled storage, or the merchandise is covered by paragraph (c).

If principal defaults, obligors agree to pay liquidated damages of $100 for each default.

3. *Agreement to keep records.* If authorized to operate a warehouse under 19 U.S.C 1555, principal agrees to:

(a) Record the shipping marks and numbers of all packages, (or the weigher's or gauger's numbers of weighable or gaugeable packages that lack shipping marks and numbers) in accordance with Customs Regulations and file a copy of the record pertaining to a specific warehouse entry, general order shipment, or a seizure in a separate permit file folder;

(b) File in that same file folder, and record in accordance with Customs Regulations, within 2 business days after the event occurs, all receipts, damages/shortage reports, manipulation requests, specific removals, and blanket removals and the partial release permit copy for each removal made under the blanket authority, referred to in 19 CFR 19.6;

(c) Maintain that permit file folder in the facility and allow inspection of it by Customs at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of $100 for each item that is incorrectly recorded or filed, or not recorded or filed, or each instance of a refusal to allow Customs inspection of a permit file folder covering a warehouse entry, general order shipment, or seizure.

4. T3Agreement to secure facility. If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Secure the facility by meeting each of the general standards and recommended specifications that are listed in T.D. 72-56; so long as they do not conflict with the provisions of paragraph (b);

(b) Meet every applicable Federal, state, and local requirement (such as fire codes) for the safe and sanitary storage of merchandise in the facility and remove all trash and waste from the bonded area;

(c) Place merchandise in the facility so that no door, entrance, or exit is blocked;

(d) Establish and maintain aisles in the facility so that Customs has ready access to all merchandise at all reasonable hours;

(e) Hold the facility open for Customs inspection at all reasonable hours; and

(f) Secure inlets and outlets of bonded tanks with locks or Customs approved inbond seals.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply.

5. *Agreement to notify and file documents with Customs.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(a) Before any removal, insure that Customs has given either specific or blanket permission for the removal;

(b) Within 10 business days after a final removal of merchandise covered by a warehouse entry, general order shipment, or seizure, file with Customs the complete permit file folder on that merchandise, together with a complete accounting of all merchandise in the entry, shipment, or seizure;

(c) Before any manipulation, notify Customs of the intended manipulation and obtain Customs specific or blanket approval;

(d) Within 45 days from the end of the principal's business year (fiscal or calendar), file the Warehouse Proprietor Submission in the form prescribed by T.D. 82-204 which includes a complete accounting of the beginning and ending inventories of merchandise in each facility during the year and of all receipts, manipulations, and removals during the year;

(e) Notify Customs if any merchandise in an entry or in a general order shipment is not withdrawn during the applicable 5-year warehousing period or the applicable 1-year general order period, on expiration of that period, and file with Customs the permit file folder on that entry or shipment when requested by Customs;

(f) Notify Customs in writing by close of business of the next business day on discovery of any extraordinary (one percent or more of the value of merchandise in an entry) overage, or shortage of, or damage to any merchandise in the facility; and

(g) Notify Customs in writing by close of business of the next business day on discovery of any discrepancy (i.e. overage, shortage, damage, etc.) in merchandise in a general order shipment or seizure.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, obligors agree to pay liquidated damages equal to five times the duty and tax due, as calculated by Customs, on any dutiable or taxable merchandise and liquidated damages equal to the value of any nondutiable merchandise.

6. *Agreement on sealing conveyances.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

7. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1555 and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of $100 for each day the annual fee remains unpaid.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Principal) _____
[Seal]
(Name) _____
(Address) _____
(Address) _____
(Surety) _____
[Seal]
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
[Seal]

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, _____, certify that I am the _____ secretary of the corporation named as principal in the within bond; that _____, who signed the said bond on behalf of the principal, was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

_____ [corporate seal]

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix B.—Proprietor's Manufacturing Warehouse Bond, Class 6

No. _____

Know all men by these presents that*

_____

_____

of _____, as principal, and* _____, of _____, and _____, of _____, as sureties, are held and firmly bound into the United States of America in the sum of _____ dollars ($_____), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this _____ day of _____, 19__.

Whereas, under the warehouse laws of the United States and the regulations of the U.S. Customs Service made in pursuance thereof, the above-bounden principal has made application to bond the warehouse, or premises located in Customs District No. _____, at the place and for the purpose of manufacturing certain articles specified below, namely:

_____

*May be executed by the secretary, assistant secretary, or other officer of the corporation.

Location (number, street, city, and State)	For the manufacture of (specify articles in detail)

Now therefore, the condition of this obligation is such that—

1. *Agreement to comply with statute and regulations.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Use the warehouse exclusively for the purpose for which it is bonded;

(b) Properly enter and pay duty on any imported implement, machinery, or apparatus that is for the construction of the warehouse or for the prosecution of its business;

(c) Insure that all operations conform strictly to any manufacturing formula filed with Customs;

(d) Maintain within the warehouse a separate storage area, secured in accordance with the standards and specifications in T.D. 72-56, for storage and all imported merchandise, domestic spirits, and other merchandise subject to an Internal Revenue tax transferred to the warehouse for manufacturing; and

(e) Maintain within the warehouse a separate area, secured in accordance with the standards and specifications in T.D. 72-56, for the storage of products manufactured in the warehouse.

(f) Properly enter and pay duty on any article, waste, or byproduct that is withdrawn for consumption.

If principal defaults, obligors agree to pay liquidated damages of $1,000 for each default under subparagraph (a) and/or (c), and $100 for each default under subparagraphs (b), (d), (e) and/or (f).

2. *Agreement to secure against loss.* If principal is authorized to operate a bonded manufacturing warehouse, obligors agree to reimburse the United States for any loss or expense connected with the deposit, storage, manufacturing or removal of merchandise in the warehouse, including duty and tax due and an expense due to the transfer of merchandise on the discontinuance or suspension of the bonded status of the facility.

3. *Agreement with respect to deposit of merchandise.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Receive only merchandise covered by an appropriate Customs permit;

(b) Store merchandise received in the manner required by statute or regulation;

(c) Transfer merchandise from a storage area in the warehouse to a manufacturing area in the warehouse in the manner required by regulation;

(d) Mark each package with the correct warehouse entry number and date until manufacturing takes place; and after manufacture, mark each package of the finished product with the correct warehouse entry and date.

If principal defaults, obligors agree to pay liquidated damages which equals $100 and the amount of duty on any merchandise involved in the default.

4. *Agreement to keep records.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Record all deposits of merchandise, for manufacturing or prosecution of warehouse business in accordance with Customs Regulations;

(b) Record all transfers from any storage area to a manufacturing area in the facility in accordance with Customs Regulations;

(c) Record all transfers from any manufacturing area to finished product storage area within the facility in accordance with Customs Regulations;

(d) Record all manufacturing operations performed within the warehouse with sufficient detail to enable a Customs officer to determine whether there has been compliance with any manufacturing formula filed with Customs and to enable a Customs officer to audit use and disposition of the merchandise;

(e) Record all withdrawals and removals from the facility in accordance with Customs Regulations;

(f) File in a separate folder pertaining to each entry into the facility each document (receipt, permit, transfer permit, manufacturing abstract, and removal permit) on that entry within 2 business days after the event covered by the document occurs;

(g) Maintain each permit file folder in the facility and allow inspection of it by Customs at all reasonable hours; and

(h) Take an annual physical inventory as well as file a warehouse proprietor submission.

If principal defaults, obligors agree to pay liquidated damages of $100 for each item that is incorrectly recorded, incorrectly filed, or not recorded or filed, or for each failure to inventory, or each instance of a refusal to allow Customs inspection of a permit file folder covering a warehouse entry.

5. *Agreement on removals.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(a) Not remove or suffer the removal of any merchandise except under a Customs permit;

(b) Within 10 business days after final removal of any merchandise in a warehouse entry, file the complete permit file folder on that entry with Customs;

(c) At the end of each month, file a detailed statement of all imported merchandise and merchandise on which Internal Revenue tax has not been paid which was used by the proprietor in the manufacture of articles;

(d) Notify Customs upon expiration of the warehouse period if any imported merchandise in an entry is not withdrawn within 5 years from the date of importation and simultaneously file with Customs the permit file folder on that entry;

(d) If any imported merchandise in an entry is not withdrawn within 5 years from the date of importation notify Customs of that fact on expiration of that period and simultaneously file with Customs the folder on that entry;

(e) Notify Customs in writing by close of business of any extraordinary (one percent or more of the value of merchandise in an entry) overage or shortage of or damage to any merchandise in the facility; and

(f) Properly mark each package of cigars that is to be withdrawn for consumption.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply. In addition, if any merchandise is removed without Customs approval, or if it consists of improperly marked packages of cigars, obligors agree to pay liquidated damages equal to five times the duty and tax due on any dutiable and/or taxable merchandise involved in the default and liquidated damages equal to the value of any nondutiable merchandise involved in the default.

6. *Agreement to furnish proof of exportation.* If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to furnish any consular invoices, declaration of owners or consignees, certificates of origin, certificates of exportation or other document that may be demanded by Customs to show compliance with the law and regulations within six months from the date of demand.

If principal defaults, obligors agree to pay liquidated damages equal to the duty or tax on any merchandise involved in the default.

7. If principal is authorized to operate a bonded manufacturing warehouse, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

8. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1311 and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of $100 for each day the annual fee remains unpaid.

Then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Principal) _____
(SEAL)
(Name) _____
(Address) _____
(Name) _____
(Address) _____
[Surety] _____
(SEAL)
(Name) _____
(Address) _____
(Name) _____
(Address) _____
(Surety) _____
(SEAL)

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, ———, certify that I am the ——— secretary of the corporation named as principal in the within bond; that ———, who signed the said bond on behalf of the principal, was then ——— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

——— [corporate seal]

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix C.—General Bond for Smelting and Refining Warehouses

No. ———

Know all men by these presents, that*———, of ———, as principal, and ——— of ———, and ———, of ——— as sureties, are held and firmly bound unto the United States of America in the sum of ——— dollars ($———), for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severelly, firmly by these presents.

Witness our hands and seals this ——— day of ———, 19——.

Whereas, the said ——— have (has) been authorized to smelt or refine, or both, imported metal-bearing materials in bond without the payment of duty thereon, as provided in section 312, Tariff Act of 1930, as amended, in the premises situated at ———, and more particularly described by metes and bounds in exhibits ———, attached hereto and made a part hereof, which premises are owned, controlled, and operated by ———; and

Whereas, metal-bearing materials will be entered for warehouse to be smelted or refined, or both; and

Whereas, metal-bearing materials (as well as merchandise generally) will be entered for consumption or for warehouse, and in warehouses of classes 2, 3, or 4 at any of the following ports of entry ———

———; and ———

Whereas, certain merchandise, in whole or in part, may be entered under the provisions of section 484, Tariff Act of 1930, as amended, and duties deposited under the provisions of section 505(a), Tariff Act of 1930, as amended; and

Whereas, pursuant to the regulations promulgated under section 448(b), Tariff Act of 1930, the said principal may find that immediate delivery of the merchandise will be necessary and desires the release of such merchandise prior to the making of formal entry therefor and payment of duties thereon; and

Whereas, imported merchandise generally, and dutiable metal-bearing materials (including products partly smelted or refined) will, to the extent permitted by law and regulations and in accordance therewith, be transferred from one warehouse to another, or be withdrawn for consumption, for transportation and rewarehousing, for exportation, for transportation and exportation, or for any other purpose provided for by law and regulations, as shown in the required documents.

Whereas, the above-bounden principal may request that the merchandise be examined elsewhere than at the public store, wharf, or other place in charge of a Customs officer;

Now, therefore, the condition of this obligation is such, that—

1. *Agreement to pay costs and expenses.* If principal is allowed to operate a bonded smelting and refining warehouse and enters any metal-bearing material without payment of duty, obligors agree to pay any costs or expense associated with Customs supervision of the warehouse and indemnify Customs for any loss associated with the entry, deposit, storage, smelting, refining, withdrawal, transfer, or removal of any metal-bearing material or any product of a metal-bearing material in or from the warehouse, including any expense caused by the transfer of merchandise on the discontinuance or suspension of the bonded status of the facility.

2. *Agreement on recordkeeping.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Maintain complete smelting and refining records in accordance with Customs Regulations showing the receipt and disposition of each shipment of materials (hereinafter includes metal-bearing materials, products of metal-bearing materials, and dutiable metal) received (actual and theoretical), into the warehouse.

(b) File with the Regional Director, Regulatory Audit Division, for the district in which the plant is located, at end of the principal's business year, a complete statement of the annual smelting and refining operations done which shows:

(i) The quantity of metal-bearing materials in the warehouse and their dutiable metal content at the beginning of the year;

(ii) The quantity of metal-bearing materials received during the year and their dutiable metal content;

(iii) The quantity of metal-bearing materials in the warehouse at the end of the year and their dutiable metal content;

(iv) The quantity of metal-bearing materials worked during the year which shall include the quantity of foreign material and the quantity of domestic material put in process;

(v) The quantity and kind of metal and intermediate products produced;

(vi) Disposition of all materials transferred, withdrawn, or removed (actually or theoretically) from the warehouse during the year;

(c) Maintain the report of sampling, weighing, and assaying on each shipment of metal-bearing materials received into the warehouse for five years from the date of liquidation;

(d) Maintain for five years from date of liquidation any report of sampling, weighing, and assaying on any smelting and unrefined product or bullion obtained from the smelting of imported material that is to be transferred to another warehouse in a separate permit file folder and file the completed folder on that entry with Customs within 10 business days after final removal of merchandise on the entry;

(e) Maintain all Customs permits (blanket or specific) to enter, transfer, withdraw, or remove (actual or theoretical) any materials into or from the warehouse;

(f) Complete and file with Customs within 30 days after exportation of metal under the memorandum withdrawal procedure set forth in 19 U.S.C. 1312(b)(1) and the Customs Regulations all records on the exportation;

(g) File with Customs a complete monthly inventory of all metals in the warehouse as required by the Customs Regulations; and

(h) Notify Customs upon expiration of the warehouse period if any imported merchandise on an entry is not withdrawn within 5 years from the date of importation and simultaneously with notification file with Customs the permit file folder on that entry.

If principal defaults, obligors agree to pay liquidated damages of $100 for each default.

3. *Agreement on entry and withdrawals.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Receive actual or theoretical deposit of any metal-bearing material, a product of a metal-bearing material, or any metal, which may be subject to duty, only after receipt of a Customs permit;

(b) Keep separate any metal-bearing material which may be subject to duty from all other materials until that material has been sampled, weighed, and assayed; and

(c) Obtain Customs permit to transfer, withdraw, or remove (physically or theoretically) any material before transfer, withdrawal, or removal is begun.

If principal defaults, obligors agree to pay liquidated damages equal to the amount of duty on all materials involved in the default.

4. *Agreement to pay duty.* If principal operates a bonded smelting and refining warehouse, obligors agree to pay on demand all duty determined to be due on liquidation or by regulation with respect to any material withdrawn for consumption and any dutiable metal found to be missing from the warehouse without a proper withdrawal or removal.

5. *Agreement to secure facility.* If principal operates a bonded smelting and refining warehouse, principal agrees to:

(a) Secure the warehouse by meeting each of the general standards and recommended specifications that are listed in T.D. 72-56; so long as they do not conflict with those provisions of paragraph 5(b);

(b) Meet every applicable Federal, state and local requirement (such as fire codes) for the safe, sanitary, and secure storage of materials in the warehouse;

(c) Place materials in the warehouse so that no door, entrance, or exit is blocked;

(d) Establish and maintain the warehouse so that Customs has ready access to all materials at all reasonable hours; and

(e) Hold the warehouse and all records open for Customs inspection at all reasonable hours.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply.

* May be executed by the secretary, assistant secretary, or other officer of the corporation.

6. If principal operates a bonded smelting and refining warehouse, principal agrees to:

(1) Affix and break Customs seals in accordance with the Customs Regulations or an order or directive from Customs;

(2) Report to Customs any seal that is found to be broken, missing, or improperly affixed; and

(3) Hold the vehicle, container, and contents intact for Customs.

If principal defaults, obligors agree to pay liquidated damages of $100 for each failure to comply with any of the above requirements.

7. *Agreement to pay annual fee.* If authorized to operate a bonded warehouse under 19 U.S.C. 1312, and the audit-inspection program, principal agrees to pay the annual fee established by regulation within 14 days of the due date.

If principal defaults, obligors agree to pay liquidated damages of $100 for each day the annual fee remains unpaid.

Then this obligation to be void; otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) ————————
(Address) ————————
(Name) ————————
(Address) ————————
(Principal) ————————
[Seal]
(Name) ————————
(Address) ————————
(Name) ————————
(Address) ————————
(Surety) ————————
[Seal]
(Name) ————————
(Address) ————————
(Name) ————————
(Address) ————————
(Surety) ————————
[Seal]

* If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporate Principal

I, ————, certify that I am the ———— secretary of the corporation named as principal in the within bond; that ————, who signed the said bond on behalf of the principal, was then ———— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.*

————[corporate seal]

Note.—To be used when no power of attorney has been filed with the district director of Customs.

Appendix D

U.S. Customs Service, Bonded Warehouse Proprietor, Submission Instructions

The preparation and filing of this submission, with the Regional Director, Regulatory Audit Division, U.S. Customs Service, is to occur within 45 days subsequent to the company's year end. Should you have questions regarding this submission, contact the Regional Director, Regulatory Audit Division.

* May be executed by the secretary, assistant secretary, or other officer of the corporation.

A warehouse proprietory is required to file a submission for each warehouse facility. The definition of a warehouse facility is as follows: A warehouse facility will be determined by street address, location, or both. For example, if a proprietor has two warehouses located at one street address and three warehouses located at three different street addresses, the two would be considered as one warehouse facility and the three warehouses would each be considered as separate facilities.

The following instructions are to assist you in preparing the "Bonded Warehouse Proprietor Submission."

On the front page of each warehouse submission record the information requested as shown below.

Name of warehouse facility
Address
Telephone number
IRS number
Contact person

The Warehouse Proprietor Submission form is set forth below. The form is divided into eight sections labeled A through H.

In:

Column (A). Record the number and date of all entries which were included in:

1. The beginning inventory of the year just ended.
2. The ending inventory based on the physical inventory just taken.
3. Also, include all entries which were opened and closed during the year which do not appear in either the beginning or ending inventory listings.

Column (B). Provide an adequate description of all merchandise covered by those entries listed in column (A). The description should be specific enough to identify the commodity, e.g. "scotch" rather than "liquor." For entries listing multiple commodities, the term "various" may be used, however this will not be acceptable for all situations.

Column (C). Record in column (C) the quantity stated on the entry for each commodity described in column (B).

Column (D). Record any quantity actually received that is over/short that recorded in column (C).

Column (E) and (F). Record the quantities relating to all breakage occurring upon arrival and/or in the warehouse pertaining to each commodity listed in column (B).

Column (G). Record the quantity of merchandise that is on hand at the end of the business year.

Column (H). Record the date on which the entry was closed and forwarded to Customs.

An authorized representative of the company must sign the document where indicated prior to presenting it to Customs.

WAREHOUSE PROPRIETOR SUBMISSION

Entry and date	Description of merchandise	Quantity		Breakage		Ending inventory quantity	Date entry closed and forwarded to customs
		Per entry	Over/short on receipt	Upon receipt quantity	In warehouse quantity		
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)

Certification: I hereby certify that the information contained in this submission completely and accurately represents all entry transactions as well as beginning and ending inventories of (name) ———— warehouse facility for the year ending ————.

(Signed)
(Title)
(Company)
(Date)

Appendix E

Final Regulatory Flexibility Analysis on Customs Regulations Amendments Relating to Bonded Warehouses

Introduction

The U.S. Customs Service is amending selected portions of the Customs Regulations, relating to the control of merchandise in Customs bonded warehouses. The amendments entail major changes in the method of control of merchandise in such warehouses. The principal changes are the elimination of the physical supervision or warehouse transactions by Customs warehouse officers and the elimination of recordkeeping by Customs warehouse officers that tends to duplicate the recordkeeping of warehouse proprietors. The new warehouse control system will make use of periodic audits and spot checks of warehouse inventories. Warehouse proprietors will incur certain additional responsibilities and will be accountable for the proper management of their operations.

The amendments will have an economic impact on Customs bonded warehouses as well as on the U.S. Treasury. The Regulatory Flexibility Act requires that "regulatory flexibility" analyses be prepared on proposed regulations unless the regulations will not have a "significant economic impact on a substantial number of small entities." Since many Customs bonded warehouses could be considered to be "small entities," and since the proposed warehouse amendments were likely to have a "significant economic impact" on those small entities, an *initial* regulatory analysis was prepared by the Customs Service and was published in the Federal Register on March 4, 1982, along with the Notice of Proposed Rulemaking on Customs bonded warehouses. The initial regulatory flexibility analysis and the Notice generated over 50 public comments on the proposed amendments. These public comments have been taken into

consideration during the preparation of the final rule on this project. The *final* regulatory flexibility analysis (as required by the Regulatory Flexibility Act) on the bonded warehouse amendments appears below; this analysis also fulfills any regulatory analysis requirements under Executive Order 12291.

Statement of the Problem and Rationale for Customs Action

The current bonded warehouse control system utilized by the Customs Service often necessitates the physical presence of a Customs warehouse officer. This is deemed by the Customs Service to be an outdated system, and is therefore being changed. Indeed, in 1974 a General Accounting Office report stated that: "We reviewed the necessity of having warehouse officers in view of the inventory document controls maintained at the customhouse and the periodic physical inventories performed by Customs on goods in bonded warehouses. *The existing procedures for centrally controlling bonded goods at the customhouse, together with the bond protection of the Customs duties and the periodic physical inventory checks, are adequate for protecting Government revenues without having a warehouse officer present.*" (emphasis added).

In order to help establish a viable alternative to the current Customs bonded warehouse control system, the Customs Service carried out successful pilot test at two selected bonded warehouses between October 1979 and April 1980. The test utilized a reporting system with post audit application, i.e., recordkeepiing and other functions were carried out by warehouse proprietors without the constant physical presence of a warehouse officer, but with followup audit by the Customs Service. This new control method was deemed by the Customs Service to be both cost-efficient and mission-effective. Accordingly, a Program Development Model was prepared which described the benefits of the new control method and compared it with a number of alternative methods. Customs management decided to pursue the complete modification of the current system into a system that uses spot checks and post audit techniques rather than the physical presence of Customs warehouse officers. Accordingly, subsequent to the receipt and study of public comments on the proposed new control system, the Customs Service is now announcing the final rule which implements the new system.

The Number of Warehouses and "Small Entities" Affected

A Customs bonded warehouse is a building or other secured area in which merchandise may be stored, manipulated, or undergo manufacturing operations without payment of duty. A recent Customs Service survey indicated that there were 1,538 Customs bonded warehouses in the United States as of March 1982. These warehouses are divided into eight "classes," according to the type of storage, manipulation, manufacturing, or smelting that takes place in each warehouse. The two predominate types of bonded warehouses are (1) warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof, and (2) public bonded warehouses used exclusively for the storage of merchandise not belonging or consigned to the proprietor. Of the 1,538 warehouses, many (i.e., those with relatively few transactions) can be considered to be "small" warehouses. However, not all such warehouses would be "small entities" under the Regulatory Flexibility Act because they may be owned by large corporations or are only a small segment of a larger warehouse (or other) operation. The number of warehouses by Customs region is shown below:

Region I (Boston)	373
Region II (New York)	96
Region III (Miami)	303
Region IV (New Orleans)	79
Region V (Houston)	193
Region VI (Los Angeles)	260
Region VII (Chicago)	234
Total	1,538

In fiscal year 1981, $489.6 million in duties were collected from bonded warehouse withdrawals.

The Current System and Current Costs

The Customs Service is responsible for controlling bonded warehouses. Currently, Customs' control is generally carried out via Customs warehouse officers who supervise the entry or withdrawal of goods from the warehouse and oversee the manipulation, manufacture, or destruction of such goods. Warehouse proprietors are required to reimburse the Customs Service for the salaries and certain other costs of full-time Customs warehouse officers and temporarily detailed officers. In March 1982 there were 265 full-time reimbursable Customs warehouse officers (as late as September 1980, there were 390 authorized positions for Customs warehouse officers, of which 361 were filled).

In many, if not most, warehouses, activity is sporadic and Customs warehouse officers are called upon to perform their tasks on an as-needed basis. The Customs Service must not only provide Customs warehouse officers and other officers to control the warehouses, but must also allocate the time of various Customs personnel (clerks, aids, supervisors, etc.) to maintain, file, and process the entry and withdrawal documentation at the customhouse. In March 1982 there were 111 such full-time (and nonreimbursable) individuals, a slight decrease from the 119 individuals of September 1980.

The annual direct cost of the current Customs warehouse control system is $8.39 million. The current cost would be well above $8.39 million if the number of Customs warehouse officers had not already diminished from 361 in September 1980 to 265 at present (an October 1980 Customs Headquarters study calculated the cost of the program at $10 million per year). The current cost of $8.39 million is divided as follows:

(1) a $4.43 million cost to warehouse proprietors to reimburse Customs for the 265 full-time officers;

(2) an estimated $1.2 million cost to warehouse proprietors to reimburse Customs for part-time officers assigned;

(3) an estimated $1.1 million cost to warehouse proprietors to reimburse Customs for overtime charges; and

(4) a $1.66 million cost to the Customs Service to pay for the 111 nonreimbursable Customs employees who are engaged in warehouse-related tasks.

Accordingly, warehouse proprietors are currently paying $6.73 million (i.e. $4.43 million plus $1.2 million plus $1.1 million, as shown above) in reimbursable fees to the Customs Service. This results in an average cost per warehouse of nearly $4,400. However, the actual reimbursable cost per each given warehouse fluctuates greatly, depending upon whether the warehouse is large (e.g. has a large volume of transactions), or is small (e.g., has a limited number of transactions). Many warehouses are believed to currently pay the Customs Service less than $500 per year in reimbursable expenses, while some (large volume) warehouses incur expenses of thousands or even tens of thousands of dollars.

There is also an *indirect* cost to warehouse proprietors under the current system: the delays, lost sales, and other costs incurred when Customs is unable to provide prompt and around-the-clock supervision of warehouse transactions.

With regard to the general U.S. economy, the current bonded warehouse program is beneficial, and especially beneficial to the importing community. For example, bonded warehouses allow importers to defer the payment of duties on a substantial amount of merchandise. However, Customs Service management believes that equivalent benefits can be realized at a lower cost if the current bonded warehouse control system is comprehensively changed.

The "New" Bonded Warehouse Control System and Estimated Costs

The Customs Service, via the attached "final rule," is hereby instituting a new system of supervising merchandise in bonded warehouses. This new system entails a complete revision in the type and scope of Customs' physical supervision of bonded warehouse operations. Among the changes which will occur are:

(1) the elimination of Customs warehouse officer positions at bonded warehouses;

(2) the elimination of the 111 nonreimbursable warehouse related positions;

(3) the increased accountability of warehouse proprietors for the proper management of their warehouse operations; new responsibilities would include certain recordkeeping requirements, including the preparation of an annual "Proprietor's Submission" at the end of each warehouse's fiscal year;

(4) a higher fee to establish ($820), and new fees to alter ($356) or relocate ($356) a warehouse facility (the fee to *establish* a warehouse would have been raised even under the *current* bonded warehouse control system);

(5) the establishment of an annual fee of $650 in the first year on warehouses to cover the cost of Customs spot checks and regulatory audits; and

(6) perhaps the securing of modified bond coverage for a number of warehouses.

Under the new system, proprietors will be held accountable for recordkeeping functions similar to those currently being carried out by Customs warehouse officers. However, recordkeeping requirements for most warehouses will probably not impose substantial burdens on proprietors since proprietors *already* keep substantive records of transactions (it should be noted that such records are needed for billing purposes and tax purposes).

Nevertheless, a few (generally large) warehouses, especially in Customs Region II (New York), have indicated that the new recordkeeping requirements and Proprietor's Submission will contribute to *increased* costs for their operations. A number of proprietors have claimed that it will be necessary for each of them to hire a new employee to prepare the Proprietor's Submission and carry out related recordkeeping. The annual cost of this employee would range from $15,000 (low estimate) to up to $25,000 (high estimate), according to estimates provided to the Customs Service.

Other alleged costs would be for possible reprogramming and computer expenses, possible increased security costs, and a cost in preparing any physical inventory which may be necessary for warehouses during the conversion period.

Certain large warehouses may indeed incur the "additional" expense of hiring a bookkeeper/clerk to prepare the Proprietor's Submission, especially since the Proprietor's Submission may necessitate a different recordkeeping format from that already kept by the warehouse proprietor. However, it is likely that such personnel will be hired at a cost which is *lower* than the currently reimbursable cost of the Customs warehouse officer who is assigned to the particular warehouse. Accordingly, while some large warehouses will incur certain new costs relating to the Proprietor's Submission, these costs are likely to be less than the savings which such warehouses will reap under the new control system. The cost effect of the Proprietor's Submission on small warehouses is not expected to be substantial, due to the relatively few number of transactions handled in most small warehouses. The Customs Service's original calculation of the total amount of time which will be spent by the warehouse community to prepare the Proprietor's Submission has now been revised substantially downward due to new information and a better understanding of the effect on warehouses. The aggregate cost of the Proprietor's Submission and related recordkeeping will be approximately $1.8 million.

The annual cost of the new system on existing warehouses is estimated to be less than $3.4 million, i.e., significantly less than the cost of the current system. The estimated cost is based upon the following components:

(1) a cost for recordkeeping and the preparation of the annual Proprietor's Submission of $1.8 million (there may also be a "one-time" cost of a complete inventory/reconciliation which would be taken before the new system is implemented). In addition, warehouses will experience the occasional cost of interruptions due to Customs audits and spot checks;

(2) a cost (as estimated by the initiating office) of $1.0 million during the first year for Customs regulatory audit and inspector services; the estimated $1.0 million for these services represents the aggregate "annual fee;" and

(3) possible increased costs of bonding coverage and certain fees for the establishment, alteration, or location of warehouse facilities—these costs are believed to be less significant than the amounts specified in (1) and (2) above.

The aggregate cost of the new warehouse control system on bonded warehouses is expected to be less than under the current system, although there are likely to be absolute increased costs (mainly as a result of the annual fee) on a number of small warehouses. The aggregated cost to warehouse proprietors under the new system is estimated at less than $3.4 million per year, compared to $6.73 million under the current system, for a savings of at least $3.33 million per year.

The economic impact of the new system on the U.S. Treasury (U.S. taxpayer) will also be beneficial. The Customs Service would save up to $1.66 million per year in indirect warehouse control costs which are currently being incurred to support 111 nonreimbursable warehouse-related positions, although there will be a (minimal) new expense involved in collecting, processing, and analyzing information on the Proprietor's Submission. The new system will also result in the elimination of many Customs warehouse officer positions from the Customs employment ceiling. Customs management also believes that the new system will not have any adverse effects on enforcement or on the collection of revenue.

Consideration of Public Comments

The Regulatory Flexibility Act requires that regulatory flexibility analyses contain a summary of the issues raised by public comments, a summary of the agency assessment of such issues, and a statement of any changes made pursuant to the comments.

The **Federal Register** notice on bonded warehouses of March 4, 1982 requested public comments on the Notice of Proposed Rulemaking as well as on the initial regulatory flexibility analysis. Fifty comments were received; 27 of these generally supported the proposed amendments and 19 were opposed.

The remaining commenters did not take a firm position but rather made general comments and observations about the proposed amendments. A few comments delineating alleged adverse economic consequences were received after the comment deadline. Many of the public comments dealt with procedural matters of relevance to only individual warehouses or commenters; the Customs Service's responses to such matters are fully explained in the accompanying Notice of Final Rulemaking. However, a number of major issues, including economic issues, were raised repeatedly throughout the comments. The principal such issues raised were:

(1) concern with the proposed Proprietor's Submission and perceived related reprogramming expenses;

(2) concern with the proposed annual fee on bonded warehouses; and

(3) requests for more study and deliberation prior to the final modification of the current bonded warehouse control system.

The Proprietor's Submission.—Many commenters expressed concern over the proposed Proprietor's Submission and other perceived reporting requirements. Some commenters argued that the preparation of the Proprietor's Submission would entail significant increased costs and considerable reprogramming. It was pointed out that the Customs data requirements (presently kept by the Customs warehouse officers) are different from the proprietors' records and that warehouses would have to hire additional personnel to satisfy Customs' data requirements. One commenter recommended that reporting requirements should be "in a manner ordinarily recorded in the industry."

The Customs Service has decided to retain the requirement for an annual Proprietor's Submission, as proposed in the Notice of Proposed Rulemaking. A standard format such as the Proprietor's Submission will be necessary to effectively compare and control warehouse operations. Moreover, many warehouses are relatively small and will not necessitate significant amounts of time or money to collect appropriate data and prepare the required forms. Some large warehouses may incur the additional expense of hiring inventory clerk, but this expense is not expected to substantially affect the cost structure or operations of such warehouses, and indeed will probably result in a net *savings* to many warehouses which will no longer be required to reimburse the Customs Service for Customs warehouse officers. Accordingly, the proposed Proprietor's Submission has been left intact.

The Annual Fee.—Approximately ten commenters expressed opposition to the proposed annual fee which will be assessed on warehouses. Some of the commenters expressed the view that simply dividing total Customs' audit and inspection costs by the number of warehouses would discriminate against *small* warehouses, i.e. that small warehouses will be required to pay the same annual fee as large warehouses. A few commenters felt that it may be more equitable to bill individual proprietors for the costs of audits and spot checks that occur at their particular warehouses. One commenter argued that the fee-setting should be the subject of a separate Notice of Proposed Rulemaking.

The Customs Service recognizes the concern over the equity of an "averaged" annual fee, and indeed will further evaluate the method of assessing the fees as experience is gained with the new warehouse control system. In the meantime, however, the average fee will be retained. This average fee (which will be $650 in the first year) will be a significant saving for large warehouses that are currently paying $15,000 or more for a Customs warehouse officer. With regard to *small* warehouses, an average fee will entail

an increased cost for many of the very small or virtually inoperative warehouses and could result in a few warehouses voluntarily giving up their Customs warehouse status. The Customs Service did attempt to devise a "tiering" system to tailor the fees on small warehouses (to minimize the economic impact), but no effective tiering system was ultimately developed; indeed, no *specific* viable tiering system was provided by the public comments either. However, as previously stated, the Customs Service will continue to evaluate various methods of assessing the fee as experience is gained with the new warehouse control system. Indeed, the entire fee structure will be reviewed for reasonableness and equity immediately after the first 2 full years of operation under the new system, and will be changed if necessary.

Appropriate Study of the New System.—Approximately 13 commenters recommended that more time be taken to study the new bonded warehouse control system before it is implemented. It was felt that the 60-day period for the submission of public comments was not enough to adequately assess the proposed new system, especially with the many unanswered questions and unknowns that existed. Accordingly, a postponement of the final rule on this project was recommended.

Customs Headquarters has studied the bonded warehouse control conversion for several years. A pilot test of the new system was successfully concluded. Substantial data-gathering and expertise have been devoted to this project, although further study of the situation via (for example) the preparation of questionnaires by selected warehouses would indeed significantly assist in measuring the economic impact on individual warehouses. However, to further delay the implementation of the final rule on this project could, in the view of Customs' management, be counterproductive and would result in the continuation of the current Customs warehouse officer costs and other costs for many bonded warehouses.

Alternatives to the Proposed Warehouse Control System

The Regulatory Flexibility Act also requires final regulatory analyses to describe any alternatives which may minimize any significant economic impact on small entities, and which were considered by the agency in the preparation of a new rule. In addition, a statement of the reasons why each of the alternatives was rejected is also required.

The Customs Service investigated various methods of reforming the current warehouse control system. One alternative was a "modified "current system in which various changes to the current system would be implemented in a step-by-step manner; this system was rejected because of Customs management's belief that a relatively *rapid* and *complete* modification of the current system would result in greater cost savings for both the Customs Service and the importing community.

Other alternatives considered were (1) the "roving team" approach, under which the positions and functions of Customs warehouse officers would be eliminated and replaced by the establishment of roving teams which would make unannounced inspections and would carry out inventories, and (2) contracting out to a third party. The roving team approach was not deemed to be a viable cost-effective approach by the Regulatory Audit Division, while the alternative of contracting out to a third party would probably require a change in legislation.

After examination of various alternative warehouse control systems, the Customs Service has now chosen the system discussed in the attached "Final Rule." This "new" system is also deemed to be the most cost-effective by Customs management.

The Customs Service considered implementing the new system gradually (over a 1-year period). However, due to operational considerations, the system will now be implemented immediately, i.e., after appropriate notice is given to warehouse proprietors and the general public via this notice of final rule. In order to ensure an orderly transition to the new system and to help minimize any problems or costs for warehouses that may result from the system's immediate implementation, Customs will provide appropriate assistance or information to warehouses. The overall economic effect of the new system's immediate implementation may be beneficial to large warehouses, since such warehouses will soon no longer be subject to the reimbursable fees for Customs warehouse officers.

Appendix F—Proprietor's Warehouse Bond

By this instrument ———— as principal, of ————, and ———— as surety, of ——— agree to be bound to the UNITED STATES OF AMERICA in the sum of ——— dollars ($———), the payment of which is jointly and severally binding on us, our heirs, executors, administrators, successors, and assigns.

WHEREAS, the principal intends to operate as the proprietor of a Customs bonded warehouse under 19 U.S.C. 1311, 1312, or 1555, and by this instrument, the principal and surety intend to secure the principal's performance under those laws and the Customs Regulations.

WHEREAS, the principal and surety agree to be bound to the same extent as if they executed a bond that contained the conditions set forth in appendixes A, B, or C, to T.D. 82-204, as appropriate.

THEREFORE, the condition of this obligation is such that—

1. *Agreement of a proprietor of a warehouse for storage and manipulation of merchandise, classes 2, 3, 4, 5, and 8.* If principal is authorized to operate a bonded warehouse under 19 U.S.C. 1555, principal and surety agree to comply with all of the conditions and obligations of the bond set forth in appendix A to T.D. 82-204 with respect to any activity of that warehouse.

2. *Agreement of a proprietor of a Customs bonded manufacturing warehouse, class 6.* If principal is authorized to operate a Customs bonded manufacturing warehouse under 19 U.S.C. 1311, principal and surety agree to comply with all conditions set forth in appendix B to T.D. 82-204 with respect to any activity of that warehouse.

3. *Agreement of a proprietor of a Customs bonded smelting and refining warehouse.* If principal is authorized to operate a Customs bonded smelting and refining warehouse under 19 U.S.C. 1312, principal and surety agree to comply with all conditions and obligations of the bond set forth in appendix C to T.D. 82-204 with respect to any activity of that warehouse.

Then this obligation to be void, otherwise to remain in full force and effect.

Signed, sealed, and delivered in the presence of—

(Name) ————————
(Address) ————————
(Name) ————————
(Address) ————————
(Principal) ————————
(SEAL)
(Name) ————————
(Address) ————————
(Name) ————————
(Address) ————————
(Surety) ————————
(SEAL)
(Name) ————————
(Address) ————————
(Name) ————————
(Address) ————————
(Surety) ————————
(SEAL)

*If the principal or surety is a corporation, the name of the State in which incorporated also shall be shown.

Certificate as to Corporation Principal

I, ———— certify that I am the ———— secretary of the corporation named as principal in the within bond; that ————, who signed the said bond on behalf of the principal, was then ———— of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed, and attested for in behalf of said corporation by authority of its governing body.

———— (corporate seal)

Note.—To be used when no power of attorney has been filed with the district director of Customs.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 3280

[Docket No. R-82-1017]

Manufactured Home Construction and Safety Standards

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

ACTION: Final rule.

SUMMARY: This final rule makes editorial changes to material

incorporated by reference into the Federal Manufactured Home Construction and Safety Standards. The changes will enable the Department to continue in effect the current referenced standards by meeting the requirements for incorporation by reference established by the Director of the Office of the Federal Register. The changes include: (1) Adding language making clear that an incorporation by reference is intended, (2) providing complete citations of all the incorporated material (including dates), and (3) providing a statement indicating where each standard is available.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard Mendlen, Standards Officer, Office of Manufactured Housing and Construction Standards, Manufactured Housing Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. (202) 755-5798. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The Federal Manufactured Home Construction and Safety Standards (Standards), promulgated pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5401 et seq., became effective on June 15, 1976. At that time, the Department incorporated by reference into the Standards material which had been developed by private standards setting organizations.

These referenced standards have been approved for incorporation by reference by the Director of the Office of the Federal Register (OFR) pursuant to 5 U.S.C. 552(a). However, OFR has notified the Department that certain drafting requirements as set forth at 1 CFR 51.6-8 have not been met and must be complied with for OFR to continue its approval of the referenced standards. Specifically, OFR requirements include (1) adding language making clear that an incorporation by reference is intended; (2) providing complete citations of the incorporated material (including the date of edition); and (3) providing a statement indicating where the incorporated material can be obtained.

The Department is meeting these requirements by amending 24 CFR 3280.4, Incorporation by Reference, to make clear that the referenced standards are approved for incorporation by reference by the Director of OFR and, are available from the Department if they cannot be obtained from the producer organization. The Department will enforce the listed editions of these referenced standards. If later editions are to be enforced, the Department will publish a notice of change in the **Federal Register.** Finally, the Department is making editorial corrections to the citations of referenced standards as they now appear in the text of the Federal Manufactured Home Construction and Safety Standards, 24 CFR Part 3280. These corrections include inserting the date or correcting the title of the referenced publication. Examples of the types of changes made are set forth below.

Example No. 1: 24 CFR 3280.203 Flame spread limitations and fire protective requirements. Under this section the surface flame spread rating of interior finish materials shall not exceed certain ratings when tested by the Standard Method of Test of Surface Burning Characteristics of Building Materials, ASTM E84. The amendment to this section inserts the date of the referenced publication after the citation, i.e., ASTM E84 (1975).

Example No. 2: 24 CFR 3280.703 Minimum standards. The table in this section incorporates the ANSI standard Z21.44-1973. The title of the publication is incorrectly cited as "Gas fired gravity and fan-type sealed combustion system wall furnaces." The amendment to this section corrects the title to read "Gas-fired gravity and fan-type direct vent wall furnaces."

The Department is referencing a different standard for smoke detectors. Underwriters Laboratories (U.L.) No. 167 for ionization detectors and No. 168 for photoelectric detectors are now referenced. However, U.L. no longer lists or labels smoke detectors to those standards because they have been replaced by U.L. Standard No. 217 for Single- and Multiple-Station Smoke Detectors. This rule deletes the references to U.L. Standards Nos. 167 and 168 and replaces them with a reference to Standard No. 217. This codifies the Department's Interpretative Bulletin C-1-77.

Finally, the Department is changing two referenced standards in the table setting forth the minimum standards for heating, cooling, and fuel burning systems, 24 CFR 3280.703. U.L. 307(b)-1965 gas heating appliances for mobile homes and travel trailers has been replaced by the 1971 edition, and NSF-5-1959 hot water generating equipment for food services establishments using spray type dishwashing machines has been replaced by the 1972 edition. At the time these standards had been referenced in 1976, they had already been superseded by later editions. The later editions have been inserted into the table.

The Secretary has determined that the changes made by this rule are editorial rather than substantive in nature. Accordingly, the Secretary has determined that prior notice and public procedure are unnecessary, and that good cause exists for making this rule effective without an opportunity for prior public comment. However, Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication. Accordingly, notice of the effective date of this rule will be announced by means of a subsequent notice published in the **Federal Register.**

A finding of No Significant Impact With Respect to the Environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

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

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the changes in existing rules are editorial in nature, rather than substantive.

This rule was not listed in the Department's Semi-Annual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program number is 14.804 Manufactured Homes.

List of Subjects in 24 CFR Part 3280

Fire prevention; Housing standards, Mobile homes.

PART 3280—[AMENDED]

Accordingly, 24 CFR Part 3280 is amended as set forth below:

Subpart A—General

1. Section 3280.4 is revised to read as follows:

§ 3280.4 Incorporation by reference.

(a) The specifications, standards and codes of the following organizations are incorporated by reference in this Standard pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51 as though set forth in full. The incorporation by reference of these standards has been approved by the Director of the Federal Register. Wherever reference standards and this Standard are inconsistent, the requirements of this Standard prevail to the extent of the inconsistency.

(b) The abbreviations, and addresses of organizations issuing the referenced standards appear below. Reference standards which are not available from their producer organizations may be obtained from the Office of Manufactured Housing and Construction Standards, Manufactured Housing Standards Division, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

AA—Aluminum Association, 818 Connecticut Avenue, N.W., Washington, D.C. 20006
AGA—American Gas Association, 1515 Wilson Boulevard, Arlington, Virginia 22209
AAMA—Architectural Aluminum Manufacturers Assoc., 35 East Wacker Drive, Chicago, Illinois 60601
AISC—American Institute of Steel Construction, 400 North Michigan Avenue, Chicago, Illinois 60611
AISI—American Iron and Steel Institute, 1000 16th Street, N.W., Washington, D.C. 20036
AITC—American Institute of Timber Construction, 333 W. Hampden Avenue, Englewood, Colorado 80110
ANSI—American National Standards Institute, 1430 Broadway, New York, New York 10018
APA—American Plywood Association, P.O. Box 11700, Tacoma, Washington 98411
ARI—Air Conditioning and Refrigeration Institute, 1815 North Ft. Myer Drive, Arlington, Virginia 22209
ASHRAE—American Society of Heating, Refrigeration and Air-Conditioning Engineers, 1791 Tullie Circle N.E., Atlanta, Georgia 30329
ASME—American Society of Mechanical Engineers, 345 East 47th Street, New York, New York 10017
ASTM—American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103
CISPI—Cast Iron Soil Pipe Institute, 1499 Chain Bridge Road, McLean Virginia 22101
CMI—Cultured Marble Institute, 435 North Michigan Avenue, Chicago, Illinois 60611
CS—U.S. Department of Commerce, Commercial Standards, National Bureau of Standards, Office of Engineering Standards, Room A-166, Tech. Bldg., Washington, D.C. 20234
DOC—Department of Commerce, Washington, D.C. 20230
DOT—U.S. Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590
FS—Federal Specifications, General Services Administration, Specifications Branch, Room 6039, GSA Building, 7th and D Streets SW., Washington, D.C. 20407
GAL—Gas Appliance Laboratory, 3138 East Olympic Boulevard, Los Angeles, California 90023
HPMA—Hardwood Plywood Manufacturers Association, P.O. Box 2789, Reston, Virginia 22090
HUD-FHA—Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410
HVI—Home Ventilating Institute, 4300-L Lincoln Avenue, Rolling Meadows, Illinois 60068
IAPMO—International Association of Plumbing and Mechanical Officials, 5032 Alhambra Avenue, Los Angeles, California 90032
MIL—Military Specifications and Standards, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120
NFPA—National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269
(N)FPA—National Forest Products Association, 1619 Massachusetts Avenue NW., Washington, D.C. 20036
NPA—National Particleboard Association, 2306 Perkins Place, Silver Spring, Maryland 20910
NSF—National Sanitation Foundation, P.O. Box 1468, Ann Arbor, Michigan 48105
NWMA—National Woodwork Manufacturers Association, 205 West Toughy Avenue, Park Ridge, Illinois 60068
PS—Product Standards, U.S. Government Printing Office, Washington, D.C. 20401
SAE—Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096
SJI—Steel Joist Institute, Suite 204, 1703 Parham Road, Richmond, Virginia 23229
TPI—Truss Plate Institute, 100 West Church Street, Frederick, Maryland 21701
UL—Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

(c) The Department will enforce the listed editions of material incorporated by reference into this standard. If a later edition is to be enforced, the Department will publish a notice of change in the **Federal Register.**

Subpart B—Planning Considerations

2. Section 3280.114(b) is revised to read as follows:

§ 3280.114 Glass and glazed openings.

* * * * *

(b) *Safety glazing.* Glazing in all entrance or exit doors, sliding glass doors, units (fixed or moving sections), unframed glass doors, unbacked mirrored wardrobe doors (i.e. mirrors not secured to a backing capable of being the door itself), shower and bathtub enclosures and surrounds to a height of 6 feet above the bathroom floor level, storm doors or combination doors, and in panels located within 12 inches on either side of exit or entrance doors shall be of a safety glazing material. Safety glazing material is considered to be any glazing material capable of passing the requirements of performance specifications and Methods of Test for Safety Glazing Material used in Buildings, ANSI Z97.1-1972.

Subpart C—Fire Safety

3. Section 3280.203(a), introductory text, is revised to read as follows:

§ 3280.203 Flame spread limitations and fire protective requirements.

(a) Flame spread limitations. The surface flame spread rating of interior finish materials shall not exceed the following when tested by Standard Method of Test for Surface Burning Characteristics of Building Materials, ASTM E84-1975. The surface flame spread rating of interior finish materials required by § 3280.203(a) (4) and (6) may be established using standard Method of Test for Surface Flammability of Materials Using a Radiant Heat Energy Source, ASTM E162-1975. Testing shall be by laboratories acceptable to the Secretary.

* * * * *

4. Section 3280.208(c) is revised to read as follows:

§ 3280.208 Mobile home fire detection equipment.

* * * * *

(c) *Smoke detectors.* Smoke detectors shall be either the ionization chamber or the photoelectric wall mounted type and shall comply with all the requirements of Underwriters' Laboratories Standard for single and multiple station smoke detectors UL 217-1976. Detectors shall bear the label of a testing and approval laboratory that indicates the smoke detectors have been tested and approved under the requirements of UL

217–1976. The testing and approved laboratory shall be one which maintains a periodic follow-up service of the labeled devices to ensure compliance with the original approval. .

* * * * *

Subpart D—Body and Frame Construction Requirements

5. Section 3280.304(b)(1), Table is revised to read as follows:

§ 3280.304 Materials.

* * * * *

(b)(1) * * *

Aluminum: Aluminum Construction Manual, Sect. 1 specifications for aluminum structures.	AA–1971.
Steel:	
Specification for the design, fabrication, and erection of structural steel for buildings with supplements 1, 2 and 3.	AISC–1973.
Specification for the design of cold-formed steel structural members with Addendum 1.	AISI–1968.
Stainless steel cold-formed structural design manual.	AISI–1974.
Standard specifications for open web steel joists, J- and H-Series.	AISC–1973.
Standard specifications and Load-Tables-open web Steel Joist, J and H Series.	SJI–1973.
Manual for structural applications of steel cables for buildings.	AISI–1973.
Wood and wood products:	
Basic Hardboard	PS 58–1973.
Prefinished Hardboard Paneling	PS 59–1973.
Hardboard Siding	PS 60–1973.
Hardwood and decorative plywood	PS 51–1971.
Structural design guide for hardwood plywood.	HPMA–SG–1971.
Timber, structural glued laminated—inspection.	AITC–200–1973.
Timber, structural glued laminated	PS 56–1973.
Construction and industrial plywood	PS 1–1974.
Plywood residential construction guide.	APA–1974.
Design specifications for plywood—lumber components.	APA–1974.
Fabrication specifications of plywood—lumber components.	APA–1974.
Stress grade lumber and its fastenings—national design specifications for (and supplement).	(N) FPA–1973.
Structural design data—wood	(N) FPA–1970.
Span tables for joists and rafters (PS 20–70).	(N) FPA–1973.
Working stresses for joists and rafters.	(N) FPA–1974.
Timber construction standards	AITC–100–1972.
Design specifications for light metal plate connected wood trusses.	TPI–1974.
Span tables for light metal plate connected wooden trusses.	TPI–1972.
Particleboard for mobile home decking.	NPA 1 1973.
Mat-formed wood particleboard	CS 236–1966.
All plywood beams for mobile homes.	APA 124–1975.
Wood flush doors (interior, exterior)	NWMA I.S. 1–1974.
Wood window units	ANSI A200.1–1974. (NWMA I.S.2–1973)
Water repellent preservative non-pressure treatment for millwork.	NWMA I.S. 4–1970.
Wood sliding patio doors	NWMA I.S. 3–1970.
Other: Gypsum wallboard	ASTM C36–1975.
Fasteners:	
Nails, brads, staples and spikes, wire, cut and wrought.	F.S.FF–N–105b–1971.
Application and fastening schedule. Power driven, mechanically driven, and manually driven fasteners—HUD–FHA Use of Materials Bulletin No. UM.	25d–1973.
Windows and glazing: performance specifications and methods of test for safety glazing material used in buildings.	ANSI Z97.1–1972.
Unclassified: Building code requirements for minimum design loads in buildings and other structures.	ANSI A58.1–1972.

* * * * *

6. Section 3280.305(g)(4) and (i)(1)(i) are revised to read as follows:

§ 3280.305 Structural design requirements.

* * * * *

(g) * * *

(4) Botom board material (with or without patches) shall meet or exceed the level of 48 inch-pounds of puncture resistance as tested by the Beach Puncture Test in accordance with puncture and stiffness of paperboard, corrogated and solid fiberboard, ASTM D–781–1968. The material shall be suitable for patches and the patch life shall be equivalent to the material life. Patch installation instruction shall be included in the mobile home manufacturer's instructions.

* * * * *

(i) * * *

(1) *Welded connections.* (i) All welds shall be made in accordance with the applicable provisions of the specification for the design, fabrication, and erection of structural steel for buildings, with supplements 1, 2 and 3, AISC–1973. The specification for the design of cold-formed steel structural members with addendum 1, AIISI–1968 and the specification for the design of stainless steel cold-formed structural design manual, AISI 1974.

* * * * *

7. Section 3280.306(g)(2) is revised to read as follows:

§ 3280.306 Windstorm protection.

* * * * *

(g) * * *

(2) Type 1, Finish B, Grade 1 steel strapping, 1¼ inches wide and 0.035 inch thick, conforming with Federal Specification strapping, steel and seals FS QQ–S–7B1H–1974 is judged to conform with the provisions of this section and paragraph (f) of this section.

Subpart E—Testing

8. Section 3280.403(b)(1), (3)(i), (ii), (iii), text preceding table on "Glass Dimensional Tolerances" and the table on "Glass Dimensional Tolerances", (c)(2), (3), (4), introductory text, and (c)(4)(ii) (e)(2) and (l)(2)(i) are revised to read as follows:

§ 3280.403 Standard for windows and sliding glass doors used in mobile homes.

* * * * *

(b) * * *

(1) *Wood and wood based products.* (i) Wood. Wood parts including plywood and particleboard parts of window units shall have a moisture content of 6 to 12 percent at the time of fabrication. Wood parts, except inside stops and trim shall be manufactured utilizing wet-use adhesive requirements as defined in standard specification for adhesive used in non-structural glued lumber products. ASTM § 3110–1972 and preservative treated in accordance with standard for water repellent preservative non-pressure treatment for millwork NWMA IS–4–1970.

(ii) *Plywood.* Plywood parts except for inside stops and trim shall be exterior type plywood and preservative treated in accordance with NWMA IS–4–1970.

(iii) *Particleboard.* Particleboard parts except for inside stops and trim shall be type-2 particleboard and preservative treated in accordance with NWMA IS–4–1970.

* * * * *

(3) Glass. (i) Safety glazing materials, where used, shall meet Performance Specifications and Methods of Test for Safety Glazing Material used in Buildings. ANSI Z97.1–1972. Tempered glass, where used, shall also meet Glass, Plate (Float), sheet, figured and spandrel (Heat Strengthened and Fully Tempered). FS DD–G–1403B–1972.

(ii) Insulated glass, when used, shall be permanently identified with the name of the insulating glass manufacturer.

(iii) Glass tolerances and areas shall meet or exceed the values shown in the Glass Table below.

GLASS DIMENSIONAL TOLERANCES[a] AND MAXIMUM ALLOWABLE AREAS[b]—SHEET GLASS

Nominal thickness (inches)	Minimum thickness (inches)	Maximum area[b] (square feet) at 15 lb/ft²	Maximum area[b] (square feet) at 25 lb/ft²
18 oz	0.078	11	10
SS	.085	13	11
24 oz	.108	18	14
DS	.115	20	15
3/16	.182	40	30
1/32	.206	58	37
¼	.236	72	43

[a] For other types of glass see Federal Specification Glass, Plate, sheet, Figured Float flat, for glazing, corrugated mirrors and other uses FS DD–G–451C–1968.

[b] Maximum areas shown are based on minimum glass thicknesses set forth. Maximum are as shown apply for rectangular lites of annealed glass firmly supported on all 4 sides in a vertical position.

* * * * *

(c) * * *

(2) *Structural performance test*—(i) *Zone I.* There shall be no glass breakage, permanent deflection or any other condition which would cause the specimen to be inoperable after being subjected to an exterior pressure of 15 pounds per square foot. The test method applicable to this requirement shall be standard method of test for structural performance of exterior windows, curtain walls and doors under the influence of wind loads. ASTM E-330-1970.

(ii) *Zone II.* There shall be no glass breakage, permanent deflection or any other condition which would cause the specimen to be inoperable after being subjected to exterior pressure of 25 pounds per square foot. The test method applicable to this requirement shall be ASTM E-330-1970.

(iii) *Interior pressure.* There shall be no glass breakage, permanent deflection or any other condition which would cause the specimen to be inoperable after being subjected to an interior pressure equal to ½ the requirements in either paragraphs (c)(2)(i) or (c)(2)(ii) of this section. The test method applicable to this requirement shall be ASTM E-330-1970 except that no artificial means of containing pressure shall be allowed. Should pressure not be obtainable due to lack of air the testing agency will report the pressure achieved, the theoretical air flow supplied to the unit, and certify that no additional flow from the equipment in use was available. Laboratory equipment used for this test must be capable of developing 10 × air flow determined in § 3280.403(c)(3).

(3) *Air infiltration test.* Air infiltration shall not exceed 0.50 CFM per square foot of window area when tested in accordance with standard method of test for rate of air leakage through exterior windows, curtain walls and doors. ASTM E 283-1973 at an exterior pressure differential of 1.567 pounds per square foot (0.30" of water pressure).

(4) *Water resistance test.* No leakage shall pass the interior face of the test specimen at a test pressure of 2.86 psf (0.55" Water pressure) when tested in accordance with standard method of test for water penetration of exterior windows, curtain walls and doors by cyclic static air pressure differential ASTM E-547-1975 with a test cycle consisting of 5 minutes with pressure applied and 1 minute with pressure released, during which the water spray shall be continuously applied.

* * * * *

(ii) For the purpose of compliance with paragraph (c)(4), penetration, as referenced in standard method of test for water penetration of exterior windows, curtain walls and doors by cyclic static air pressure differential. ASTM E-547-1975 paragraph 4.3, shall not include drops passing the interior face by energy developed in the bursting of sill drain system bubbles created by a pressure differential applied to the exterior face of the specimen.

* * * * *

(e) * * *

(2) Inspect screening shall be of a material compatible with aluminum and shall meet insect wire screening CS-138-1955 wire fabric (insect screening) FS RR-W-365-1967 "Screening, Wire, Insect," Vinyl-coated Glass Fiber Insect Screening and Louver Cloth CS 248-1964. Screening, insect, non-metallic FS L-S 125B-1972.

* * * * *

(i) *Certification.* The manufacturer shall show evidence of continued compliance by affixing a quality certification label to the product in accordance with American National Standard Practice for Certification Procedures ANSI 734.1-1947. In determining certifiability under this section, compliance shall consist of preproduction specimen testing in accordance with each and every requirement of this section followed by an inplant inspection and production unit testing system consisting of a minimum of two such inspections per year by an independent quality assurance agency.

9. Section 3280.405(d)(1) and (3), (e)(2)(i), (l)(2)(ii), (l)(2)(iii) and (l)(2)(iv) are revised to read as follows:

§ 3280.405 Standard for swinging exterior passage doors for use in mobile homes.

* * * * *

(d) * * *

(1) *Wood and wood based products*—(i) *Wood.* Wood door parts shall be manufactured of suitable lumber having a moisture content of 6 to 12 percent at time of fabrication. Wood parts except interior trim shall be manufactured utilizing wet-use adhesive requirements as defined in standard specification for adhesives used in non-structural glued lumber products, ASTM D-3110-1972 and Preservative Treated in accordance with water repellent preservative non-pressure treatment for millwork NWMA I.S.-4-1970.

(ii) *Plywood.* Plywood shall be exterior type and preservative treated in accordance with NWMA I.S.-4-1974.

(iii) Hardboard parts shall meet or exceed the requirements for ⅛ inch tempered hardboard in accordance with the latest edition of Basic Hardboard PS 58-1973.

* * * * *

(3) *Glass.* All glazing in doors shall be safety glazing material meeting performance specifications and methods of test for safety glazing material used in buildings ANSI Z97.1-1972. Glass in jalousies shall also be at least 7/32 in. in thickness and not longer than 36 inches. Exposed edges shall be seamed, ground or polished to prevent injury.

* * * * *

(e) * * *

(2) *Structural performance test*—(i) *Wind pressure resistivity.* There shall be no glass breakage or permanent deflection or any other condition which would cause the specimen to be inoperable after being subjected to exterior pressures of 25 pounds per square foot. The test method applicable to this requirement shall be standard method of test for structural performance of exterior windows, curtain walls and doors under the influence of wind loads. ASTM E-330, 1970.

(ii) *Interior pressure.* There shall be no glass breakage or permanent deflection or any other condition which would cause the specimen to be inoperable after being subjected to an interior pressure equal to ½ the requirements in paragraph (e)(2)(i). The test method applicable to this requirement shall be ASTM E-330-1970 except that no artificial means of containing pressure shall be allowed. Should pressure not be obtainable due to lack of air, the testing agency will report the pressure achieved, the theoretical air flow supplied to the unit, and certify that no additional flow from the equipment in use was available. Laboratory equipment used for this test must be capable of developing 10 × air flow determined in paragraph (e)(2)(iii) of this specification.

(iii) *Air infiltration test.* Air infiltration shall not exceed the limits set forth below when tested in accordance with standard method of test for rate of air leakage through exterior windows, curtain walls and doors, ASTM E-283-1973 at an exterior pressure differential of 1.56 pounds per square foot (0.300" water pressure).

1.35 CFM per sq ft. of door	Jan. 1, 1975.
1.2 CFM per sq ft. of door	Jan. 1, 1976.
1.0 CFM per sq ft. of door	Jan. 1, 1977.

(iv) *Water resistance test.* No water shall pass the interior face of the test specimen at a test pressure of 0 psf when tested in accordance with standard method of test for water penetration of exterior windows, curtain walls and doors by uniform static air pressure differences, ASTM E-331-1970.

* * * * *

Subpart F—Thermal Protection

10. Section 3280.508 Introductory text is revised to read as follows:

§ 3280.508 Heat loss, heat gain and cooling load calculations.

Information, values and data necessary for heat loss and heat gain determinations shall be taken from the 1972 ASHRAE Handbook of Fundamentals.

* * * * *

11. Sections 3280.511(a)(1) and (b) are revised to read as follows:

§ 3280.511 Comfort cooling certificate and information.

(a) * * *

(1) *Alternative 1.* If a central air conditioning system is provided by the home manufacturer, the heat gain calculation necessary to properly size the air conditioning equipment shall be in accordance with procedures outlined in Chapter 22 of the 1972 ASHRAE Handbook of Fundamentals, with an assumed location and orientation. The following information shall be supplied in the Comfort Cooling Certificate:

"Air Conditioner Manufacturer ————
Air Conditioner Model ————
Certified Capacity—B.T.U./Hr. in accordance with the appropriate Air Conditioning and Refrigeration Institute Standards.

[1] The temperature to be specified shall be 20 F or 30% of the design temperature difference, whichever is greater, added to the temperature specified as the heating system capacity certification temperature without storm windows or insulating glass for Zone I and with storm windows or insulating glass for Zones II and III. Design temperature difference is 70 minus the heating system capacity certification temperature in degrees Fahrenheit.

The central air conditioning system provided with this home has been sized, assuming an orientation of the front (hitch) end of the home facing ———— and is designed on the basis of a 75 F indoor temperature and an outdoor temperature of —— F dry bulb and —— F wet bulb."

Example Alternate 1

Comfort Cooling Certificate

Mobile Home Mfg ————
Plant Location ————
Mobile Home Model ————
Air Conditioner Manufacturer ————
Air Conditioner Model ————
Certified Capacity—B.T.U./Hr. in accordance with the appropriate Air Conditioning and Refrigeration Institute Standards.

The central air conditioning system provided with this home has been sized assuming an orientation of the front (hitch end) of the home facing ————. On this basis the system is designed to maintain an indoor temperature of 75 F when outdoor temperatures are —— F dry bulb and —— F wet bulb.

The temperature to which this home can be cooled will change depending upon the amount of exposure of the windows of this home to the sun's radiant heat. Therefore, the home's heat gains will vary dependent upon its orientation to the sun and any permanent shading provided. Information concerning the calculation of cooling loads at various locations, window exposures and shadings are provided in Chapter 22 of the 1972 edition of the ASHRAE Handbook of Fundamentals.

Information necessary to calculate cooling loads at various locations and orientations is provided in the special comfort cooling information provided with this mobile home.

* * * * *

(b) For each home originated as suitable for central air conditioning the manufacturer shall provide the maximum central mobile home air conditioning capacity certified in accordance with the appropriate standards for Unitary air conditioning equipment ARI 210–1974 standards and in accordance with § 3280.715(a)(3). If the capacity information provided is based on entrances to the air supply duct at other than the furnace plenum, the manufacturer shall indicate the correct supply air entrance and return air exit locations.

* * * * *

Subpart G—Plumbing Systems

12. Section 3280.604(b) is amended by revising the table to read as follows:

§ 3280.604 Materials.

* * * * *

(b) * * *

Materials	ANSI	ASTM	FS	Other standards
Ferrous pipe and fittings:				
Cast iron threaded fittings	B16.4-1971			
Malleable iron threaded fittings	B16.3-1971			
Special cast iron fittings				IAPMO PS 5-1966.
Welded wrought iron pipe	B36.2-1969	A72-1968		
Wrought steel and wrought iron pipe	B36.10-1970			
Black and hot dipped zinc-coated (galvanized) welded and seamless steel pipe.		A120-1972a		
Welded and seamless steel pipe	B125.1-1972	A53-1972a		
Pipe threads (except dry-seal)	B2.1-1968			
Cast iron soil pipe and fittings	A112.5.1-1971	A74-1972	WW-P-401D-1969	
Nonferrous pipe and fittings:				
Seamless copper, pipe, standard sizes	H26.1-1973	B42-1972		
Wrought seamless copper and copper alloy tube	H23.4-1973	B251-1971		
Seamless copper water tube	H23.1-1973	B88-1972		
Copper drainage tube (DWV)	H23.6-1973	B306-1973		
Wrought copper and bronze solder-joint pressure fittings	B16.22-1973			
Wrought copper and wrought copper alloy solder-joint drainage fittings	B16.29-1966			
Cast bronze solder-joint pressure fittings	B16.18-1972			
Cast bronze solder-joint drainage fittings-DWV	B16.23-1969			
Cast bronze fittings for flared copper tubes	B16.26-1967			
Seamless red brass pipe, standard sizes	H27.1-1973	B43-1972		
Cast bronze threaded fittings, 125 and 250 pound	B16.15-1971			
Plastic pipe and fittings:				
ABS plastic drain waste, and vent pipe and fittings		D2661-1973		IAPMO PS 17-71.
Pipe and fittings (ABS, drain waste and vent DW)			L-P-322B-1973	
Thermoplastic materials, pipe fittings, valves, traps and jointing materials				NSF-14-1965.
PVC plastic drain, waste, and vent-pipe and fittings		D2665-1973		IAPMO PS 27-69.
Pipe and fittings, plastic (Pdyvinyl) chloride, PVC, drain, waste and vent DWV			L-P-320B-1973	
Chlorinated poly (vinyl/chloride) (CPVC) plastic hot water distribution systems		D2846-1973		NSF-14-1970.
Polybutylene (PB) plastic pipe (SDR-PR)		D2662-1973		
Polybutylene (PB) plastic hot water distribution systems		D3309-1974		
Miscellaneous:				
Pipe nipples, threaded			WW-N-351B(1)-1967	
Rubber gaskets for cast iron soil pipe and fittings		C564-1970		
Backflow valves	A112.14.1-1975			
Backflow prevention devices				IAPMO PS 31-1971.
Valve, gate bronze (125, 150 and 200 pound) threaded ends, flange ends solder end and bronze end for land use.			WW-V54D-1973	

Materials	ANSI	ASTM	FS	Other standards
Valve gate, cast iron, threaded and flanged (for land use)			WW-V58B-1971	
Plumbing—fixture-setting compound			HH-C-536A-1954 or TT-P-1536A.	
Cast brass and tubing P-traps				IAPMO PS 2-1966.
Relief valves and automatic gas shutoff devices for hot water supply systems	Z21.22 -1971, 22a-1972 and 22b-1974.			
Solvent cement for ABS plastic pipe and fittings		D2235-1973		
Solvent cement for PVC plastic pipe and fittings		D2564a-1973		
Plumbing system components for mobile homes and recreational vehicles				NSF-24-1972.
Diversion tees and twin waste elbow				IAPMO PS 9-1966.
Flexible copper water connectors				IAPMO PS 14-1971.
Dishwater drain airgaps				IAPMO PS 23-1968.
Gas supply connectors for mobile homes				IAPMO TSC 9-1972.
Plumbing fixtures:				
Plumbing fixtures (land use) (general specifications)			WW-P541D-1971	
Vitreous china plumbing fixtures	A112.19.2-1973			
Enameled cast iron plumbing fixtures	A112.19.1-1973			
Procelain enameled formed steel plumbing fixtures				IAPMO TSC 22-1972. IAPMO PS 5-1966.
Plastic bathtub units	Z124.1-1974			
Gel-coated glass-fiber reinforced polyester resin shower receptor and shower stall units.	Z124.2-1967			
Stainless steel plumbing fixtures—residential use				CS-243-1962.
Plumbing system components for mobile homes and recreational vehicles				NSF-24-1972.
Drains for prefabricated and precast showers				IAPMO PS 4-1966.
Cultured marble lavatory				IAPMO PS 18-1973; CMI-LS 1-1975.
Performance specifications and methods of test for safety glazing material used in buildings.	Z97.1-1972			

13. Section 3280.607(b)(3)(iii) is revised to read as follows:

§ 3280.607 Plumbing fixtures.

* * * * *

(b) * * *

(3) * * *

(iii) Shower doors and tub and shower enclosures shall be constructed so as to be waterproof and, if glazed, glazing shall comply with the Standard for performance specifications and methods of Test for safety glazing material used in buildings ANSI Z 97.1-1972.

* * * * *

14. Section 3280.611(d)(5) is revised to read as follows:

§ 3280.611 Vents and venting.

* * * * *

(d) * * *

(5) Materials for the anti-siphon trap vent shall be as follows: cap and housing shall be listed acrylonitrilebutadiene styrene, DWV grade; stem shall be DWV grade nylon or acetal; spring shall be stainless steel wire, type 302; sealing disc shall be neoprene, conforming to Rubber Gaskets for Cast Iron Soil Pipe and Fittings, ASTM C564-1970 or, silcone rubber, low and high termperature and tear resitant, conforming to Rubber Silicone FS ZZ-R-765B-1970 Liners, case and sheet, overwrap, water-vapor-proof or water proof. Flexible MIL-L-10547E-1975.

* * * * *

Subpart H—Heating, Cooling, and Fuel Burning Systems

15. Section 3280.703 is amended by revising the Table to read as follows:

§ 3280.703 Minimum standards.

* * * * *

Type	ANSI	UL	Other standards
Appliances:			
Air conditioners, central cooling		465-1975	
Liquid fuel-burning heating appliances for mobile homes and travel trailers	A147.1-1969	307a-169	
Electric Air Heater		1025-1973	
Electric Baseboard Heating Equipment		1042-1973	
Electric Central Air-Heating Equipment		1096-1973	
Gas-heating appliances for mobile homes and travel trailers		307(b)-1971	
Gas clothes dryers	Z21.5.1-1972		
	Z21.5.1a-1973		
	Z21.5.1b-1974		
Hot water generating equipment for food services establishments using spray type dishwashing machines.			NSF-5-1972.
Gas-fired absorption summer air conditioning appliances	Z21.40.1-1973		
	Z21.40.1a-1974		
Gas-fired gravity and forced air central furnaces	Z21.47-1973		
	Z21.47a-1974		
Gas-fired gravity and fan-type direct vent wall furnaces	Z21.44-1973		
	Z21.44a-1974		
	Z21.44b-1975		
Gas commercial cooking and warming equipment			NSF-4-1963.
Household cooking gas appliances	Z21.1-1972		
	Z21.1a-1974		
Refrigerators using gas fuel	Z21.19-1971		
	Z21.19a-1972		
	Z21.19b-1973		
Gas water heaters vol 1 automatic storage type water heaters with input 75,000 Btu/h or less.	Z21.10.1-1974		
	Z21.10.1a-1975		

Type	ANSI	UL	Other standards
Electric central air heating equipment		1096-1973	
Heat Pumps		559-1975	
Ferrous pipe and fittings:			
Black and hot dipped zinc-coated (galvanized) welded and seamless steel pipe			ASTM A120-1972a.
Pipe, steel (seamless and welded) (for ordinary use)			FS-WW-P-406D-1973.
Electric-resistance welded coiled steel tubing for gas and fuel oil lines			ASTM A539-1973.
Pipe threads (except dry seal)	B2.1-1968		
Wrought steel and wrought iron pipe	B36.10-1970		
Nonferrous pipe, tubing, and fittings:			
Seamless copper water tube			ASTM B88-1972.
Seamless copper tube for air conditioning and refrigeration field service			ASTM B280-1973.
Metal connectors for gas appliances	Z21.24-1973		
Manually operated gas valves	Z21.15-1974		
Gas supply connectors for mobile homes			IAPMOTSC 9-1972.
Wrought seamless copper and copper alloy tube			ASTM B251-1971.
Seamless copper pipe, standard size			ASTM B42-1972.
Pipe, copper, seamless, standard sizes			FS-WW-P-377D-1962.
Miscellaneous:			
Air ducts		181-1972	
Flame tests of flame-resistant fabrics and films		214-1971	
Tube fittings for flammable and combustible fluids and refrigeration service and, marine use.		109-1972	
Pigtail, expansion coils, and flexible hose connector for liquified petroleum gas fittings for LP-Gas.		569-1973	
Roof jacks for mobile homes and trailer coaches		311-1971	
Relief valves and automatic gas shutoff devices for hot water supply systems	Z21.22-1971		
	Z21.22a-1972		
	Z21.22b-1974		
Automatic gas ignition systems and components	Z21.20-1971		
	Z21.20a-1972		
	Z21.20b-1974		
Automatic valves for gas appliances	Z21.21-1974		
Gas appliance thermostats	A21.23-1971		
	Z21.23a-1972		
	Z21.23b-1974		
Gas vents	A131.2-1973	441-1973	
Factory-built chimneys	A131.1-1971		
Chimneys, factory built residential type and building heating appliance	UL 103-1971		
Factory-built fireplaces	A131.3-1971	127-1971	
Standard for fireplace stoves for installation in mobile structures	GAL-1973		
Installation of oil burning equipment	Z95.1-1974		NFPA No. 31-1974.
Installation of gas appliances, gas piping in buildings, national fuel gas code	Z223.1-1974		NFPA No. 54-1974.
Installation of warm air heating and air conditioning systems			NFPA No. 90B-1973.
Tests for flammability of plastic materials for parts in devices and appliances		94-1974	
Storage and handling of liquefied petroleum gas	A106.1-1974		NFPA No. 58-1974.

16. Section 3280.704(b)(2) is revised to read as follows:

§ 3280.704 Fuel supply systems.

* * * * *

(b) * * *

(2) *Construction of containers.* Containers shall be constructed and marked in accordance with the specifications for LP-Gas Containers of the U.S. Department of Transportation (DOT) or the Rules for Construction of Pressure Vessels 1974, ASME Boiler and Pressure Vessel Code section VIII, Division 1 ASME Containers shall have a design pressure of at least 312.5 psig. (i) Container supply systems shall be arranged for vapor withdrawal only. (ii) Container openings for vapor withdrawal shall be located in the vapor space when the container is in service or shall be provided with a suitable internal withdrawal tube which communicates with the vapor space on or near the highest point in the container when it is mounted in service position, with the vehicle on a level surface. Containers shall be permanently and legibly marked in a conspicuous manner on the outside to show the correct mounting position and the position of the service outlet connection. The method of mounting in place shall be such as to minimize the possibility of an incorrect positioning of the container.

* * * * *

17. Section 3280.705(b)(1), (b)(3) and (f) are revised to read as follows:

§ 3280.705 Gas piping systems.

* * * * *

(b) * * *

(1) Steel or wrought-iron pipe shall comply with ANSI Standard B36.10-1970 for Wrought-Steel and Wrought-Iron Pipe. Threaded brass pipe in iron pipe sizes may be used. Threaded brass pipe shall comply with Standard Sizes and Specifications for Seamless Red Brass Pipe Standard Sizes (ASTM B43-1972).

* * * * *

(3) Copper tubing shall be annealed type, Grade K or L, conforming to the Specifications for Seamless Copper Water Tube (ASTM B88-1972), or shall comply with the Specifications for Seamless Copper Tube for Air Conditioning and Refrigeration Field Service, ASTM B280-1973. When used on systems designed for natural gas, such tubing shall be internally tinned.

* * * * *

(f) *Joints for tubing.* (1) Tubing joints shall be made with either a single or a double flare of 45 degrees in accordance with Flares For Tubing, SAE-J533b-1972 or with other listed vibration-resistant fittings, or joints may be brazed with material having a melting point exceeding 1,000 F. Metallic ball sleeve compression-type tubing fittings shall not be used.

(2) Steel tubing joints shall be made with a double-flare in accordance with Flares For Tubing. SAE-J533b-1972.

* * * * *

18. Section 3280.706(b)(1) is revised to read as follows:

§ 3280.706 Oil piping systems.

* * * * *

(b) * * *

(1) Steel or wrought-iron pipe shall comply with American National Standard for Wrought-Steel and Wrought-Iron Pipe, B36.10—1970. Threaded copper or brass pipe in iron pipe sizes may be used.

* * * * *

19. Section 3280.707 (d)(1), (d) (2), and (f) is revised to read as follows:

§ 3280.707 Heat producing appliances.

* * * * *

(d) Performance efficiency. (1) Except as provided herein, all automatic electric storage water heaters installed in mobile homes that enter the first stage of production on or after February 15, 1977, shall have a standby loss not exceeding 43 watts/meter ^{2} (4 watts/ft^2) of tank surface area. The method of test for standby loss shall be as described in section, loss shall be as described in section 4.3.1 of Household Automatic Electric Storage Type Water Heaters ANSI C72.1–1972.

However, a mobile home that enters the first stage of production on or after February 15, 1977, and before April 1, 1977, may contain an automatic electric storage water heater which does not meet the above performance efficiency requirements if a label is affixed to the water heater as follows:

(i) The label shall be located on the front of the water heater so that it is readily visible after the water heater is installed in the mobile home.

(ii) The label shall be made of paper .005 plastic laminate material, or other materials which may be easily affixed to the water heater by use of a gum or adhesive backing.

(iii) The label shall be a minimum of 3" x 1½" in dimension.

(iv) The label shall read as follows:

This electric water heater does not meet energy efficiency criteria established by the Department of Housing and Urban Development for water heaters installed in mobile homes. This does not make the water heater unsafe or hazardous.

(2) All gas and oil-fired automatic storage water heaters shall have a recovery efficiency, E_r, and a standby loss, S, as described below, effective January 1, 1977. The method of test of E_r, and S shall be as described in Section 2.7 of Gas Water Heaters, Vol. I, Automatic Storage Type Water Heaters with input of 75000 Btu/Hr. or less. ANSI 221.10.1–1974, except that for oil-fired units. CF=1.0, Q=total gallons of oil consumed and H=total heating value of oil in Btu/gallon.

Storage capacity in gallons	Recovery efficiency	Standby loss
Less than 25	At least 74 percent.	Not more than 7.5 percent.
25 up to 35	do	Not more than 7 percent.
35 or more	do	Not more than 6 percent.

* * * * *

(f) Oil fired heating equipment. All oil fired heating equipment shall conform to liquid fuel-burning heating appliances for mobile homes and Travel Trailers—UL307a–1969 or ANSI A147.1–1969 and be installed in accordance with installations of oil burning equipment. NFPA 31–1974. Regardless of the requirements of the above referenced standards, or any other reference standards, the following are not required: (1) External switches or remote controls which shut off the burner or the flow of oil to the burner, or (2) An emergency disconnect switch to interrupt electric power to the equipment under conditions of excessive temperature.

Authority: Section 625 of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5424.

Dated: October 27, 1982.

Philip Abrams,

General Deputy Assistant Secretary-Deputy Federal Housing Commissioner.

[FR Doc. 82-29865 Filed 10-29-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 5c

[T.D. 7841]

Temporary Income Tax Regulations Under the Economic Recovery Tax Act of 1981; Extension of Time To Conform Elections Relating To Tax Straddles

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary income tax regulations that extend the date by which taxpayers must conform returns that made an election regarding tax straddles.

DATES: These regulations extend the date by which taxpayers must conform returns that made an election under § 5c.1256–1 or § 5c.1256–2 from November 1, 1982, until February 1, 1983.

FOR FURTHER INFORMATION CONTACT: Barry L. Wold of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566-3828).

SUPPLEMENTARY INFORMATION:

Background and General Explanation

This document amends the temporary income tax regulations published in the **Federal Register** on Thursday, September 2, 1982 (47 FR 38688) relating to two elections under sections 508(c) and 509 of the Economic Recovery Tax Act of 1981. These regulations extend the date by which taxpayers must conform returns that make an election under § 5c.1256–1 (relating to election with respect to property held on June 23, 1981, under section 508(c) of the Economic Recovery Tax Act of 1981) or § 5c.1256–2 (relating to election with respect to taxable years beginning before June 23, 1981, and ending after June 22, 1981, under section 509 of the Economic Recovery Tax Act of 1981) from November 1, 1982, until February 1, 1983. This same extension also applies to the returns of flowthrough entities which must supply information concerning futures contracts transactions to taxpayers.

Non-Applicability of Executive Order 12291

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

Regulatory Flexibility Act

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

Drafting Information

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

List of Subjects in 26 CFR 5c

Income taxes, Economic Recovery Tax Act of 1981, Commodities straddles, Capital gains and losses, Income averaging.

Adoption of Amendments to the Regulations

PART 5c—[AMENDED]

Accordingly, the following amendments are made to Part 5c of Title 26 of the Code of Federal Regulations:

§ 5c.1256-1 [Amended]

Paragraph 1. Section 5c.1256-1(b) is amended by removing "November 1, 1982", and inserting in lieu thereof "February 1, 1983".

§ 5c.1256-2 [Amended]

Par. 2. Section 5c.1256-2(b) is amended by removing "November 1, 1982", and inserting in lieu thereof "February 1, 1983".

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

(Sec. 7805, Internal Revenue Code of 1954 (68A Stat. 917, 26 U.S.C. 7805); sec. 508(c) and 509, Economic Recovery Tax Act of 1981 (95 Stat. 333-335))

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: October 27, 1982.

J. Gregg Ballentine,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-29936 Filed 10-27-82; 4:01 pm]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 36

Loan Guaranty; State and Local Housing Authorities Title Limitations and the Acceptability of Age Restrictions on VA Guaranteed Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is amending its regulations to enable veterans to participate simultaneously in affordable housing programs sponsored by State and local government agencies and to obtain VA-guaranteed loans. These amendments will aid low- or moderate-income families seeking to obtain housing.

The VA is also amending its regulations to authorize the acceptance of properties securing VA-guaranteed loans when the sale, lease, or occupancy of the dwelling unit is restricted on the basis of age. VA guaranteed loans may now be used to obtain housing in retirement communities or other developments with age restrictions.

EFFECTIVE DATE: October 27, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202) 389-3042.

SUPPLEMENTARY INFORMATION: On July 6, 1982, the VA published in the **Federal Register** (47 FR 29270) proposed amendments to the home and manufactured home regulations (§§ 36.4253(b)(5) 36.4350(b)(5) and 36.4358(c)(5)). These proposed amendments were for the purpose of obtaining public comment on two major policy proposals: the acceptance of homes for security on VA guaranteed loans when the homes are restricted by a State or local housing authority through a recorded legal document which affects title, and the acceptance of homes in communities which limit the sale, lease or occupancy of homes on the basis of age. For a complete discussion of the regulatory proposals, please refer to the July 6, 1982 **Federal Register** (47 FR 29270).

Seven comments were received from the general public. Three comments endorsed the proposed amendments. Concerning the State and local title restrictions two comments were suggested for improvement to the regulations. Both comments were supportive of the amendments but suggested that the acceptable maximum term of State and local housing authorities' restrictions be increased from the proposed 10-year limitation. We agree and the final amendments authorized the acceptance of properties subject to State or local housing authorities' title limitations on the properties for any period of time as established by local law or ordinance. When a State or local authority elects to purchase a home from a home seller, the authority must furnish a notice of its decision to purchase the property from the home owner. The proposed amendments would have required the housing authority to furnish a notice within 30 days of having been informed by the home seller of his/her intentions to offer the home for sale. Two comments indicated that the proposed 30-day time limit was too short for the government authority to reasonably take actions. We concur and the final regulations authorize up to 90 days for the local government to exercise its option to purchase a home. On comment also suggested that the method of computing the maximum sale price which a housing authority would pay for a home was too limited. We also concur with this comment and the final amendments reflect two major methods for computing the maximum sale price and authorize the Administrator to review any nonconforming State and local housing authority proposals for reasonableness and possible acceptable into the Loan Guaranty Program.

Three of the comments did not discuss the age restriction portion of these amendments. One comment was received which strongly endorsed the proposed amendments and applauded our consideration of communities designed to primarily benefit senior citizens. One comment was opposed to the proposed amendments because they might violate the Age Discrimination Act (title III of Pub. L. 94-135, 89 Stat. 728), as implemented at title 45, Code of Federal Regulations, Part 90.

Contracts of guaranty or insurance are exempted under the provisions of the Age Discrimination Act (ADA) (42 U.S.C. 6103). See also 45 CFR 90.4. We also do not believe the regulations violate the spirit of the ADA since the Act is primarily designed to prevent discrimination against the elderly. These regulations reflect the fact that the median age of Americans is increasing, and some veterans would prefer to live in retirement or childless communities. While the VA does not endorse these types of communities, we do feel the VA should not prevent a veteran from using VA loan guaranty eligibility, which was earned through military service, to purchase a home in an age-restricted community.

One comment was opposed to the adoption of the age restriction regulations but encouraged VA to amend the regulations, if eventually adopted. The comment urged that age restrictions be allowed only where the restrictions had been found valid under State law, in projects where a certain number of units had been set aside for persons not meeting the age restriction requirements, or projects physically designed for and otherwise adapted to the specific needs of the elderly. Concerning the validity of age restrictions under State law, the VA regulations allow but do not require acceptance of age-restricted homes as security for VA-guaranteed loans. Any State may outlaw age restrictions or hold them unenforceable through local legislative (or judicial) initiatives. We also do not believe it appropriate to limit eligible communities, subject to age restrictions, to those communities which offer non-age-restricted units or

communities with adaptations specifically designed for the elderly. This is because we believe if the restrictions suggested were adopted, the effect would be that most age-restricted communities would be ineligible for VA guaranty. This would defeat the purpose of the amendments which is to make this type of housing available to veterans.

We again believe it is important to allow veterans to freely choose where the veteran wishes to live, either in a community with no age restrictions, some age restrictions or even highly restrictive communities. We expect that market forces will determine whether or not a developer constructs a subdivision or development subject to age restrictions. The amendments, as adopted, require the veteran to be fully informed and consent in writing before acquiring a home with a VA-guaranteed loan in an age-restricted community. In addition, our regulations do offer protection to the veteran to allow him or her a reasonable opportunity to lease or rent the property if the family makeup is changed.

Finally, we received one comment which strongly endorsed the proposed age restriction regulations but suggested the regulations be amended to specify what age restrictions would be considered unacceptable by the VA. We do not feel it is possible to list either all allowable or all non-allowable age restrictions which could be incorporated into legal documents. We have amended the regulations to reflect our belief that veterans who suddenly become guardians or custodians of minor children must have a reasonable opportunity to lease or rent their homes to qualified persons. In addition, a child or other person who inherits property which he/she may not occupy must also have a reasonable opportunity to lease or rent the home to a qualified person. Age restrictions which require a person to sell in lieu of rent or lease a home if the family makeup changes will be considered unacceptable.

We believe these improvements to the regulations will cure the concerns expressed in this public comment.

We expect that the adoption of these regulations will expand housing opportunities for veterans. Veterans eligible to participate in State or local housing programs will be eligible to combine this benefit with the benefits of obtaining a VA-guaranteed loan. Veterans wishing to purchase homes in retirement communities or other age-restricted developments will also be able to use their VA home loan benefits.

Technical amendments have also been made to section 36.4253 to change the term "mobile home" to "manufactured home" as required by Pub. L. 97-306, 96 Stat. 1429, enacted October 14, 1982.

The Administrator hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, sections 601-612. Pursuant to 5 U.S.C. section 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The regulations, if adopted, will indirectly aid small government jurisdictions who wish to assist low- and moderate-income families obtain housing and will indirectly aid small businesses who wish to build homes or lend funds to such families. The regulations should have no adverse impact upon small organizations. No compliance costs or reporting burdens will be imposed by these regulations upon small entities.

The amendments have been reviewed pursuant to Executive Order 12291 and have been found to be nonmajor regulations. The regulations will not have a large economic impact or cause a major increase in costs or prices. They simply provide the opportunity for veterans to obtain VA-guaranteed loans and also participate in State and local affordable housing programs.

The amendments are promulgated under authority granted to the Administrator by sections 210(c), 1803(c) and 1819(g) of title 38, United States Code.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: October 27, 1982.

Robert P. Nimmo,

Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. Section 36.4253 is amended as follows:

§ 36.4253 [Amended]

A. By removing the words "mobile home" and inserting the words "manufactured home" in the introductory portion of paragraph (c) and in paragraph (c)(4)(i).

B. By adding subparagraph (iv) to paragraph (b)(5) as follows:

§ 36.4253 Title and lien requirements.

* * * * *

(b) * * *

(5) * * *

(iv) Notwithstanding the provisions of paragraphs (b)(5)(i), (ii), and (iii) of this section, a property shall not be considered ineligible pursuant to paragraph (a) of this section if:

(A) The veteran obtained the property under a State or local political subdivision program designed to assist low- or moderate-income purchasers, and as a condition the purchaser must agree to one or more of the following restrictions.

(*1*) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, the purchaser must first offer the property to the government housing agency, or a low- or moderate-income purchaser designated by such agency, provided the option to purchase is exercised within 90 days after notice by the purchaser to the agency of intention to sell;

(*2*) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, a governmental agency may specify a maximum price for the property upon resale; or

(*3*) Such other restriction approved by the Administrator designed to insure either that a property acquired under such program again be made available to low- or moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price.

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(A) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner, plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Administrator; or

(B) A recorded restriction on title limits the sale, lease, or occupancy, of a

dwelling to persons based on age, including prohibitions against the permanent occupancy of the dwelling by children. The Administrator may refuse to approve a property with such a restriction if its operation would work an undue hardship upon the owner in the case of sudden, unforeseen events or be likely to result in an increased risk of default. Examples of restrictions that could work an undue hardship include, but are not limited to, requirements for sale in lieu of leasing or renting of the property if the owner-occupant becomes the guardian or custodian of a minor child who must reside with the owner-occupant upon the death or incapacity of the child's parents, and restrictions that do not permit persons younger than the specified age who inherit the property either to rent or lease such property to a qualified occupant. The enforcement of an age restriction which would authorize the eviction of owners who adopt or give birth to a child is not considered an undue hardship; and

(C) The veteran is fully informed and consents in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for manufactured home loan guaranty or the report of a manufactured home loan processed on the automatic basis; (38 U.S.C. 1819(g))

* * * * *

2a. In § 36.4350, the introductory portion of paragraph (b)(5)(ii) is amended and (b)(5)(ii)(*b*)(*5*) as published in FR Doc. 76-29306 at 41 FR 44040, October 6, 1976 is corrected to read "(iii)". A new subdivision (iv) is added. Such subdivisions to read as follows:

§ 36.4350 Estate of veteran in real property.

* * * * *

(b) * * *

(5) * * *

(ii) A condominium estate established by the filing for record of the Master Deed, or other enabling document before December 1, 1976 will not fail to comply with the requirements of paragraph (a) of this section by reason of:

* * * * *

(iii) Any property subject to a restriction on the owner's right to convey to any party of the owner's choice, which restriction is established by a document recorded on or after December 1, 1976, will not qualify as security for a guaranteed or insured loan. A prohibition or restriction on leasing an individual unit in a condominium will not cause the condominium estate to fail to qualify as security for such loan, provided the restriction is in accordance with § 36.4358(c);

(iv) Notwithstanding the provisions of paragraph (b)(5)(i), (ii), and (iii) of this section, a property shall not be considered ineligible pursuant to paragraph (a) of this section if:

(a) The veteran obtained the property under a State or local political subdivision program designed to assist low- or moderate-income purchasers, and as a condition the purchaser must agree to one or more of the following restrictions:

(*1*) If the property is resold within a time period as established by local law or ordinance, after the purchaser acquires title, the purchaser must first offer the property to the government housing agency, or a low- or moderate-income purchaser designated by such agency, provided the option to purchase is exercised within 90 days after notice by the purchaser to the agency of intention to sell;

(*2*) If the property is resold within a time period as established by local law or ordinance after the purchaser acquires title, a governmental agency may specify a maximum price which the veteran may receive for the property upon resale; or

(*3*) Such other restriction approved by the Administrator designed to insure either that a property acquired under such program again be made available to low- or moderate-income purchasers, or to prevent a private purchaser from obtaining a windfall profit on the resale of such property, while assuring that the purchaser has a reasonable opportunity to dispose of the property without undue difficulty at a reasonable price.

The sale price of a property under any of the restrictions of paragraph (b)(5)(iv)(*a*) of this section shall not be less than the lowest of the following: The price designated by the owner as the asking price; the appraised value of the property; or the original purchase price of the property, increased by a factor reflecting all or a reasonable portion of the increased costs of housing or the percentage increase in median income in the area between the date of original purchase and resale, plus the reasonable value or actual costs of any capital improvements made by the owner plus a reasonable real estate commission less the cost of necessary repairs required to place the property in saleable condition; or other reasonable formula approved by the Administrator; or

(*b*) A recorded restriction on title limits the sale, lease, or occupancy, of a dwelling to persons based on age, including prohibitions against the permanent occupancy of the dwelling by children. The Administrator may refuse to approve a property with such a restriction if its operation would work an undue hardship upon the owner in the case of sudden, unforeseen events or be likely to result in an increased risk of default. Examples of restrictions that could work an undue hardship include, but are not limited to, requirements for sale in lieu of leasing or renting of the property if the owner-occupant becomes the guardian or custodian of a minor child who must reside with the owner-occupant upon the death or incapacity of the child's parents, and restrictions that do not permit persons younger than the specified age who inherit the property either to rent or lease such property to a qualified occupant. The enforcement of an age restriction which would authorize the eviction of owners who adopt or give birth to a child is not considered an undue hardship; and

(*c*) The veteran is fully informed and consents in writing to the housing restrictions. A copy of the veteran's consent statement must be forwarded with the application for home loan guaranty or the report of a home loan processed on the automatic basis; (38 U.S.C. 1803(c)).

* * * * *

§ 36.4350 [Amended]

b. In 38 CFR Part 36, § 36.4350(b)(5)(ii)(*b*)(*6*)-(*8*), the codification is changed from figures appearing in italics (*6*)-(*8*) to those appearing in arabic numbers (6)-(8).

3. In § 36.4358, paragraph (c)(5) is revised as follows:

§ 36.4358 Rights and restrictions

* * * * *

(c) * * *

(5) *Right of first refusal.* The right of a unit owner to sell, transfer, or otherwise convey his or her unit in a condominium shall not be subject to any right of first refusal or similar restriction if the declaration or similar document is recorded on or after December 1, 1976. If the declaration was recorded prior to December 1, 1976, the right of first refusal must comply with § 36.4350(b)(5)(ii). Provided, however, restrictions on the basis of age or restrictions established by a State, Territorial, or local government agency as part of a program for providing assistance to low- and moderate-income purchasers shall be governed by § 36.4350(b)(5)(iv), (38 U.S.C. 1803(c)).

[FR Doc. 82-30936 Filed 10-29-82; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 39

State Cemetery Grants; Aid to States for Establishment, Expansion, and Improvement of Veterans' Cemeteries

AGENCY: Veterans Administration.

ACTION: Final Regulations.

SUMMARY: The VA (Veterans Administration) is issuing final regulations for the implementation of legislation which provides for a program of aid to States for the establishment, expansion, and improvement of veterans' cemeteries.

EFFECTIVE DATES: October 1, 1979. The Director of the Federal Register approves the incorporation by reference of certain publications in 38 CFR 39.3(b)(10), 39.8(d)(1)(i), 39.8(d)(3) and 39.8(d)(4) effective on October 28, 1982.

FOR FURTHER INFORMATION CONTACT: H. F. Graber, Director, State Cemetery Grants (40G), Department of Memorial Affairs, Veterans Administration, Washington, D.C. 20420 (202-389-2313).

SUPPLEMENTARY INFORMATION: On pages 55866-55872 of the **Federal Register** of September 28, 1979, there were published interim regulations with comments requested.

Interested persons were given 60 days to submit comments, suggestions, or objections to these interim regulations. Three comments were received.

One respondent stated it was unclear whether or not the VA intends to consider the development costs and current value of existing State veterans' cemeteries in determining a State's allowable share of the matching funds for grants. The views expressed by this respondent are in accord with our intent of allowing improvements to be considered in the appraiser's determination of the property's current value. These views are also in accord with the "Uniform Appraisal Standards for Federal Land Acquisitions" which are required by the regulations. We feel that this interpretation can be derived from the regulations in their present form and that no change is necessary.

Another subject of comment concerns assurances which are prescribed by (OMB) Office of Management and Budget Circular No. A-102, Revised, and cannot be deleted without OMB consent.

One respondent believes there are civil rights implications to the State Cemetery Grants Program which should be evaluated by the VA prior to granting assistance to individual states. The respondent's comments were addressed in the revision of § 39.3(b) (13) and § 39.5(a) for VA compliance with the Civil Rights Act of 1964, as amended.

The reference to Executive Order 11752 relating to the prevention, control, and abatement of environmental pollution has been changed to Executive Order 12088. The former executive order was revoked by Executive Order 12088.

Furthermore, a requirement for States to comply with the National Environmental Policy Act of 1969, the Age Discrimination in Employment Act of 1967 and the Age Discrimination Act of 1975 was added.

The Administrator of the VA hereby certifies that this final regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. Sections 601-612. Pursuant to 5 U.S.C. 605(b), this final rule is therefore exempt from the regulatory analysis requirements of Sections 603 and 604. The reason for this certification is that there will be no direct impact on small entities as the regulations merely provide guidelines to assist States in applying for Federal assistance and the terms and conditions of the grant to which States are to comply if the grant is awarded.

The agency has determined that this regulation is nonmajor in accordance with Executive Order 12291 since it will not have a $100 million annual effect on the economy, cause major increases in costs or prices, or otherwise have significant adverse economic effects.

Paperwork Reduction Act. Information collection requirements contained in §§ 39.3 and 39.8 (c) and (e) which pertain to the preapplication and application (SF 424, Federal Assistance) with attachments have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511). Information collection requirements contained in § 39.8(b)(2)(xiii)(D) concerning register of burials have also been approved by the Office of Management and Budget. OMB control number 2900-0375 has been assigned.

(The Catalog of Federal Domestic Assistance Programs number is 64.203)

List of Subjects in 38 CFR Part 39

Cemeteries, Grants administration, Grant programs—veterans, Veterans, Incorporation by reference.

Minor editorial changes have been made for clarity.

The final regulations are set forth below.

Approved: October 18, 1982.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Part 39 of title 38 of the Code of Federal Regulations is revised to read as follows:

PART 39—STATE CEMETERY GRANTS

Sec.
39.1 Definitions.
39.2 Scope of the State cemetery grants program.
39.3 Applications with respect to projects.
39.4 Disallowance of a grant application and notice of a right to hearing.
39.5 Responsibilities following project completion.
39.6 State to retain control of operations.
39.7 Recapture.
39.8 General standards for site selection and construction of State veterans' cemeteries.

Authority: 38 U.S.C. 1008.

Aid to States for Establishment, Expansion, and Improvement of Veterans' Cemeteries

§ 39.1 Definitions.

For the purpose of this part:

(a) The term "establishment" means the process of site selection, land acquisition, development planning, contouring, landscaping, and construction necessary to convert a tract of land to an operational cemetery. (38 U.S.C. 1008(c)(2))

(b) The term "expansion" means an increase in the burial capacity or acreage of a cemetery through the addition of gravesites and/or cemeterial facilities. (38 U.S.C. 1008(c)(2))

(c) The term "improvement" means the enhancement of a cemetery through landscaping, nonrecurring maintenance, or addition of other features appropriate to cemeteries. (38 U.S.C. 1008(c)(2))

(d) The terms "establishment, expansion and improvement" include facilities determined to be necessary for the functioning of the cemetery such as superintendent lodges, chapels, crypts, mausoleums, and columbaria. (38 U.S.C. 1008(c)(1))

(e) The term "time phased development plan" means a detailed, narrative description of the proposed site's characteristics, schedule for development, and estimates of costs by phases of construction. (38 U.S.C. 1008(c)(2))

(f) The "project" means an undertaking to establish, expend, or improve a specific site for use as a

State-owned veterans' cemetery. (38 U.S.C. 1008(c)(2))

(g) The term "State" means each of the several States, Territories and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. (38 U.S.C. 101(20))

(h) The term "veteran" means a person who served in the active military, naval, or air service and who died while in service or was discharged or released therefrom under conditions other than dishonorable. (38 U.S.C. 1002)

§ 39.2 Scope of the State cemetery grants program.

(a) Subject to the availability of an appropriation, the Administrator may approve grants to assist any State in establishing, expanding, or improving veterans' cemeteries which are or will be owned by such State. In order to qualify for assistance under this program, a cemetery must be operated solely for the interment of veterans, their wives, husbands, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support. (38 U.S.C. 1008(c)(2) and 101(4))

(b) The amount of the Federal contribution to a state is limited to 50 percent of the combined value of the land to be acquired or dedicated for cemetery purposes and the dollar value of the improvements to be made. The remaining 50 percent of the project's cost will be contributed by the State. (38 U.S.C. 1008(b)(2))

(c) A State may dedicate for the purposes of the cemetery involved land which it already owns. The value of land of this nature can be included in the computation of the State's portion of the funding for the establishment of a State veterans' cemetery. The value of the land, however, cannot exceed 50 percent of the State's total contribution to the project's cost and may not be used as part of a State's contribution for any subsequent grant. "Uniform Appraisal Standards for Federal Land Acquisitions" (Interagency Land Acquisition Conference—1973) shall be used as guidelines when determining the value of the land. (38 U.S.C. 1008(b)(3))

§ 39.3 Applications with respect to projects.

(a) A State seeking Federal assistance for establishment, expansion, or improvement of a State veterans' cemetery shall submit SF 424, Federal Assistance, with preapplication or application attachments, as applicable, to the Administrator for such assistance in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A-102, Revised. The applicant shall submit as a part of the application or as an attachment thereto:

(1) The amount of the grant requested with respect to such project which may not exceed 50 per centum of the estimated cost of construction of such project.

(2) A description of the site for such project.

(3) Plans and specifications as required by § 39.8 The preapplication (Part IV) shall include design concept and space outline as required by OMB Circular No. A-102, Revised.

(4) Any comments or recommendations made by State reviewing agencies. (38 U.S.C. 1008(a)(1))

(5) The preapplication submission shall include an environmental assessment to determine if an Envionmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Environmental Assessment shall briefly describe the possible beneficial and/or harmful effects on the following impact categories because of the proposed project. If an adverse environmental impact is anticipated, the applicant must explain what action will be taken to minimize the impact, (i) Transportation, (ii) Air Quality, (iii) Noise, (iv) Solid Waste, (v) Utilities, (vi) Geology (Soils/Hydrology/Floodplains), (vii) Water Quality, (viii) Land Use, (ix) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, etc., (x) Economic Activities, (xi) Cultural Resources, (xii) Aesthetics, (xiii) Residential Population, (xiv) Community Services and Facilities, (xv) Community Plans and Projects, and (xvi) Other. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended.

(b) The applicant must furnish written assurance that:

(1) Any cemetery established, expanded, or improved through assistance of this program shall be used exclusively for the interment of eligible persons as set forth in §§ 39.1(h) and 39.2(a).

(2) Title to such site is or will be vested solely in the State.

(3) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; that legislative authority or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(4) The project conforms to the applicable requirements for the implementation, maintenance and enforcement of ambient air quality standards adopted pursuant to section 108 of the Clean Air Act, as amended (42 U.S.C. 7410); that upon completion, the project will conform to the provisions of the conservation rules adopted by the VA pursuant to E.O. 12185, 3 CFR, 1980 Comp., p. 474; that it will comply with Pub. L. 90-480, as amended (42 U.S.C. 4151), which provides that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped; and that, the project will comply with provisions of section 504, Rehabilitation Act of 1973, Pub. L. 93-112, as amended (29 U.S.C. 794) providing for prevention of discrimination against the handicapped in federally assisted programs.

(5) It will comply with the provisions of: Executive Order 11988, 3 CFR 1978 Comp., p. 117 relating to floodplain management and Executive Order 12088, 3 CFR, 1979, Comp., p. 243, relating to the prevention, control and abatement of environmental pollution.

(6) It will have sufficient funds available to meet the non-Federal share of the cost of construction projects. Sufficient funds will be available when construction is completed to assure effective operation and maintenance of the facility for the purposes constructed.

(7) It will provide and maintain competent and adequate architectural engineering supervision and inspection at the construction site to insure that the completed work conforms with the approved plans and specifications; that it will furnish progress reports and such other information as the Administrator may require.

(8) It will operate and maintain the facility in accordance with standards as prescribed under § 39.5.

(9) It will give the Administrator and the Comptroller General through any authorized representative access to and the right to examine all records, books, papers, or documents related to the grant.

(10) It will require the facility to be designed to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," ANSI A117.1-1961(R1971), which is incorporated by

reference. This incorporation by reference was approved by the Director of the Federal Register on October 28, 1982. This code is incorporated as it was on the date of approval and a notice of any change in this code will be published in the **Federal Register**. Copies are available from the Veterans Administration, Office of Construction, 810 Vermont Avenue, NW., Washington, DC 20420. A copy of this standard is on file at the Office of the Federal Register. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(11) It will cause work on the project to be commenced within a reasonable time after receipt of notification from the Administrator that funds have been approved and that the project will be prosecuted with reasonable diligence.

(12) It will not dispose of or encumber its title or other interests in the site and facilities.

(13) It will comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and all regulations adopted by the VA pursuant to such Title as incorporated in 38 CFR Part 18, Subpart A. In accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measure necessary to effectuate this agreement. This assurance shall obligate the applicant for the period during which the site is operated as a State veterans' cemetery. (Prior to approval of financial assistance, the VA will make a determination as to whether the applicant is in compliance with Title VI and the requirements of this part. The basis for such a determination shall be the submission of an assurance of compliance (VA Form 27-8206, Statement of Assurance of Compliance under Title VI, Civil Rights Act of 1964) by the applicant, and any relevant compliance review reports on file with the agency. Where a determination cannot be made from this data, the VA will require the submission of necessary additional information and may take additional steps. Such additional steps may include, for example, field reviews and communicating with local government officials and protected class organizations.)

(14) It will comply with the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621 et seq.), which prohibits discrimination in employment practices on the basis of age and the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 et seq.) which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

(15) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(16) It will comply with the requirements of Title II and Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally-assisted programs.

(17) It will comply with all requirements imposed by the Veterans Administration concerning special requirements of law, program requirements, and other administrative requirements in accordance with OMB Circular A-102, Revised.

(18) It will comply with the provisions of the Hatch Act which limit the political activity of employees.

(19) It will comply with the applicable minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act as they apply to employees of State and local governments.

(20) It will insure that the facilities under its ownership which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Veterans Administration of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility to be utilized in the project is under consideration for listing by the EPA.

(21) It will comply with the requirements of the National Environmental Policy Act of 1969, Pub. L. 91-190, as amended (42 U.S.C. 4321) and Executive orders issued pursuant thereto.

(22) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 102(a) requires, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards.

(23) It will assist the Veterans Administration in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470f), Executive Order 11593, 3 CFR, 1971-1975, Comp., p. 559, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (i) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR 800.8) by the activity, and notifying the Veterans Administration of the existence of any such properties, and by (ii) complying with all requirements established by the Veterans Administration to avoid or mitigate adverse effects upon such properties.

(24) It will obtain approval by the Administrator of the final working drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause it to be constructed, to final completion in accordance with the application and approved plans and specifications; it will submit to the Administrator for prior approval changes that alter the costs of the project, use of space, or functional layout; it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the construction grant program(s) have been met.

(c) The Administrator will approve any such application if the Administrator finds that there are sufficient funds available to make the grant requested with respect to such project and that:

(1) It has been determined by the Veterans Administration that the application meets the requirements of paragraphs (a) and (b) of this section.

(2) The plans and specifications for such project are in accordance with § 39.8.

(3) The State has established procedures for determining reasonableness, allowability, and allocability of costs in accordance with the provisions of OMB Circular No. A-87.

(4) The State is not receiving more than 20 per centum of the total amount appropriated for such grants for such fiscal year. (38 U.S.C. 1008(b)(1))

(d) The Administrator shall certify approved applications to the Secretary of the Treasury in the amount of the grant requested, but in no event an

amount greater than 50 percent of the estimated cost of the project, and shall designate the appropriation from which it shall be paid. Funds paid for the establishment, expansion, or improvement of a State veterans' cemetery will be used solely for carrying out such project as so approved. (38 U.S.C. 1008(c)(2))

(e) Any amendment of any application, whether or not approved under paragraph (c) of this section, will be subject to review and approval pursuant to the regulations governing grants to States for establishment, expansion, and improvement of State veterans' cemeteries in the same manner as an original application. (38 U.S.C. 1008(c)(1))

(f) Sums provided under paragraph (d) of this section shall remain available until the end of the second fiscal year following the fiscal year for which they are appropriated. If all funds from a grant have not been utilized by a State for the purpose for which the grant was made within 3 years after the Administrator has certified the approved application for such grant to the Secretary of the Treasury, the United States shall be entitled to recover any such unused grant funds from such State. (38 U.S.C. 1008(d)) (Approved by Office of Management and Budget under control number 2900–0375)

§ 39.4 Disallowance of a grant application and notice of a right to hearing.

(a) No application for the establishment, expansion or improvement of State veterans' cemeteries shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall be in accord with the provisions §§ 18.9 and 18.10, Title 39, Code of Federal Regulations. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available. (38 U.S.C. 1008(c)(2))

§ 39.5 Responsibilities following project completion.

(a) States shall monitor use of the facility by various sub-groups and minority groups. To the extent that underutilization by any of these groups is determined to exist, a program shall be established to inform members of these groups about benefits available to them. The information regarding the program shall be available in a language other than English where a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs such service or information.

(b) State veterans' cemeteries established, expanded, or improved with assistance under this program shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to safety of users.

(2) The cemetery shall be kept open for public use at reasonable hours and time of the year. (38 U.S.C. 1008(c)(1))

(c) The State, in coordination with the Administrator, shall audit such projects at their completion in accordance with Attachment P. OMB Circular A–102 and audit procedures established by the VA Office of the Inspector General. A copy of the audit shall be forwarded to the Director, State Cemetery Grants Program, giving the date and location where the audit was made and citing any deficiencies and corrective action taken or proposed. (38 U.S.C. 1008(c)(2))

(d) The VA, in coordination with the State, shall inspect the project at completion for compliance with the standards set forth in § 39.8 and at least once in every 3-year period following completion of the project, and throughout the period the facility is operated as a State veterans' cemetery. A copy of the inspection shall be forwarded to the Director, State Cemetery Grants Program, giving the date and location where the inspection was made and citing any deficiencies and corrective action taken or proposed. (38 U.S.C. 1008(c)(2))

(e) Failure of the State to comply with paragraphs (a) through (c) of this section shall be considered cause for the Veterans' Administration to suspend any payments due a State on any or all projects until the situation involved is corrected. (38 U.S.C. 1008(c)(2))

§ 39.6 State to retain control of operations.

Neither the Administrator nor any employee of the Veterans' Administration shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State verterans' cemetery constructed, expanded, or improved with assistance received under this program except as prescribed in this part. (38 U.S.C. 1008(c)(2))

§ 39.7 Recapture.

If a State which has received a grant to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as veterans' cemetery, or uses any part of the funds provided through such grant for a purpose other than for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State in connection with the establishment, expansion or improvement of such cemetery. (38 U.S.C. 1008(b)(4))

§ 39.8 General standards for site selection and construction of State veterans' cemeteries.

(a) *General.* (1) The various codes, requirements, recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which reference is made in these standards, are applicable to grants for construction of State veterans' cemeteries. Additional information concerning these standards may be obtained from the Veterans Administration, Department of Memorial Affairs (40G), 810 Vermont Avenue, NW., Washington, D.C. 20420.

(2) These standards constitute general design and construction criteria and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 1008.

(3) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. These standards must be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards will provide equivalent or better design criteria. Conversely, compliance is required with State and local codes where such requirements provide a higher standard. The additional cost, if any, in using standards which are higher than those of the VA (Veterans Administration) should be documented and justified in the application.

(4) The space criteria and area requirements referred to in these standards should be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be required by the program but are subject to approval by VA. Substantial deviation from the space or area standards should be carefully considered and justified, except for occasional variances which would require individual justification. Failing to meet or exceeding the standards by more than 10 percent in

the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. VA participation may be subject to proportionate reduction in those projects which unjustifiably exceed maximum space or area criteria.

(b) *Site planning standards.*—(1) *Site selection.* (i) *Location.* The land should be located as closely as possible to the densest veteran population in the area under consideration.

(ii) *Size.* Sufficient acreage should be available to provide gravesites for estimated needs for at least 20 years. Acreage could vary depending on the State veteran population and National Cemetery availability.

(iii) *Accessibility.* The site should be readily accessible by highway, bus or railroad.

(iv) *Topography.* The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land should not be subject to flooding.

(v) *Water table.* The water table should be lower than the maximum proposed depth of burial.

(vi) *Soil requirement.* The soil should be free from rock, muck, quicksand, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting lawns, shrubs, and trees, with normal care and without the addition of topsoil.

(vii) *Utilities.* Electricity and/or gas should be available (if required).

(viii) *Water supply.* An adequate supply of water should be available.

(ix) *Sanitary sewer.* An approved means to dispose of storm flow and sewage from the facility should be available.

(2) *Site development requirements.*—(i) *General.* The development plan shall provide for adequate hardsurfaced roads, walks, parking areas, public rest rooms, flag circle, protective enclosure of the area, and a main gate. Pedestrian gates should also be provided at the main gate for activities that may be necessary or appropriate when the main gates are closed.

(ii) *Road widths.* Road widths shall be compatible with proposed traffic flows and volumes.

(iii) *Surface and structure parking.* All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of one handicapped space to every twenty regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on-parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces.

(iv) *Pavement design.* The pavement section of all roads, service areas and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in accordance with local and State design criteria.

(v) *Curbs.* Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Free standing curbs may be substituted when the advantage of using them is clearly indicated. All curbs shall have a "roll-type" cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control.

(vi) *Curb radii.* The radii of curbs at road intersections shall not be less than 20'-0"

(vii) *Curb ramps (curb cuts).* Curb ramps shall be provided to accommodate the physically handicapped and lawnmowers. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have nonslip surfaces.

(viii) *Walks.* Walks shall be designed with consideration for the physically handicapped. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps and platforms shall have nonslip surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Walks that have gradients of from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1½ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(ix) *Steps.* Exterior steps may be included in the site development as long as provisions are also provided for use by physically handicapped persons.

(x) *Grading.* Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(xi) *Landscaping.* (A) The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum.

(B) Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(xii) *Surface drainage.* Surface grades shall be determined in coordination with the architectural, structural and mechanical design of buildings and facilities so as to provide proper surface drainage.

(xiii) *Burial areas.* (A) *General.* A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. All applicable dimensions to roadways, fences, utilities or other structures shall be indicated on the layout.

(B) *Area standard.* The VA standard for computing gravesite yield from net burial acreage is 600 gravesites per acre. This figure normally can account for roads, utilities, and other service related structures. Depending on the character of the land and the way in which the cemetery is to be developed, a minimum of 50 percent of the gross acreage available at the site should be designated as burial acreage. A site proposed for development as a veterans' cemetery should be adequate to meet the State's projected interment needs for a minimum of twenty years.

(C) *Gravesites.* Gravesites should be laid out in uniform pattern. There should be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum carrying distance from the

edge of a permanent road to any gravesite should not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.

(D) *Monumentation.* Each grave shall be marked with an appropriate marker and there shall be kept in each cemetery a register of burials setting forth the name of each person buried and the number of the grave in which he/she is buried. It is advisable that permanent gravesite control markers be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones. Markers may be either flat or upright, but should be uniform throughout the cemetery. (Approved by the Office of Management and Budget under control number 2900–0375)

(c) *Space criteria for support facilities:* These criteria are based on a projected annual burial rate of one to six per day, staffing by position, and maintenance and service equipment. For cemeteries with less than one or more than six burials per day, support facilities are considered on an individual basis in accordance with paragraph (a)(4) of this section. In converting NSF (net square feet) to GSF (gross square feet), a conversion factor of 1.5 is the maximum allowed. The applicant shall, in support of the design, include the following as an attachment to the application: a list of all grounds maintenance supplies and equipment and the number of FTE (full-time employees) by job assignment for the next 10 years. (Approved by Office of Management and Budget under control number 2900–0375)

(1) *Administrative building.*
Office, Cemetery Director, 150 NSF
Administrative (Lobby/Office) Area, 165 NSF [1]
Operations (File/Work Area), 160 NSF
Family/Conference Room, 200 NSF
Refreshment Unit, 45 NSF
Housekeeping Aid's Closet, 40 NSF
Toilet Facilities,
Water Closet (Handicapped), 35 NSF
Each additional fixture, 22 NSF

(2) *Maintenance/service building* [2]
Office, 150 NSF [3]
Lunch Room:
Under 5 FTE, Not authorized
5 or more FTE (Minimum 120—Maximum 300 NSF), 12 NSF/FTE
Kitchen Unit, 45 NSF
Vending Machines, 25 NSF

(i) Toilet and Shower Facilities.[4]
(A) Toilet Facilities:
Water Closet (Handicapped), 35 NSF
Each additional Fixture, 22 NSF
(B) Shower:
Handicapped [5], 80 NSF
Standard Fixture, 25 NSF
(C) Lockers, 6 NSF/FTE
(D) Boot and Towel Storage, 1.5 NSF/FTE
(E) Housekeeping aids closet, 40 NSF

(ii) Vehicle and Equipment Maintenance/Storage.
(A) Service bay, 450 NSF
(B) Vehicle and Equipment Storage, 288 NSF/Bay [6]
Backhoe, 288 NSF/each
Industrial tractors, 96 NSF/each
Cub tractors, 32 NSF/each
Hand Mower and trimmers, 12 NSF/each
(C) Ground Maintenance Storage, 288 NSF
(D) Flammable Storage, 100 NSF

(iii) Other Equipment Storage: Based on climatic conditions it may be justified to erect open structures or paved areas to protect the following types of equipment.
Dump Trucks, 240 NSF/each
Pickup Trucks, 240 NSF/each
Cemetery Automobiles, 240 NSF/each
Gang & Circular Mowers, 29 NSF/each
Dumpsters (Trash/Solid Waste) [7], 240 NSF/each
Dump Wagon or utility trailers [7], 240 NSF/each
Plow Blades [7], 120 NSF/each
Headstones/Markers [7], 120 NSF

(3) *Interment/Committal Service Shelter:* One permanent shelter is authorized for every five interments per day.
Covered area (maximum 256 NSF), 16 NSF/person
Total paved area (including covered area), 784 NSF
Enclosed equipment/storage area, 40 NSF

(4) *Interment/Committal Service Chapel:* A chapel may be substituted for the interment/committal service shelters. Only one chapel is allowed per cemetery.
Chapel area (fixed seating and chancel), 512 NSF
Clergy robing room, 100 NSF
General storage, 80 NSF
Housekeeping aid's Closet, 40 NSF
Restroom(s) Men/Women:
Water Closet (each Handicapped restroom), 35 NSF
Lavatory (each restroom), 22 NSF
Urinal (Men's restroom), 22 NSF

(5) *Public Restrooms:* Space determinations for separate structures for public restrooms will be considered on an individual basis.

(6) *Other Interment Structures:* Space determinations for other support facilities such as columbaria, mausolea or garden crypts, etc., will be considered on an individual basis in accordance with paragraph (a)(4) of this section.

(d) *Architectural Design Standards.*
(1) *Architectural and Structural Requirements.* (i) *Life Safety Code.* The 1981 edition of the Code for Safety to Life from Fire in Buildings and Structures (NFPA 101) published by the National Fire Protection Association (NFPA), Batterymarch Park, Quincy, Massachusetts, 02269, will be the design criteria. The 1981 edition of the Life Safety Code (NFPA 101) is hereby incorporated by reference into this section as though set forth in full herein. This incorporation by reference was approved by the Director of the Federal Register on October 28, 1982. This code is incorporated as it was on the date of approval and a notice of any change in this code will be published in the **Federal Register.** This code is available for inspection at the Office of Federal Register, 1100 L Street NW., Washington, DC. Fire safety construction features not included in NFPA 101 shall be designed in accordance with the standards of the 1976 edition (R1977) of the National Building Code published by the American Insurance Association Engineering and Safety Services, 85 John Street, New York, New York 10038. The 1976 edition (R1977) of the National Building Code is hereby incorporated by reference into this section as though set forth in full herein. This incorporation by reference was approved by the Director of the Federal Register on October 28, 1982. This code is incorporated as it was on the date of approval and a notice of any change in this code will be published in the **Federal Register.** This code is available for inspection at the Office of the Federal Register, 11100 L Street NW., Washington, DC. Where the adopted codes state conflicting requirements, the National Fire Codes shall govern.

(ii) *State and Local Codes.* In addition to compliance with the standards set forth in this document, all applicable local and State building codes and regulations must be observed. In areas

[1] Add 80 NSF for each additional staff (maximum of 2).

[2] Service Building may be combined with the administrative building.

[3] Add 80 NSF for each additional employee required to be located in the office.

[4] One Water Closet and Shower/30 FTE and One Lavatory/Urinal/20 FTE or fraction thereof (minimum one handicap equipped per toilet and shower room). If FTE exceed 5, provide one Water Closet/Lavatory/Shower for females. Recommend that female facilities be located and designed so as to be included with male facilities when no females are on maintenance staff.

[5] If required by State program requirements.

[6] /Total NSF divided by 288=number of bays.

[7] No allowance for cover or enclosure.

not subject to local or State building codes, the recommendations contained in the 1976 edition (R1977) of the National Building Code (See § 39.8(d)(1)(i) shall apply insofar as such recommendations are not in conflict with the standards set forth in this document.

(iii) *Occupational safety and health standards.* Applicable standards as contained in the Occupational Safety and Health Act must be observed.

(2) *Mechanical requirements.* The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations.

(3) *Plumbing requirements.* Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in this part. Where no State or local codes are in force, the 1978 edition of the National Standard Plumbing Code, published jointly by the American Society of Plumbing Engineers and the National Association of Plumbing-Heating-Cooling Contractors, 1016 20th Street, NW., Washington, DC 20036, shall apply. The 1978 edition of the National Standard Plumbing Code is hereby incorporated by reference into this section as though set forth in full herein. This incorporation by reference was approved by the Director of the Federal Register on October 28, 1982. This code is incorporated as it was on the date of approval and a notice of any change in this code will be published in the **Federal Register.** This code is available for inspection at the Office of the Federal Register, 1100 L Street NW., Washington, DC.

(4) *Electrical requirements.* The installation of electrical work and equipment shall comply with the 1981 National Electrical Code (NFPA No. 70), all State and local codes and laws applicable to electrical installations, and the minimum general standards as set forth in this part. The regulations of the local utility company shall govern service connections. Aluminum busways should not be used as a conducting medium in the electrical distribution system. The 1981 edition of the National Electrical Code is hereby incorporated by reference into this section as though set forth in full herein. This incorporation by reference was approved by the Director of the **Federal Register** on October 28, 1982. This code is incorporated as it was on the date of approval and a notice of any change in this code will be published in the Federal Register. This code is available for inspection at the Office of the Federal Register, 1100 L Street, NW., Washington, D.C.

(e) *Plan preparation.*—(1) *General.* The requirements contained herein have been established for the guidance of the state agency and the architect to provide a standard for preparation of drawings, specifications and estimates.

(2) *Predesign conferences.* A conference is recommended for all major construction projects primarily to ensure that the State agency becomes oriented to VA procedures and requirements plus any technical comments pertaining to the project.

(3) *Preapplication requirements.* No plans and specifications will be required with the preapplication submission to the VA. The program narrative shall describe the need, objectives, method of accomplishment, projected interment rate, benefits expected to be obtained from the assistance and include design concepts, *space outline,* geographical location (i.e., a location map showing the location of the project and all appropriate demographic boundaries) etc. (Approved by Office of Management and Budget under control number 2900–0375)

(4) *Formal application requirements.*—(i) *Boundary and site survey and soil investigation.* (A) The State agency shall provide for a survey and soil investigation of the site and furnish a legal description of the site. The purpose of this survey and soil investigation is to obtain data necessary for the evaluation of the site as a cemetery, structural design and utility service connections. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan.

(B) If required the survey shall show:

(*1*) The outline and location referenced to boundaries, of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads and streams, and other information as hereinafter specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.

(*2*) The point of beginning, bearing, distances, and interior angles. Closures computations shall be furnished with the survey and error of closure shall not exceed 1 foot each 10,000 feet or lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners), shall be referenced with curve data (including measurement chord) and other data sufficient for replacement and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angles and other pertinent points.

(*3*) The area of the parcel in acres or in square feet.

(*4*) The location of all monuments.

(*5*) Delineation of 100-year floodplain and source.

(*6*) The signature and certification of the Surveyor.

(C) Soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements. A new soil investigation is not required if one was done for a previously approved project on the same site and information contained is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report.

(*1*) Adequate investigation shall be made to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions.

(*2*) The following information shall be covered in the report:

(*i*) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.

(*ii*) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.

(*iii*) The elevation of rock, if known and the probability of encountering quicksand.

(*3*) The elevations and location of tops of workings relative to the site, if the site is underlaid with mines, or old workings are located in the vicinity.

(ii) *Preliminary site plan.* A site plan showing the proposed layout of all facilities on the selected site shall be included as an exhibit to the formal application. If the project is to be phased into different year programs, the phasing shall be indicated. The preliminary site plan shall be submitted on standard 28 inch by 42 inch plan sheets at a scale sufficiently large to show necessary details or dimensions.

(iii) *Preliminary architectural drawings.* All buildings are to be shown on drawings accompanying the application. The drawings must comply with the following requirements:

(A) A site plan of the immediate area around the building shall be drawn to a convenient scale and shall show the building room plan, utility services, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of

handicapped provisions, landscaping, north arrow and any other appropriate items.

(B) Floor plans of all levels at a convenient scale shall be double line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures and interior finish schedule.

(C) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(D) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(f) *Final working drawings and specifications.* Prior to the release of funds for the construction of any project being sponsored under this program, the VA must approve the final working drawings and specifications. The approval by the VA is notification to the applicant that the project complies with the terms and conditions prescribed by the VA and does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) Final working drawings shall be prepared so that clear and distinct prints may be obtained, accurately dimensioned and include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for complete VA review and comment. Separate drawings shall be prepared for each of the following types of work: architectural, structural, heating and ventilating, plumbing and electrical. They shall include the following:

(i) *Architectural drawings.* Site plan showing all new topography, grades, existing buildings, roadways, walks and areas to be seeded. All structures and other work to be removed; all floor plans and a room plan if any new work is involved; all elevations which are affected by the alterations; building sections; demolition drawings. All details to complete the proposed work and finish schedules.

(ii) *Planting drawings.* (A) All proposed features such as roads, buildings, walks, utility lines, burial layout, etc.

(B) Contours, scale, north arrow, legend showing existing trees.

(C) A graphic or keyed method of showing plant types as well as quantities of each plant.

(D) Plant list with the following: Key, quantity, botanical name, common name, size and remarks (i.e., balled and burlaped, container, 3 stem clump, specimen, etc.)

(E) Typical tree and shrub planting details.

(F) Areas to be seeded or sodded.

(G) Areas to be mulched.

(iii) *Layout drawings.* Submit a layout plan which shows the following:

(A) Roadways, walks, buildings, scale and north arrow, boundary lines and fence lines.

(B) Section layout with permanent section monument markers and lettering system.

(C) Gravesite layout and numbering system.

(D) Gravesites which are obstructed.

(E) Direction the headstone faces.

If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed and reserved gravesites.

(iv) *Equipment drawings.* Large scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment.

(v) *Structural drawings.* Complete foundation and framing plans and details. General notes to include: governing code, material strengths, live loads, windloads, foundation design values, and seismic zone.

(vi) *Mechanical drawings.* Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation and exhaust. Plumbing drawings showing sizes and elevations of soil and waste systems; sizes of all hot and cold water piping; drainage and vent systems; plumbing fixtures and riser diagrams.

(vii) *Electrical drawings.* Separate drawings for lighting and power. Service entrance, feeders and all characteristics. All panel, breaker, switchboard and fixture schedule. All lighting outlets, receptacles, switches, power outlets and circuits. Telephone layout, fire alarm systems and emergency lighting.

(2) Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover of title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.

(3) Show in convenient form and detail the estimated total cost of the work to be performed under the contract including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work.

(4) All of the above requirements must be met and approved prior to the State agency advertising for bids.

(g) *Final review and approval—(Bid tabulations and cost estimates).* (1) The State agency shall submit itemized bid tabulations; assurance, if required; and a revised grant application form reflecting project cost(s) based on bids. If there are non-VA participating area(s), these should be itemized separately.

(2) Following VA approval of bid tabulations and cost estimates, the grant will be awarded by a Notification of Award of Federal Grant Funds. (38 U.S.C. 1008).

[FR Doc. 82-29907 Filed 10-29-82; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-143; RM-4018, RM-4108, RM-4109]

FM Broadcast Stations Brunswick and Kingsland, Georgia; Changes Made in Table of Assignments.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 292A to Kingsland, Georgia, in response to proposals submitted by F. Keith O'Quinn and by Kingsland Broadcasters, instead of to Brunswick, Georgia, as requested by Burrows Broadcasting Company or to Fernandina Beach, Florida, as requested by Carole A Mays. The assigned channel could provide a first FM service to Kingsland.

DATE: Effective December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 18, 1982

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Brunswick and Kingsland, [1] Georgia), BC Docket No. 82-143 RM-4018 RM-4108 RM-4109.

[1] This community has been added to the caption.

1. Before the Commission is a *Notice of Proposed Rule Making,* 47 FR 11902, published March 19, 1982, proposing the assignment of Channel 292A to Brunswick, Georgia, in response to a petition filed by Burrows Broadcasting Company ("petitioner").[2] In response to the *Notice,* counterproposals were submitted by Kingsland Broadcasters and F. Keith O'Quinn, each seeking the assignment of Channel 292A to Kingsland, Georgia.[3] Due to minimum separation requirements, Channel 292A cannot be assigned to both communities. Co-channel Class A assignments must be separated by at least 65 miles, the distance between Brunswick and Kingsland is approximately 27 miles. No other channels are available for assignment to either community.

2. Comments were filed by Casey Broadcasting Company, Inc.[4] and by Radio Station WGIG , Inc., licensee of Stations WGIG (AM) and WSBI (FM), Brunswick, Georgia. Carole A. Mays submitted a counterproposal to assign Channel 292A to Fernandina Beach, Florida [5], during the reply comment period. Kingsland Broadcasters filed a "Motion to Dismiss" The Mays' counterproposal. Burrows Broadcasting Company, the original proponent, did not comment in this proceeding.[6] the Mays' counterproposal was submitted on May 28, 1982. However, the time for filing a counterproposal in this proceeding ended April 29, 1982. Mays contends that the Commission's Mimeo No. 4068, released May 17, 1982, extended the comment period to May 28, 1982. However, that action extended only the reply comment period. The deadline for filing conflicting proposals is set forth in § 1.420(d) of the Rules and paragraph 3(a) of the Appendix to the *Notice.* Mays thus failed to file within the appropriate time period. Accordingly, we find the counterproposal unacceptable.

3. In support of their counterproposals, Kingsland Broadcasters and O'Quinn assert that the assignment of Channel 292A to Brunswick would provide a sixth aural service to that community while depriving Kingsland of a first FM service. They also point out that Kingsland's only media outlet is a weekly newspaper, and therefore is more deserving of the assignment than Brunswick. Both petitioners stated their intent to apply for Channel 292A at Kingsland, if assigned.

4. WGIG supports the counterproposal to assign Channel 292A to Kingsland arguing that Kingsland appears to have a greater need for FM service.

5. We have had no continuing expression of interest in the Brunswick proposal in reponse to our *Notice.* It is our general policy to refrain from assigning channels for which we have had no commitment from any interested party that the channel, if assigned, will be put to use. See, *Williams, Arizona,* 47 FR 20827, published May 14, 1982, and paragraph 2 of the Appendix to the *Notice of Proposed Rule Making.* Thus, we have dismissed the request for lack of a continuing interest by any party. With regard to the Kingsland proposal, we are convinced that the public interest would be served by assigning Channel 292A to Kingsland, Georgia, so as to provide that community with a first FM service. The channel can be assigned in compliance with the minimum distance separation requirements.

6. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective December 27, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended as follows:

City	Channel No.
Kingsland, Ga	292A

7. It is further ordered, that the request (RM-4018) of the Burrows Broadcasting Company to assign Channel 292A to Brunswick, Georgia, and of Carole A. Mays to assign Channel 292A to Fernandina Beach, Florida, are dismissed.

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29922 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

[2] Burrows Broadcasting is the licensee of AM Station WMOG, Brunswick, Georgia.

[3] Public Notice of the counterproposals (RM-4108 and 4109) was given on May 11, 1982, Report No. 1351.

[4] Casey's comments merely inform the Commission that it will not participate further in the proceeding, although it requested an extension of time to respond to the counterproposals.

[5] This proposal was not given Public Notice because it was filed late.

[6] The *Notice* requested Burrows Broadcasting Company, proponent for the Brunswick assignment, to submit preclusion data to further justify a third FM assignment to Brunswick. However, in view of the action taken in the *Revision of FM Policies and Procedures,* 90 F.C.C. 2d 88 (1982), this information is no longer relevant.

47 CFR Part 73

[BC Docket No. 82-307; RM-4058]

FM Broadcast Station in Mason City, Iowa; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns FM Channel 228A to Mason City, Iowa, as its third local FM service, as requested by Radio Communications, Inc.

DATE: Effective December 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of an amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Mason City, Iowa); BC Docket No. 82-307, RM-4058; report and order (Proceeding Terminated).

1. The Commission has before it for consideration a *Notice of Proposed Rule Making,* 47 FR 26864, published June 22, 1982, in response to a petition filed by Radio Communications, Inc. ("petitioner"), proposing the assignment of FM Channel 228A to Mason City, Iowa, as the community's third FM assignment. Supporting comments were filed by petitioner in which it reaffirmed its intent to file for the channel, if assigned. Harold A. Jahnke filed comments in support of the proposal, stating that he intends to file an application for authority to operate on the channel, if it is so assigned. No oppositions to the proposal were received.

2. We believe that the public interest would be served by the assignment of Channel 228A to Mason City, Iowa. An interest has been shown for its use, and such an assignment could provide the community with a third local FM broadcast service.

3. Authority for the adoption of the amendment herein is contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules.

4. Accordingly, it is ordered, That effective December 27, 1982, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the following community:

City	Channel No.
Mason City, Iowa	228A, 252A, and 291.

5. It is further ordered, That this proceeding is terminated.

6. For further information concerning the above, contact Philip S. Cross, Broadcast Bureau, (202) 632-5414.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29920 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-417; RM-4114]

FM Broadcast Station in Osakis, Minnesota; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 208A to Osakis, Minnesota, in response to a petition filed by Christian Broadcasters, Inc. The assigned channel could provide a first local FM assignment to Osakis.

DATE: Effective December 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 18,1982.

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Osakis, Minnesota), BC Docket No. 82-417 RM-4114.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 47 FR 32554, published July 28, 1982, proposing the assignment of FM Channel 208A to Osakis, Minnesota, as that community's first FM channel, in response to a petition filed by Christian Broadcasters, Inc. ("petitioner"). Petitioner filed comments in support of the assignment and reaffirmed its intention to apply for the channel, if assigned. Harold A. Jahanke also filed comments in support of the proposal and stated that he would apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Canadian concurrence has been received.

3. The Commission has determined that the public interest would be served by assigning Channel 208A to Osakis, since it could provide a first FM broadcast service to that community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules, it is ordered that effective December 27, 1982, § 73.202(b) of the Commission's rules is amended with respect to the following community.

City	Channel
Osakis, Minn	208A

5. It is further ordered, that this proceeding is terminated.

6. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29918 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

47 CFR Part 73

[BC Docket No. 82-332; RM 4070]

FM Broadcast Station in Oakes, North Dakota; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes FM Class C Channel 222 for unused Channel 252A at Oakes, North Dakota, in response to a petition filed by Kingsley H. Murphy. The new channel could provide for a wider coverage area station.

DATE: Effective December 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations (Oakes, North Dakota), BC Docket No. 82-332, RM-4070.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 47 FR 29288, published July 6, 1982, in response to a petition filed by Kingsley H. Murphy ("petitioner"), proposing the substitution of Class C Channel 222 for unused Channel 252A at Oakes, North Dakota. Supporting comments were filed by petitioner in which it affirmed its intent to file for the channel, if assigned. No oppositions to the proposal were recieved.

2. In support of his request for a wide-coverage area Class C channel petitioner provided coverage data and other figures to demonstrate the need for a wide coverage area station. However, in view of the action taken in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982), this information is no longer relevant.

3. Canadian coordination on the proposal has been received.

4. Accordingly, in view of the fact that the assignment of Channel 222 in lieu of Channel 252A at Oakes would provide service to a much larger area, we find the proposal to be in the public interest.

5. Authority for the adoption of the amendment herein is contained in Sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's Rules.

6. Accordingly, it is ordered, that effective December 27, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with regard to the following community:

City	Channel No.
Oakes, N. Dak.	222

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Philip S. Cross, Broadcast Bureau, (202) 632-5414.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29919 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-356; RM-4106]

Radio Broadcast Services; FM, Broadcast Station in Anson, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 276A to Anson, Texas, in response to a petition filed by Lilly Amador ("petitioner"). The assigned channel could provide a first local aural service to Anson.

DATE: Effective December 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Anson, Texas), BC Docket No. 82-356 RM-4106.

1. The Commission has under consideration the *Notice of Proposed Rule Making,* 47 FR 31018, published July 16, 1982, proposing the assignment of FM Channel 276A to Anson, Texas, as the community's first local FM channel in response to a petition filed by Lilly Amador ("petitioner"). Petitioner filed comments in support of the proposal and restated her intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements. No opposition to the proposal was received.

2. The Commission has determined that the public interest would be served by assigning FM Channel 276A to Anson, Texas, since it could provide a first local FM broadcast service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.281 and 0.204(b) of the Commission's rules, it is ordered, that effective December 27, 1982, § 73.202(b) of the Commission's rules is amended with respect to the following community:

City	Channel No.
Anson, Texas	276A

4. It is further ordered that this proceeding is terminated.

5. For further information contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29921 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-462; RM-4101]

FM Broadcast Station in Sutton, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns a first FM channel to Sutton, West Virginia, in response to a petition filed by Milliken Investment Corporation.

DATE: Effective December 27, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcast.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations, (Sutton, West Virginia), BC Docket No. 82-462; RM-4101.

1. The Commission has under consideration the *Notice of Proposed Rule Making,* 47 FR 33286, published August 2, 1982, proposing the assignment of Class B Channel 246 to Sutton, West Virginia, as its first FM assignment. The *Notice* was issued in response to a petition filed by Milliken Investment Corporation ("petitioner"). Supporting comments were filed by the petitioner reaffirming that it will apply for the channel, if assigned.

2. After consideration of the proposal and comments in this proceeding, we have concluded that the proposed assignment would serve the public interest and provide Sutton with its first FM assignment. The transmitter site is restricted to 6.1 miles south of the city to avoid short spacing to Station WKWK, Wheeling, West Virginia.

3. In view of the above and pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281 of the Commission's rules, it is ordered, that effective December 27, 1982, the FM Table of Assignments, § 73.202(b) of the Commission's rules is amended with regard to the following community:

City	Channel No.
Sutton, W. Va.	246

4. It is further ordered that this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29721 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 80-476; RM-3601, RM-3801]

FM Broadcast Stations in Hudson and Adrian, Michigan and Swanton, Ohio, Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Clarification.

SUMMARY: This item indicates a transmitter site restriction for Channel

249A at Hudson, Michigan, previously amended to the FM Table of Assignments (§ 73.202(b) of the Commission's rules) in response to a request from Defiance Broadcast Company.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 14, 1982.

Released: October 21, 1982.

1. On February 5, 1982, the Commission, by its Broadcast Bureau, released a *Report and Order*, 47 FR 6873 (February 17, 1982), in the above captioned proceeding, assigning Channel 249A to Hudson, Michigan. Defiance Broadcast Company, an applicant for Channel 251 at Defiance, Ohio, is concerned that because the *Report and Order* failed to indicate a site restriction for Channel 249A at Hudson, a short spacing may occur to its proposed Defiance station. As indicated in the Notice for Proposed Rule Making, a 6.4 mile southeast site restriction is required to comply with the mileage spacing rules and applications for Channel 249A at Hudson are expected to meet this condition.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 82-29909 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[Docket No. 21502; RM-2737]

Radio Broadcast Services Subscription Television Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: In the Third Report and Order, FCC 82-281, published in the **Federal Register** on July 12, 1982, at 47 FR 30069, there is an error in the text of Item 2 of Appendix A (§ 73.643, Subscription TV operating requirements). It is changed to read correctly.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Released: October 26, 1982.

In the above captioned *Third Report and Order*, released June 29, 1982, and published in the **Federal Register** on July 12, 1982, at 47 FR 30069, § 73.643, Subscription TV operating requirements (Item 2 of Appendix A) is stated incorrectly. It is corrected to read:

§ 73.643 Subscription TV operating requirements.

Except as they may be otherwise waived by the Commission in authorizations issued hereunder, the rules and policies applicable to regular television broadcast stations are applicable to subscription television operations.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-29910 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 215

[FRA Docket No. RSFC-6, Notice 5]

Railroad Freight Car Safety Standards

Note.—This document originally appeared in the **Federal Register** of October 29, 1982. It is reprinted in this issue to meet requirements for publication on the Monday-Thursday schedule assigned to the Federal Railroad Administration.

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

ACTION: Amendment of final rule.

SUMMARY: This document amends the final rule published on June 24, 1982 (47 FR 27293). That final rule extended the compliance date for equipping the side doors of railroad box cars with safety hangers or the equivalent, from July 1, 1982 until November 1, 1982. This amendment further extends the compliance date until December 1, 1982. This action is being taken in response to a petition of the Association of American Railroads (AAR) for extension of the compliance date.

EFFECTIVE DATE: This amendment will become effective November 1, 1982.

FOR FURTHER INFORMATION CONTACT: Leavitt A. Peterson, Office of Safety, Federal Railroad Administration, Washington, D.C. 20590, telephone (202) 426-0897.

SUPPLEMENTARY INFORMATION: On June 24, 1982, FRA published a notice of public hearing and an amendment of final rule which extended the compliance date for equipping the side doors of railroad box cars with safety hangers or the equivalent until November 1, 1982. The purpose of this four month extension was to enable FRA to hold public hearings and receive written comments from interested persons on the AAR's request to extend that compliance date until December 31, 1985.

A public hearing was held on August 3, 1982 at which testimony was offered by representatives of railroad labor and railroad management. Written comments were also received from interested persons.

To provide additional time to consider the AAR request before making a final decision, FRA is entending from November 1, 1982 to December 1, 1982, the compliance date for equipping the side doors of railroad box cars with safety hangers or the equivalent.

To avoid the disruption of rail service and public inconvenience that would result if all plug door box cars not equipped with safety hangers were to be removed from service on the current compliance date of November 1, 1982, this amendment shall become effective in less than 30 days on November 1, 1982.

Regulatory Impact

FRA has reviewed this amendment under the standards established by Executive Order 12291 and DOT's order on regulatory policies and procedures. FRA has concluded that the amendment is not a major rule under the terms of Executive Order 12291 or a significant rule under DOT criteria.

The amendment has been reviewed according to the requirements of the Regulatory Flexibility Act (Pub. L. 95-354, 94 Stat. 1184, September 19, 1980). FRA has not identified any significant economic impact from the rule change that will affect small entities. Based on this fact, it is certified that the amendment will not have a significant impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act.

The amendment does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

List of Subjects in 49 CFR Part 215

Freight, Penalties, Railroad safety.

The Amendment

PART 215—[AMENDED]

In consideration of the foregoing, § 215.121(d) of Part 215 of Title 49, Code of Federal Regulations, is amended, effective November 1, 1982, to read as follows:

§ 215.121 Defective car body.

* * * * *

(d) After December 1, 1982, the car is a box car and its side doors are not equipped with operative hangers, or the equivalent, to prevent the doors from becoming disengaged.

* * * * *

(Secs. 202 and 209, 84 Stat. 971 and 975, 45 U.S.C. 431 and 438; and § 1.49(m) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(m))

Issued in Washington, D.C. on October 27, 1982.

Robert W. Blanchette,

Administrator.

[FR Doc. 82-30016 Filed 10-28-82; 8:56 am]

BILLING CODE 4910-06-M

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49 CFR Part 575

[Docket Nos. 80-14 and 80-25; Notices 5 and 50]

Consumer Information Regulations; Uniform Tire Quality Grading; Federal Motor Vehicle Safety Standards

AGENCY: National Highway Traffic Safety Adminsitration (NHTSA), DOT.

ACTION: Extension of public comment deadline.

SUMMARY: NHTSA has recently issued a series of three related notices involving the effects of deleting the tire tables in Federal Motor Vehcile Safety Standard (FMVSS) 109 on the manner in which tire test loads are to be determined for purposes of compliance testing under FMVSS 109 and for purposes of the Uniform Tire Quality Grading Standards. See 47 FR 25930, June 15, 1982; 47 FR 34990, August 12, 1982,; and 47 FR 36260, August 19, 1982. Test loads under both regulations were previously determined by reference to the FMVSS 109 tables. However, given the deletion of those tables, the three notices invited comments on alternative methods for specifying test loads.

The Rubber Manufacturers Assocaition, on October 7, 1982, requested that the comment deadlines for the three notices be extended from August 16, October 12 and 18, respectively, to December 13, 1982, to permit additional time to prepare comments and recommendations. Under the agency's Rulemaking Procedures, this request was timely filed only with regard to the October 18 comment deadline. See 49 CFR 553.19. However, given the intimate relationship between these notices and the many complex technical issues involved, the agency is reopening the comment period for the June 15 and August 12 notices and in another document which will be published later will grant the request to extend the comment deadline for the August 19 notice.

DATE: Comments on these notices must be received on or before December 13, 1982.

ADDRESS: Comments on these notices should refer to the docket numbers set forth above and be submitted to: Docket Section, Room 5109 Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20509. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. F. Cecil Brenner, Officer of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-1740)

(Secs. 103, 119, and 203, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407 and 1423); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 27, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-30022Filed 10-28-82, 10:47 a.m.]

BILLING CODE 4910-59-M

NATIONAL TRANSPORTATION SAFETY BOARD

49 CFR Part 840

Rules Pertaining to Notification of Railroad Accidents

AGENCY: National Transportation Safety Board.

ACTION: Final rule.

SUMMARY: The National Transportation Safety Board is revising the rules concerning the Board's definition of a railroad accident and the criteria for railroad accidents that must be reported to the Board. The Board is adding rules concerning the priority of Board investigations and the inspection, examination, and testing of physical evidence. Reductions in the Board's staffing and appropriations have required the Board to be more selective in the types of railroad accidents to be investigated. The revision will change the requirements of railroad companies to report accidents to the Board and will explain to railroad companies the Board's authorization to inspect, examine, and test physical evidence. The revision also will explain to other Federal agencies the priority of Board investigations of railroad accidents.

EFFECTIVE DATE: November 1, 1982.

FOR FURTHER INFORMATION CONTACT: John M. Stuhldreher, General Counsel, National Transportation Safety Board, Washington, D.C. 20594 (202-382-6540), or Harold E. Storey, Chief, Railroad Accident Division, National Transportation Safety Board, Washington, D.C. 20594 (202-382-6842).

SUPPLEMENTARY INFORMATION: On November 3, 1981, Pub. L. 97-74 amended the Independent Safety Board Act of 1974. The amendment accorded the Board's investigations of railroad accidents precedence over investigations conducted by other Federal agencies in order to promote efficient use of Federal resources. The Board also was granted express authority to examine or test any vehicle, rolling stock, or track component in order to facilitate Board efforts in determining casual factors of accidents.

Reductions in staffing and appropriations have required the Board to curtail its investigation of train-related pedestrian fatalities and to redefine "accident" to exclude these accidents. (For some time the investigation of this type of fatality has not been regarded as productive for accident prevention.) The Board also will have to be more selective in the types of railroad accidents investigated which involve property damage between $150,000 and $500,000. Finally, the Board has had to establish $25,000 as the minimum property damage amount that requires a report of passenger train and rapid rail transit accidents which do not involve fatalities.

Because the revisions herein relate to rules of agency practice or procedure, notice of proposed rulemaking under 5 U.S.C. 553 is not required.

List of Subjects in 49 CFR Part 840

Administrative practice and procedure, Investigations, Hazardous materials transportation, Railroad safety, Reporting requirements.

PART 840—RULES PERTAINING TO NOTIFICATION OF RAILROAD ACCIDENTS

Accordingly, Part 840, Chapter VIII of Title 49, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 840 is revised to read as follows:

Authority: Sec. 304(a)(1)(c) of the Independent Safety Board Act of 1974, as amended (49 U.S.C. 1903).

2. Section 840.1 is revised to read as follows:

§ 840.1 Applicability.

This part contains the Safety Board's accident notification requirements, and its authority for inspection, examination, and testing of physical evidence, and describes the exercise of the Safety Board's priority accorded to its activities when investigating railroad accidents.

3. In § 840.2, paragraph (b) is revised to read as follows:

§ 840.2 Definitions.

* * * * *

(b) Accident means any collision, derailment, or explosion involving railroad trains, locomotives, and cars; or any other loss-causing event involving the operation of such railroad equipment that results in a fatality to a passenger or employee, or the emergency evacuation of persons.

* * * * *

4. Section 840.3 is amended by revising paragraphs (a)(1), (a)(2), (a)(3), and adding (a)(4) and (a)(5) to read as follows:

§ 840.3 Notification of railroad accidents.

(a) * * *

(1) A passenger or employee fatality or serious injury to 2 or more crewmembers or passengers requiring admission to a hospital; or

(2) Damage (based on a preliminary gross estimate) of $150,000 or more for repairs, or the current replacement cost, to railroad and nonrailroad property; or

(3) Damage of $25,000 or more to a passenger train and nonrailroad property or involving evacuation of a passenger train; or

(4) Damage to a tank car or container resulting in release of hazardous materials or involving evacuation of the general public; or

(5) A fatality at a grade crossing.

* * * * *

5. Section 840.5 is added to read as follows:

§ 840.5 Inspection, examination and testing of physical evidence.

(a) Any employee of the Safety Board, upon presenting appropriate credentials is authorized to enter any property wherein a transportation accident has occurred or wreckage from any such accident is located and do all things necessary for proper investigation, including examination or testing of any vehicle, rolling stock, track, or any part of any part of any such item when such examination or testing is determined to be required for purposes of such investigation.

(b) Any examination or testing shall be conducted in such a manner so as not to interfere with or obstruct unnecessarily the transportation services provided by the owner or operator of such vehicle, rolling stock, or track, and shall be conducted in such a manner so as to preserve, to the maximum extent feasible, any evidence relating to the transportation accident, consistent with the needs of the investigation and with the cooperation of such owner or operator. The employee may inspect, at reasonable times, records, files, papers, processes, controls, and facilities relevant to the investigation of such accident. Each inspection shall be commenced and completed promptly and the results of such inspection, examination, or test made available to the parties.

6. Section 840.6 is added to read as follows:

§ 840.6 Priority of Board investigations.

Any investigation of an accident conducted by the Safety Board shall have priority over all other investigations of such accident conducted by other Federal agencies. The Safety Board shall provide for the appropriate participation by other Federal agencies in any such investigation, except that such agencies may not participate in the Safety Board's determination of the probable cause of the accident. Nothing in this section impairs the authority of other Federal agencies to conduct investigations of an accident under applicable provisions of law or to obtain information directly from parties involved in, and witnesses to, the transportation accident. The Safety Board and other Federal agencies shall assure that appropriate information obtained or developed in the course of their investigations is exchanged in a timely manner.

Signed at Washington, D.C., on this 26th day of October, 1982.

Patricia A. Goldman,

Acting Chairman.

[FR Doc. 82-29846 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-58-M

Proposed Rules

Federal Register
Vol. 47, No. 211
Monday, November 1, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

Raisins Produced From Grapes Grown in California; Withdrawal of Proposal to Designate 1982-83 Crop Year Marketing Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: This action withdraws a proposal to designate preliminary marketing percentages for Natural [sun-dried] Seedless raisins from the 1982 production. Adverse weather conditions during harvest severely reduced this season's raisin crop. Consequently, marketing percentages for NS raisins will not be needed during the 1982-83 crop year to foster orderly marketing conditions.

EFFECTIVE DATE: November 1, 1982.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 [202] 447-5697.

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

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities because it would result in only minimal costs being incurred by the regulated 20 handlers.

A proposal to designate preliminary marketing percentages for Natural [sun-dried [Seedless [NS] raisins from the 1982 production was published in the September 14, 1982, issue of the **Federal Register** (47 FR 40447). The proposal was made pursuant to § 989.55 of the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California, hereinafter referred to collectively as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The purpose of the proposal was to tailor the expected supply of NS raisins to domestic and Western Hemisphere market needs to foster orderly marketing conditions. Withdrawal of the proposal is based upon a recommendation of the Raisin Administrative Committee, established under the order as the agency to work with USDA in administering the order's terms and provisions.

Adverse weather and slow drying conditions during harvest severely damaged the 1982 raisin crop. Although the full extent of the damage is still unknown, preliminary estimates indicate that the damage could be as much as 50 to 60 percent of that crop. Under these circumstances, the Committee concluded that marketing percentages for the 1982-83 crop year would be unnecessary.

Therefore, the proposal of designate preliminary marketing percentages for the 1982-83 season is withdrawn and the proceeding is terminated.

List of Subjects in 7 CFR Part 989

Marketing agreements and orders, Grapes, Raisins, and California.

Dated: October 27, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 82-29905 Filed 10-29-82; 8:45 am]
BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 240

[Rel. No. 19162; File No. S7-950]

Exemption for Options on Government Securities Traded Otherwise Than on a National Securities Exchange

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing for comment a rule under the Securities Exchange Act of 1934 that would designate as "exempted securities" under that Act certain securities derivative from government securities and traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association. If adopted, the proposed rule would enable brokers and dealers that do a business exclusively in these securities and other exempted securities to conduct such a business without registration with the Commission.

DATE: Comments should be submitted on or before December 1, 1982.

ADDRESSES: Interested persons should submit three copies of their written data, views and arguments to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should refer to File No. S7-950. All submissions will be available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas G. Lovett, Esq., Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2913.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission (the "Commission") is publishing for comment Proposed Rule 3a12-7 under the Securities Exchange Act of 1934 (the "Act") (15 U.S.C. 78a et seq.). The proposed rule would designate, pursuant to Section 3(a) (12) of the Act, options on government securities traded otherwise than on a national securities exchange or an automated quotation system of a national securities association ("OTC government options") to be exempted securities under the Act. In the absence of such a rule, broker-dealers that effect transactions in such OTC government options would be required to register with the Commission pursuant to Section 15 of the Act, and to comply with certain other provisions of the Act and Commission rules thereunder. In addition, the securities would be subject to margin regulations promulgated by the Federal Reserve Board.

The Commission is proposing the rule at this time because Congress has recently passed, and the President has signed, legislation which the

Commission recommended jointly with the Commodity Futures Trading Commission that amends the securities laws to clarify the jurisdiction of the Commission.[1] In connection with that legislation, both the Senate Committee on Banking, Housing and Urban Affairs,[2] and the House Committee on Energy and Commerce [3] stated that they anticipated that the Commission would exercise its authority to define as exempted securities options on government securities which are traded in the over-the-counter ("OTC") market. The rule would provide such an exemption.

II. Discussion

A. Status of Exempted Securities Under the Act

Section 3(a)(12) pf the Act defines "exempted securities" to include government securities, specifically,

> direct obligations of, or obligations guaranteed as to principal or interest by, the United States; such securities issued or guaranteed by corporations in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury as necessary or appropriate in the public interest or for the protection of investors * * *.

Included among these government securities are Treasury bills, notes and bonds, securities issued or guaranteed by the Government National Mortgage Association such as GNMA pass-through certificates ("GNMAs"), and Federal Home Loan Mortgage Corporation Participation Certificates ("PCs"). Because Treasury securities and GNMAs are defined as exempted securities, brokers and dealers that effect transactions only in these securities and other exempted securities are not required to register with the Commission pursuant to Section 15 of the Act (15U.S.C. 78*o*). Similarily, such exempted securities are not subject to the margin requirements established by the Federal Reserve Board pursuant to Section 7 of the Act (15 U.S.C. 78g), the anti-manipulative provisions contained in Section 9 of the Act (15 U.S.C. 78i), or the Commission's summary suspension power in Section 12 (k) of the Act (15 U.S.C. 78*l*).

B. Options on Exempted Government Securities

There are currently a number of government securities dealers that conduct a business in OTC government options as a part of their government securities business. The OTC government options traded by these firms are non-standarized and are used by market professionals and institutions as hedging or income producing vehicles. The Securities Acts Amendments of 1982 amended Section 3a(10) of the Act to provide explicitly that the term security includes "any put, call, straddle, option or privilege relating to any security." [4] Thus, it is clear that all options on government securities, including OTC government options, are securities separate from the government securities to which they relate, consistent with the current Commission staff interpretation.[5] Since not all options on government securities qualify as exempted securities under Section 3(a)(12) of the Act, brokers and dealers that effect transactions in them, in the absence of an exemption, would be required to register with the Commission and comply with all applicable provisions of the Act.

C. Proposed Rule 3a12–7

The Commission is publishing for comment proposed Rule 3a12–7 which would provide an exemption for options on government securities that are traded over-the-counter. The rule would explicitly define as an exempted security any put, call, straddle, option or privilege which relates to a government security, if the derivative security is traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association such as the NASDAQ System. The rule would not apply, however, to standardized options that are traded on a national securities exchange or automated quotation system, including options on government securities. Moreover, the rule would not exempt any options on government securities from those provisions of the Act which by their terms apply to all securities, such as the antifraud provisions.[6]

The Commission is proposing Rule 3a12–7 for several reasons. First, it believes that the purchase and sale of OTC government options is done primarily to facilitate hedging by market participants, including mortgage bankers, that have offsetting positions in the cash market. The terms of these securities are often individually negotiated, and the purchase and sale of these instruments are closely related to transactions in the underlying government securities. This is a strong basis for concluding that transactions in OTC government options should not be treated differently from transactions in the underlying government securities.[7] Second, as noted above, committees of both houses of Congress have indicated that they believe it appropriate for the Commission to adopt such a rule.[8] Finally, since the Commission would retain rulemaking authority in this area, in the future it could narrow any exemption to require registration of any class of persons it deems necessary.[9]

In proposing this rule, the Commission wishes to emphasize that it has not reached any conclusions with respect to

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[1] The President signed the bill on October 13, 1982. The amendments are referred to herein as the "Securities Acts Amendments of 1982."

[2] *See* Report of the Senate Committee on Banking Housing and Urban Affairs to Accompany S. 2260, S. Rep. No. 390, 97th Cong., 2d Sess. 5 n.2. (1982).

[3] *See* Report of the House Committee on Energy and Commerce to Accompany H.R. 6156, H.R. Rep. No. 626 (Part 1), 97th Cong. 2nd Sess. 9 and 12 (1982).

[4] Section 3(a)(10), as amended, reads as follows:

> The term "security" means any note, stock, Treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit, for a security, *any put, call, straddle, option, or privilege on any security, certificate of deposit or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on an national securities exchange relating to foreign currency, (but not, with respect to any of the foregoing, an option on a contract for future delivery)*, or in general, any instrument commonly known as a "security"; or any certificate of interest or participation in temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal therof the maturity of which is likewise limited. (new language *italicized*)

[5] Although the Commission staff has generally taken the position that OTC options on government securities are separate securities, *see, e.g.*, July 8, 1977 letter from Eric Thompson to Gerald Marcus (Oppenheimer, Appel, Dixon & Company), as a general administrative matter, the Commission has not required registration of government securities firms that limit their activities to government securities and OTC government options. The Commission intends to continue this position informally until a final rule is adopted.

[6] The rule would not exempt such securities from the Section 5 registration requirements of the Securities Act of 1933, and, accordingly, persons selling such securities would be required either to register such securities or rely upon an applicable exemption.

[7] Although as a participant in the GNMA Study, the Commission recommended enactment of legislation which would regulate certain aspects of the forward market in GNMAs, Congress has not acted upon the recommendation. *See* Report of the Joint Treasury—SEC—Federal Reserve Study of the Government Related Securities Markets, 96th Cong., 2nd Sess., Chapter IV (1980) ("GNMA Study").

[8] See notes 2 and 3, *supra*.

[9] In this regard, the Commission notes that, if an over-the-counter market in standardized government options were to develop other than on the NASDAQ System, it may be appropriate to require registration of and impose margin regulation on participants in this market.

the adequacy of regulation of the government securities markets generally. Particularly in light of the recent failures of government securities firms, the Commission has serious concerns about the unregulated portion of the government securities market. Accordingly, the Commission, together with other involved agencies, intends to continue to study concerns raised by activities in this market.

III. Regulatory Flexibility Act Considerations

The Regulatory Flexibility Act, which became effective on January 1, 1981, imposes new procedural steps applicable to agency rulemaking which has a significant economic impact on a substantial number of small entities.[10] The Chairman of the Commission has certified pursuant to the Regulatory Flexibility Act that proposed Rule 3a12-7, if adopted, would not have a significant economic impact on a substantial number of small entities, because the rule would allow all unregistered broker-dealers transacting a business in OTC government options and other exempted securities to conduct business without subjecting any of them to registration and certain other applicable provisions of the securities laws.

IV. Statutory Basis

Proposed Rule 3a12-7 would be adopted under the Act, 15 U.S.C. 78a *et seq.*, and particularly Sections 3(a)(12), 15(a)(2) and 23(a) [15 U.S.C. 78c(a)(12), 78*o* (a)(12) and 78w(a)(23)].

List of Subjects in 17 CFR Part 240

Reporting requirements, Securities.

V. Text of the Proposed Amendment

PART 240—[AMENDED]

On the basis of the above discussion and analysis, the Commission is proposing to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by adding Section 240.3a12-7 as follows:

§ 240.3a12-7 Exemption for Certain Derivative Securities Traded Otherwise than on a National Securities Exchange.

Any put, call, straddle, option, or privilege exclusively traded otherwise than on a national securities exchange or an automated quotation system of a registered securities association, which relates to any security which is a direct obligation of, or an obligation guaranteed as to principal or interest by the United States, or a security issued or guaranteed by a corporation in which the United States has a direct or indirect interest as shall be designated for exemption by the Secretary of the Treasury pursuant to Section 3(a)(12) of the Act, shall be exempt from all provisions of the Act which by their terms do not apply to any "exempted security" or "exempted securities."

VI. Solicitation of Comments

All interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should submit three copies thereof to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, not later than December 1, 1982. Reference should be made to File No. S7-950. All submissions will be made available for public inspection at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Dated: October 20, 1982.

By the Commission.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed rule 3a12-7 to define over-the-counter government options as exempted securities under the Securities Exchange Act of 1934 set forth in Securities Exchange Act Release No. 19162 will not have a significant economic impact on any unregistered broker-dealer and therefore will not have a significant impact on a substantial number of small entities. The reason for this certification is that the rule will enable all unregistered broker-dealers to continue to conduct a business in over-the-counter government options without registering with the Commission, therefore the rule would have no impact on any broker-dealers, including small broker-dealers.

Dated: October 21, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82-29851 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[10] Although Section 601(6) of the Regulatory Flexibility Act, 5 U.S.C. § 601(6), defines the term "small entity," the statute permits agencies to formulate their own definitions. The Commission has adopted definitions of the term small entity for purposes of Commission rulemaking in accordance with the Regulatory Flexibility Act. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0-10, 17 CFR 240.0-10. *See* Securities Exchange Act Release No. 18452 (January 28, 1982). A broker or dealer under Rule 0-10 generally is a "small business" or "small organization" if it had total capital of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 17 CFR 240.17a-5(d), or if not required to file such a statement, if it had total capital of less than $500,000 on the last business day of the preceding fiscal year [or in the time it has been in business, if shorter]. See Rule 0-10(c).

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Permanent State Regulatory Program of Alabama; Proposed Extension of Deadline

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

ACTION: Proposed rule.

SUMMARY: OSM is considering modifying the deadline for Alabama to meet certain conditions of approval of its State permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The conditions concerned in this rulemaking are those found at 30 CFR 901.11 (b) through (m), all of which require amendments to Alabama's surface and underground coal mining rules. Based on a request by the State, the Secretary is proposing to extend the deadline for Alabama to resolve these conditions.

DATE: Comments must be received by December 1, 1982.

ADDRESS: Written comments must be mailed or delivered to: Office of Surface Mining, Alabama Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

See **"SUPPLEMENTARY INFORMATION"** for locations where copies of the Alabama program and extension request are available for public review.

FOR FURTHER INFORMATION CONTACT: Mr. John T. Davis, Director, Alabama Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209, Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program, the Secretary's notice announcing the conditional approval of the Alabama program (47 FR 22030-22058, May 20, 1982), the State's extension request, and all written comments received in response to this notice will be available for review at the OSM offices and the Office of the State Regulatory Authority listed below, Monday through Friday,

8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining, Alabama Field Office, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209

Alabama Surface Mining Commission, Central Bank Building, Second Floor, 811 Second Avenue, Jasper, Alabama 35510

Office of Surface Mining, Administrative Record Room, Room 5315, 1100 L Street, NW., Washington, D.C. 20240

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "**DATES**" or at location other than Homewood, Alabama, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the extension request may request a meeting at the OSM office listed in "**ADDRESS**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

II. Background

Background on the Alabama State Program

Information regarding the general background of the Alabama State program, including the Secretary's Findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found in the May 20, 1982, **Federal Register** (47 FR 22030–22058).

Background on Conditional Approval

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval. The correction of each deficiency is a condition of the approval. If the conditions are not met according to the schedule, OSM takes appropriate steps to implement termination of the approval. The dates are established in consultation with the State based on regulatory and administrative needs of the State's permanent program, the time required for changes to be adopted under State procedures and legislative schedules, and the impact on SMCRA implementation.

III. Discussion of the Extension Request

The Alabama program was conditionally approved on May 20, 1982 (47 FR 22030–22058). In the notice of approval, the Secretary published the schedule for Alabama to resolve each of the 13 conditions on the approval of that State's regulatory program. In a letter to the Director, OSM, dated October 7, 1982, the Alabama Surface Mining Commission requested an extension for meeting those conditions necessitating amendments to Alabama's regulations. The conditions to be affected by Alabama's request are those found at 30 CFR 901.11(b)–(m) and are set forth at 47 FR 22057–22058, May 20, 1982.

The State indicated that it needs additional time to comply with new requirements of the Alabama Administrative Procedures Act (AAPA). One of the new AAPA requirements prescribes a period for legislative review of all changes to the State's rules. The next session of the Alabama Legislature will be in 1983. The Secretary, based on the State's request, proposes to allow the State until September 1, 1983, to meet the specified conditions.

The Secretary believes that under the circumstances, an extension of the current deadlines does not render the deficiencies major. However, the Secretary specifically requests comments on whether an extension of the deadlines would render any deficiency major as that term is used in 30 CFR 732.17(j) (See 47 FR 26356, June 17, 1982).

IV. Procedural Matters

Paperwork Reduction Act

There are no information collection requirements in 30 CFR 901.11 requiring approval by the Office of Management and Budget under 44 U.S.C. 3507.

National Environmental Policy Act

The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no Environmental Impact Statement need be prepared on this rulemaking.

Executive Order 12291

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs, actions or amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, Pub. L. 96–354, I have certified that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 901

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

Dated: October 26, 1982.

J. R. Harris,

Director, Office of Surface Mining Reclamation and Enforcement.

PART 901—ALABAMA

Accordingly, 30 CFR Part 901 is proposed to be amended as set forth herein.

1. The Authority Citation for Part 901 is:

Authority: Sec. 503, Pub. L. 95–87, 91 Stat. 407 (30 U.S.C. 1253).

§ 901.11 [Nomenclature Change]

2. In Part 901, § 901.11 paragraphs (b) through (m) are proposed to be amended by substituting "September 1, 1983" for "December 1, 1982," each time the latter date appears.

[FR Doc. 82-29985 Filled 10-29-82; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 946

Public Comment and Opportunity for Public Hearing on Modified Portions of the Virginia Permanent Regulatory Program

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

ACTION: Proposed rule; notice of receipt of permanent program modifications; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments to Virginia's alternative

reclamation bonding regulations submitted by Virginia.

This notice sets forth the times and locations that the Virginia program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and information pertinent to the public hearing.

DATES: Written comments must be received on or before 4:00 p.m. on December 1, 1982, to be considered in the Director's decision on whether to approve the proposed amendments.

A public hearing on the proposed modifications has been scheduled for November 17, 1982, at the address listed under "**ADDRESSES.**"

Any person interested in making an oral or written presentation at the hearing should contact Mr. Ralph Cox at the address and phone number listed below by November 8, 1982. If no person has contacted Mr. Cox to express an interest in participating in the hearing by the above date, the hearing will be cancelled. A notice announcing any cancellation will be published in the **Federal Register.**

ADDRESSES: Written comments should be mailed or hand delivered to: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

The public hearing will be held at the Lebanon Area Office, Office of Surface Mining Reclamation and Enforcement, Conference Room, Flanagan and Carroll Streets, Lebanon, Virginia 24266.

Copies of the Virginia program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, NW., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Drawer U, Big Stone Gap, Virginia 24219

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219, telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the Secretary of the Interior received a proposed regulatory program from the Commonwealth of Virginia. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program (45 FR 69977–70000). Virginia resubmitted its proposed regulatory program on August 13, 1981, and after a subsequent review, the Secretary approved the program subject to the correction of nineteen minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1981 **Federal Register** (46 FR 61088–61115).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register** (46 FR 61088–61115).

On July 8, 1982, Virginia submitted to OSM proposed program amendment consisting of a General Assembly bill passed on an emergency basis creating the Coal Surface Mining Reclamation Fund (Fund) and promulgated regulations to implement the legislation (Adminstrative Record No. VA 401). The proposed program amendment creates and implements an alternative reclamation bonding system in the Virginia program. On September 21, 1982, the Director of OSM approved the program amendment (47 FR 41556–41558).

On September 30, 1982, Virginia submitted to OSM, proposed program amendments to its alternative bonding regulations (Administrative Record No. VA 431). The proposed amendments to the Virginia regulations appear at V809.6 to add a definition of "cognovit note"; at V809.6 and V809.13 to clarify the type of certification required for a self-bond from an applicant; and at V809.14 to clarify that payment into the fund is due within 30 days after the end of each taxable *calendar* quarter.

The Director now seeks public comment on the adequacy of these program amendments.

Additional Determinations

Pursuant to section 702(d) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 6, and 8 of Executive Order 12291 for all State program actions taken to approve or conditionally approve State regulatory programs, actions or amendments. Therefore, this rule is exempt from a Regulatory Impact Analysis and regulatory review by OMB.

Pursuant to the Regulatory Flexibility Act, Pub. Law. 96–354, I have certified that this proposed rule will not have a signficant economic impact on a substantial number of small entities.

List of Subjects in 30 CFR Part 946

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

Dated: October 26, 1982.

J. Stephen Griles,

Acting Director, Office of Surface Mining, Reclamation and Enforcement.

[FR Doc. 82-29984 Filed 10-29-82; 8:45 a.m.]

BILLING CODE 4310-05-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM83-1]

Formal Procedures for Handling Information

October 22, 1982.

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking is a response to Recommendation 82–1 adopted by the Administrative Conference of the United States, on the nature and scope of exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552 (FOIA). It is intended to supplement 39 CFR 3001.42(c), the Commission's existing procedures regarding requests under FOIA. This rulemaking proposes to establish formal procedures for handling information which may fall within exemption 5 U.S.C. 552(b)(4) as part of the Commission's internal practices.

DATE: Comments responsive to this Notice should be filed on or before November 25, 1982.

ADDRESS: Comments and other correspondence relating to this Notice should be sent to David F. Harris,

Secretary of the Commission, 2000 L Street NW., Washington, D.C. 20268 (telephone: 202/254-3880).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Assistant General Counsel, 2000 L Street, NW., Washington, D.C. 20268 (telephone: 202/254-3824).

SUPPLEMENTARY INFORMATION: This rulemaking is a response to Recommendation 82-1 adopted by the Administrative Conference of the United States, on the nature and scope of exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552 (FOIA). It is intended to supplement 39 CFR 3001.42(c), the Commission's existing procedures regarding requests under FOIA. This rulemaking proposes to establish formal procedures for handling information which may fall within exemption 5 U.S.C. 552(b)(4) as part of the Commission's internal practices. Specifically, information generated pursuant to proceedings under the Commission's rules of practice or through subpart G requirements for periodic reports, are protected through the Commission's *in camera* rule under 39 CFR 3001.31a. It is only information which falls outside those rules which may be considered for exempt status under 5 U.S.C. 552(b)(4). We believe it appropriate to discuss the specific aspects of the Commission's rule alongside a discussion of the recommendations by the Conference.

The Conference stressed the importance of providing notice of a FOIA request for information to the submitter of that information. It stated that without protections for the submitter, the government's ability to collect information would be hindered. The Conference suggested that this protection should take the form of notice to the submitter that the information may be released. The Conference, noting that agencies can provide such notice even without new legislation, made several specific recommendations in this regard. It stated that notice should be provided prior to a final agency decision to disclose information. Recommendation 82-1, 47 FR 30702, July 15, 1982.

Our proposed rule provides, in the last sentence of the rule, for notice to the submitter "[w]hen a request pursuant to Rule 42(c) is made." It also states that the purpose of the notice is to provide an additional opportunity for the submitter to comment on the applicability of the (b)(4) exemption. Under the Commission's rule, the submitter would submit a brief statement of why the information is exempt when it submits the information. It would then have an opportunity to explain the reason for its claim of exemption in detail, should it receive notice from the Commission that a request for the information has been made.

We believe this procedure meets the recommendations of the Administrative Conference. It provides for immediate notice to the submitter as well as providing an opportunity for the submitter to comment on the exempt status of the materials. It also implements, through rulemaking, the gist of the Conference's suggestion as to how Congress should amend FOIA and provide for written objections in contested cases. In addition, by providing for written submissions along with the filing of materials, the rule also accommodates the Conference's purpose in suggesting that (b)(4) material be pre-marked.

The Commission's proposed rule also takes account of the Conference's recommendation that the agency official responsible for disclosing information be of the same rank as the one authorized to withhold information. The last sentence of the rule states: "When a request pursuant to Rule 42(c) is made for information so designated, the Secretary promptly will notify the submitter * * *." Implied in this statement is a recognition of the Secretary's role in these cases. More to the point is 39 CFR 3001.42(c) and 3001.42(c)(1) which provide that request for materials be submitted to the Secretary, and which authorize the Commission to review any decision of the Secretary. The proposed rule does not disturb these subsections.

The Administrative Conference mentioned several informal recommendations which the Commission did not explicitly adopt. Among those recommendations was a proposal to limit the discretion of agencies to release exempt materials to cases in which "disclosure is necessary to prevent injury to an overriding public interest." Recommendation, 47 FR 30702, July 15, 1982. This is a matter for legislation, not agency rulemaking.

The conference also suggested the type of showing the submitter should make in its claim of exemption. Specifically, it stated: "It should be enough that the submitter have a valuable interest in the information, and that disclosure may reasonably be expected to impair that interest." *Id.* The Conference specifically recommended that the coverage of the exemption be extended to include business and research materials. It also called upon agencies to indicate, by rule, those types of materials that are ordinarily subject to disclosure and those that are usually withheld.

We believe that it would be more appropriate to evaluate submitter's presentations individually, rather than encumbering the rule with specific criteria for determining whether the submitter has sufficiently presented his case.

With regard to business and research interests, we believe the Conference appropriately appealed to Congress to make this change. With respect to the recommendation that agencies adopt rules that would indicate those cases in which information is usually disclosed, we do not believe this is appropriate to the work of the Commission. The Commission does not receive an abundance of FOIA requests. Accordingly, it would most likely not have a "typical" case in which materials are disclosed or withheld. We believe this is in accord with the Administrative Conference's statement that "each agency should give individual consideration to techniques that will best facilitate its own disposition of determinations under the exemption." Recommendation, 47 FR 30702, July 15, 1982.

This proposed rule does not bear any significant relationship to the concerns expressed in The Regulatory Flexibility Act. Any benefits which may accrue to the business sector because of the added protections contained in this rule, would apply with equal force to large and small businesses.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Freedom of information.

PART 3001—RULES OF PRACTICE AND PROCEDURE

For the reasons set out above, the Commission proposes to amend our rules of practice by adding the following section:

§ 3001.42a Protection of trade secrets and commercial or financial information.

This section describes the procedures for evaluating Freedom of Information Act requests for information provided to the Commission by a submitter who believes it to be exempted from disclosure by 5 U.S.C. 552(b)(4). Protection of information made available pursuant to proceedings subject to these rules, 39 CFR 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in rule § 3001.31(a). Other information

submitted to the Commission which the submitter believes to be a trade secret or commercial or financial information privileged or confidential and thereby exempt from Freedom of Information Act disclosure under 5 U.S.C. 552(b)(4), should be accompanied by a brief written statement of why that material is exempt. When a request pursuant to rule § 3001.42(c) is made for information so designated, the Secretary promptly will notify the submitter, and provide an opportunity for filing an additional explanation of why the material should not be disclosed prior to decision on that request.

(39 U.S.C. 3603)

David F. Harris,

Secretary.

[FR Doc. 82-29850 Filed 10-29-82; 8:45 am]

BILLING CODE 7715-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2237-6]

Standards of Performance for New Stationary Sources; Lime Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearing and extension of public comment period.

SUMMARY: A public hearing has been scheduled for the proposed changes to the new source performance standards for lime manufacturing plants. The hearing will allow interested parties an opportunity for oral presentations of data and viewpoints. The close of the public comment period has been extended from November 1, 1982, until December 20, 1982, to ensure that the hearing record is held open for 30 days following the public hearing.

DATES: Written comments to be included in the record on the proposed standards must be postmarked no later than December 20, 1982.

Persons wishing to present oral testimony must contact EPA by November 11, 1982. The public hearing will be held on November 18, 1982, beginning at 10:00 a.m.

ADDRESSES: Comments on the proposed standards should be submitted (in duplicate, if possible) to: Central Docket Section (A-130), Attention: Docket No. A-80-53, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons wishing to present oral testimony should notify Ms. Naomi Durkee, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number 919-541-5578.

SUPPLEMENTARY INFORMATION: On September 2, 1981, EPA proposed in the **Federal Register** (47 FR 38832) a response to the Court's remand and a rule change for the new source performance standards for lime manufacturing plants. In that notice, EPA announced the date ending the public comment period and that a public hearing to receive public comment on the proposed changes to the standards would be held if requested. A public hearing has been requested, and this notice specifies the date of a public hearing and extends the end of the public comment period.

Dated: October 22, 1982.

Kathleen N. Bennett,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 82-29999 Filed 10-29-82; 8:45 am]

BILLING CODE 6560-26-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

Medicare Program, Payment for Physician Services Furnished in Institutional Providers of Services; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for public comment on a Notice of Proposed Rulemaking (NPRM) published on October 1, 1982 (47 FR 43578), regarding Medicare coverage and reimbursement for services of physicians who practice in institutional providers (hospitals and skilled nursing facilities). That NPRM proposed rules that would in part, implement section 1887 of the Social Security Act, which was established by section 10B of the Tax Equity and Fiscal Responsibility Act of 1982 (Pub. L. 97-248). The proposed regulations would set forth basic criteria for reasonable charge payment for those services, and would clarify how reasonable charges would be determined for physician services furnished by physicians in a provider setting. The regulations also would specify the conditions under which Medicare will pay on a reasonable cost basis for physician services to providers, and would provide improved tests of reasonableness for medicare carriers and intermediaries to follow in determining payment. In addition, the proposed regulations would establish more specific conditions for payment for the services of anesthesiologists, radiologists, and pathologists.

The NPRM provided an opportunity for public comment through November 1, 1982. In response to requests from physicians, providers, and organizations who are requesting additional time to submit comments, we are extending the comment period through November 16, 1982.

DATE: To assure consideration, comments should be received by November 16, 1982.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, P.O. Box 17073, Baltimore, Maryland 21235.

Please refer to file code BPP-192-P.

If you prefer, You may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection, beginning approximately three weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave., SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Leonard Peshkin, (301) 594-1115.

Dated: October 28, 1982.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 82-30090 Filed 10-29-82; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[BC Docket No. 82-716; RM-4102, RM-4140]

TV Broadcast Stations in Anchorage and Seward Alaska; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes two optional assignment plans regarding VHF television Channel 9 in Anchorage, Alaska, in response to petitions filed by the State of Alaska, and Pioneer Broadcasting Company, Inc. Option I proposes the allocation of Channel 5 on a commercial basis and the reservation of Channel *9 for noncommercial educational use at Anchorage. Option II proposes the allocation of Channel *5 for noncommercial educational use with the assignment of Channel 9 on an unreserved basis. Both options would require the substitution of Channel 8 for Channel 9 at Seward, Alaska. Anchorage could receive a second noncommercial educational channel, as well as a fifth commercial television allocation under these plans.

DATES: Comments may be filed on or before December 13, 1982.

Reply comments may be filed on or before December 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Adopted: October 14, 1982.

Released: October 26, 1982.

By the Chief, Policy and Rules Division:

In the matter of amendment of § 73.606(b), table of assignments, TV broadcast stations. (Anchorage and Seward, Alaska), BC Docket No. 82-716 RM-4102 RM-4140.

1. The Commission herein considers two petitions for rule making seeking assignment of additional VHF television channels to Anchorage, Alaska. As initially filed, the first petition, on behalf of the State of Alaska ("State"), requested the reassignment of VHF Television Channel *9 from Seward to Anchorage, Alaska, reserved for noncommercial educational use, and the substitution of VHF Television Channel 8 for unused VHF Television Channel 9 at Seward. The second petition, filed by Pioneer Broadcasting Company, Inc.[1] ("Pioneer"), also seeks to substitute VHF Television Channel 8 for unused Channel 9 in Seward but requests the reassignment of Channel 9 to Anchorage on an unreserved basis.

2. Subsequent to the filing of these petitions, the Commission in a *Report and Order*, General Docket No. 81-911, 90 F.C.C. 2d 507 (1982), reallocated the frequency bands 76-88 MHz (VHF Television Channels 5 and 6) and 88-100 MHz (FM Channels 201-260) for cross-service sharing between the Broadcast Service on a primary basis, and the Common Carrier Fixed Service on a secondary basis, thereby providing greater spectrum utilization by expanding the number of available FM and TV channels in Alaska. As a result, State now seeks the additional assignment of Channel 5 to Anchorage while retaining its preferred reservation on Channel 9 for noncommercial educational use. The respective assignments can be made consistent with the minimum distance separation requirements of § 73.610 of the Commission's rules.

3. Anchorage (population 173,017),[2] located in south central Alaska, is currently served by five VHF television stations, as follows: KTUU-TV (Channel 2); KTBY (CP issued for Channel 4); KAKM (Channel *7); KTVA (Channel 11); and KIMO (Channel 13). Seward (population 1,843), located approximately 128 kilometers (80 miles) south of Anchorage, is presently assigned VHF Television Channels 3 and 9, both unoccupied by full service stations.

4. State asserts that through its efforts to increase educational service over the years, it has established a network of translator stations, using satellite feed, to reach previously underserved areas. More recently, it claims, low-power television service has been utilized to develop a network of educational television stations throughout Alaska, thus allowing instructional material originating in Anchorage to be distributed to each station through a satellite feed. This project, which is part of the "LEARN/ALASKA Network" is a combined effort between State, the University of Alaska, and the Alaska Department of Education, and offers fundamental educational opportunities at all levels. Although the benefits of these services are provided to residents in even the most remote areas of Alaska via means of low-power television, they are not available to Anchorage residents.

5. According to State, the topography of the Anchorage area is characterized by its mountainous terrain with intervening deep canyons containing communities within which many of its residents dwell. For this reason, State claims the feasibility of utilizing low-power television stations or translators as an alternative means of reaching those residents would be impractical as more than eleven such stations would be needed to provide even marginally adequate coverage. For similar reasons, a full service UHF station could not adequately serve Anchorage. Therefore, State concludes that based on the unacceptability of other options, a full service noncommercial educational VHF television station is required to provide Anchorage and the surrounding area with instructional programming.

6. Except for Channel 4, for which a construction permit has been granted for a commercial station, State advises that the remainder of channels assigned to Anchorage are occupied by full service stations. Accordingly, State claimed in its initial filing, that Channel 9 is the only VHF television channel available for operation which would not cause harmful interference to existing or authorized stations.[3] If Channel 9 is removed at Seward, State asserts that VHF Television Channels, 8, 10 and 12 are available for assignment to Seward. Therefore, the proposed substitution would leave Seward with two channels available for full service use.

7. Pioneer supplied a detailed community profile which indicates, *inter alia*, that Anchorage serves as the center of commerce for an area extending approximately 800 miles to the west. Further, it notes that Anchorage prospers as a retail sales market. As such, it experienced an increase in excess of 20% per year between 1978-1980, to beyond one billion dollars. Thus, according to Pioneer, Anchorage's strong economic base should be able to support another commercial television station.

8. Pioneer claims that a new commercial television station in Anchorage would foster increased diversity and competition among existing stations co-extensive with the public's needs. Therefore, Pioneer

[1] Pioneer is the licensee of Anchorage Station KFQD(AM), as well as the permittee of a new FM station to operate on Channel 293 in Anchorage.

[2] Population figures are derived from the preliminary 1980 U.S. Census Reports.

[3] State remarks that if Channel 9 is reassigned from Seward to Anchorage, television translator Station K09DL, currently licensed to Seward, may be precluded from operation. However, State adds that, if necessary, it will provide technical and financial support to the City of Seward to ensure that an alternate translator station is constructed in order to assure continued service.

requests that Channel 9 be reassigned from Seward to Anchorage on an unreserved basis, and that Channel 8 be substituted at Seward, thereby maintaining the potential for television service to that community.[4]

9. If VHF Television Channel 9 is reassigned to Anchorage as proposed, and if Pioneer should ultimately become the permittee, it declares that it will seek a waiver of § 73.636(a)(1) of the Commission's rules regarding regional concentration of control,[5] to permit its construction and operation of the station.

10. Although Pioneer included preclusion information in its proposal, such study is not required in proceedings to amend the Television Table of Assignments.

11. In view of the competing proposals, we have set forth *infra* as Option I, State's initial proposal to reassign Channel 9 from Seward to Anchorage on a reserved basis, as well as the proposed addition of Channel 5, as noted *supra*, and to substitute Channel 8 for unused Channel 9 in Seward. In response to Pioneer's request, we proposed as Option II to reassign Channel 9 from Seward to Anchorage as an unreserved assignment, with a reservation on Channel 5 instead, and to substitute Channel 8 for Channel 9 in Seward. Comments are invited on the two proposals to determine, in recognition of public interest considerations, which option is preferable.

12. In light of the above, the Commission proposes to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules with respect to Anchorage and Seward, Alaska, as follows:

City	Channel No.	
	Present	Proposed
Option I		
Anchorage, Alaska	2, 4, *7-, 11, 13-	2, 4, 5, *7, *9, 11, 13-
Seward, Alaska	3-, 9-	3-, 8
Option II		
Anchorage, Alaska	2, 4, *7-, 11, 13-	2, 4, *5, *7-, 9, 11, 13-
Seward, Alaska	3-, 9-	3-, 8

13. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

14. Interested parties may file comments on or before December 13, 1982, and reply comments on or before December 28, 1982, and are advised to read the Appendix for the proper procedures.

15. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

16. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An ex parte contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an ex parte presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, and original and four copies of all

[4] Pioneer stated that the present VHF television channels assigned to Seward, 3- and 9-, have remained dormant for over 30 years. Moreover, it noted that due to the development of UHF television in Alaska, as well as the (then proposed) action in General Docket 81-911 allocating television Channels 5 and 6 to the State of Alaska, its proposal should not hinder the Commission's ability to make additional assignments thereto.

[5] See footnote 1, *supra*.

comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M. Street, NW., Washington, D.C.

[FR Doc. 82-29912 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-719; RM-4190]

FM Broadcast Station in Mary Esther, Fla.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes a first FM assignment to Mary Esther, Florida, in response to a petition filed by Richard Allen Humphrey.

DATES: Comments must be filed on or before December 13, 1982, and reply comments on or before December 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Mary Esther, Florida), BC Docket No. 82-719; RM-4190.

1. Richard Allen Humphrey ("petitioner") on August 19, 1982, submitted a petition for rule making seeking the assignment of Channel 288A to Mary Esther, Florida, as that community's first FM assignment. Petitioner stated his intention to apply for the channel, if assigned.

2. In support of the proposal the petitioner submitted population and economic information. However, in view of the action taken in *Revision of FM Policies and Procedures,* 90 F.C.C. 2d 88 (1982), these issues were eliminated as a requirement to justify a nonconflicting proposal.

3. The assignment of Channel 288A to Mary Esther, Florida, will require a site restriction of approximately 1.2 miles south of the city to avoid short spacing to Station WIGC(FM), Troy, Alabama. Because of this restriction and Mary Esther's close proximity to the Gulf of Mexico, site availability may be a problem which petitioner should address in his comments.

4. In view of the fact that the proposal could provide a first local broadcast service to Mary Esther, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to the following community:

City	Channel No.	
	Present	Proposed
Mary Esther, Florida		288A

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before December 13, 1982, and reply comments on or before December 28, 1982, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 Fed. Reg. 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1066, 1982; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 82-29915 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-720; RM-4135, RM-4136]

FM Broadcast Stations in Sumrall and Taylorsville, Mississippi; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule.

SUMMARY: Action taken herein proposes the assignment of a Class A channel to either Sumrall or Taylorsville, Mississippi, in response to petitions filed by Rebel Broadcasting of Mississippi and Communications Associates, respectively. The proposal could provide a first FM broadcast service to either community.

DATES: Comments must be filed on or before December 13, 1982, and reply comments on or before December 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), table of assignments, FM broadcast stations. (Sumrall and Taylorsville, Mississippi), BC Docket No. 82-720 RM-4135, RM-4136.

1. The Commission herein considers two separate petitions for rule making. The first was filed by Rebel Broadcasting Company of Mississippi ("Rebel") on June 9, 1982, proposing the assignment of Channel 240A to Sumrall, Mississippi. The second petition was submitted by Communication Associates ("Communication") on June 10, 1982, proposing the assignment of Channel 240A to Taylorsville, Mississippi. The proposals would provide a first FM service to either community. Since the distance between Sumrall and Taylorsville is approximately 28 miles and the required separation for co-channel Class A assignments is 65 miles, these proposals are considered mutually exclusive. A staff study indicates that no other channels are available for assignment to either community. Both petitioners have stated their intention to apply for the channel, if assigned to their requested community.

2. Sumrall (population 1,197),[1] in Lamar County (population 23,821) is located approximately 70 miles southeast of Jackson, Mississippi. It is without local broadcast service. Taylorsville (population 1,387) in Smith County (population 15,077) is located 55 miles southeast of Jackson. It is served by daytime only AM Station WSCO.

3. In support of its proposal, Communication asserts that Taylorsville is a growing city in need of a local broadcast facility. According to Communication, the requested assignment would be responsive to the needs of the community, providing local news, sports, weather and public affairs programming to its residents. Communication also claims that the educational programs and services that could be provided by the proposed facility could raise the education level of the residents, thus improving the quality of the work force. In the opinion of the petitioner, this work force could help to attract new industry and result in a favorable impact on Taylorsville's economy. Rebel did not provide any information as to the need for a first FM assignment to Sumrall. In comments on this proposal, Rebel is requested to furnish economic and demographic information to support its request for a first FM assignment to that community.

4. Although Taylorsville is the larger of the two communities, our priorities place greater weight on the provision of a first local service to as many communities as possible. Since there are no other channels available to either community, we shall provide each proponent an opportunity to further demonstrate, in comments to this proposal, why its community should receive the assignment. In this regard, the parties should be guided by our recent action in *Revision of FM Assignment Policies and Procedures,* 90 F.C.C. 2d 88 (1981). The assignment of Channel 240A to Sumrall would require a site restriction of approximately 3 miles west-northwest of the city (to avoid short spacing to WLRP, Mobile, Alabama) and a Channel 240A assignment to Taylorsville would require a site restriction of 5.3 miles southeast of the city (to avoid short spacing to Station WLIN, Jackson, Mississippi).

5. In view of the foregoing, the Commission proposes to amend the FM Table of Assignments, §73.202(b) of the Commission's rules, with regard to the following cities:

City	Channel No.	
	Present	Proposed
Sumrall, Mississippi		240A
or		
Taylorsville, Mississippi		240A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before December 13, 1982, and reply comments on or before December 28, 1982, and are advised to read the Appendix for the proper procedures.

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and*

[1] Population figures are taken from the 1980 U.S. Census, Advance Report.

604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules, 46 FR 11549, published February 9, 1981.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

(Secs. 4, 303, 48 stat., as amended, 1006, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), (5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) and 0.204(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All findings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-29917 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-718; RM-4182]

FM Broadcast Station in Farmington, New Mexico; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes a third FM channel to Farmington, New Mexico, in response to a petition filed by San Juan Broadcasting Corp.

DATES: Comments must be filed on or before December 13, 1982, and reply comments on or before December 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 14, 1982.

Released: October 26, 1982.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Farmington, New Mexico), BC Docket No. 82-718 RM-4182.

1. The Commission herein considers a petition for rule making filed August 5, 1982, by San Juan Broadcasting Corp. ("petitioner"),[1] proposing the assignment of Class C Channel 271 to Farmington, New Mexico, as its third FM assignment. Petitioner stated its intention to apply for the channel, if assigned.

2. In support of the proposal, the petitioner submitted population and economic data. However, pursuant to the action taken in *Revision of FM Policies and Procedures,* 90 F.C.C. 2d (1982), this information is no longer required to justify an assignment.

3. In view of the foregoing and the fact that the proposed assignment could provide a third FM broadcast service to Farmington, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Rules, with regard to the following city:

[1] San Juan Broadcasting Corp. is the licensee of Station KKBK(AM), Aztec, New Mexico.

City	Channel No.	
	Present	Proposed
Farmington, New Mexico	225, 245	225, 245, 271

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before December 13, 1982, and reply comments on or before December 28, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposals(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) the filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be availabe for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 82-29914 Filed 10-29-82; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-308; RM-4059, RM-4165]

FM Broadcast Stations Medford and Klamath Falls, Oreg.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to substitute FM Class C Channel 295 for Channel 237A, and add Class C Channel 278, at Medford, Oregon, in response to requests from M-3-X, Inc. and Matthias Enterprises, respectively. As an alternative, we have proposed to substitute Channel 296A for 240A at Klamath Falls, Oregon, in order to assign Channel 239 as a substitute for Channel 237A at Medford, Oregon.

DATES: Comments must be filed on or before December 13, 1982, and reply comments on or before December 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Philip S. Cross, Broadcast Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of subjects in 47 CFR Part 73
Radio broadcasting.

Adopted: October 18, 1982.

Released: October 26, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Medford and *Klamath Falls,*[1] Oregon), BC Docket No. 82-308 RM-4059 RM-4165.

1. The Commission has under consideration the *Notice of Proposed Rule Making* in this proceeding, published in the **Federal Register** on June 22, 1982 (47 FR 26868). The *Notice* proposed to substitute Class C Channel 239 for Channel 237A at Medford, Oregon, in response to a petition by M-3-X, Inc. ("M-3-X"), licensee of FM Station KBOY-FM (Channel 237A), Medford. M-3-X had also requested that its license be modified to specify operation on the Class C channel.

2. In response to the *Notice,* Comments and Reply Comments were filed by both M-3-X and Matthias Enterprises ("Matthias"). Matthias, licensee of AM Station KYJC, Medford, stated its desire to apply for a new FM station there and proposed that Class C Channel 278 also be assigned to Medford. Matthias stated that its proposal would serve the public interest by facilitating the improvement of technical service to the Medford area, and adding another Class C FM channel to meet the demand evidenced by M-3-X. Matthias stated that it would apply for operation on the channel, if so assigned.

3. Matthias also urged that, in the event the Commission determines to add only a single Class C channel to Medford, an opportunity should be accorded Matthias as well as any other interested parties, to apply for authority to operate on the one channel assigned. In its Reply Comments, M-3-X supported the Matthias proposal for an assignment of Channel 278 to Medford.

4. We have no policy objections to the assignment of Channel 239 and Channel 278 at Medford. However, in searching for Class C channels for assignment to Medford (M-3-X had originally requested the assignment of Channel 235, but that channel has been under consideration for assignment to North Bend, Oregon, in BC Docket 81-155), we have since discovered that Channel 239 involves a conflict with the assignment of Channel 240A which was recently made to Klamath Falls, Oregon (BC Docket No. 82-77, 47 FR 29849). We inadvertently overlooked the Klamath Falls assignment at the time that we proposed Channel 239 for Medford. The distance between Klamath Falls and Medford is approximately 54 miles. The required separation is 105 miles. Accordingly, we propose to solve the conflict by substituting Channel 296A for 240A at Klamath Falls.

5. Wynne Broadcasting Company, Inc. ("Wynne") has pending before the Commission an application for operation on Channel 240A at Klamath Falls (File No. BPH-820727). We shall not delay the processing of that application pending the outcome of this proceeding. Rather, Wynne should be on notice that it may have to amend its application at a later date. A copy of this *Notice* will be sent by certified mail to Wynne Broadcasting Company, Inc.

6. As another alternative, we note that there are other Class C channels which could be assigned to Medford and we are proposing as an alternative to assign Channel 295 as a substitute for Channel 237A at Medford in addition to assigning Channel 278 there. We seek comments from M-3-X and Wynne on the two alternative plans set forth herein.

7. In view of the above, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Commission's rules, as follows:

City	Channel No.	
	Present	Proposed
Option I		
Klamath Falls, Oregon	223, 240A, and 258.	223, 258, and 296A.
Medford, Oregon	229 and 237A	229, 239, and 278.
Option II		
Medford, Oregon	229 and 237A	229, 278, and 295.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

9. Interested parties may file comments on or before December 13, 1982, and reply comments on or before December 28, 1982, and are advised to read the Appendix for the proper procedures.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's rules,* 46 FR 11549, published February 9, 1981.

11. For further information concerning this proceeding, contact Philip Cross, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rulemaking other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

12. It is further ordered, that the Secretary shall send a copy of this *Further Notice of Proposed Rule Making* by certified mail, return receipt requested, to Wynne Broadcasting Company, Inc., 1338 Oregon Avenue, Klamath Falls, Oregon 97601.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) and 0.024(b) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may led to denial of the request.

3. *Cut-off Procedures.* The following

[1] This community has been added to the caption.

procedures will govern the consideration of filings on this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attched. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-29916 Filed 10-29-82; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 82-717; RM-4185]

FM Broadcast Station in Winters, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commssion.

ACTION: Proposed rule.

SUMMARY: This action proposes a first FM assignment to Winters, Texas, in response to a petition filed by Soho Broadcasting.

DATES: Comments must be filed on or before December 13, 1982, and reply comments on or before December 28, 1982.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Montose H. Tyree, Broadcast Bureau (202) 632-7792.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Adopted: October 14, 1982.
Released: October 26, 1982.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Winters, Texas), BC Docket No. 82-717 RM-4185.

1. Soho Broadcasting ("petitioner") [1] on August 16, 1982, submitted a petition for rule making which seeks the assignment of Channel 240A to Winters, Texas, as its first FM channel. Petitioner states that it will submit an application to construct and operate on Channel 240A, if assigned to winters. The channel can be assigned in full compliance with the minimum spacing requirements of § 73.207 of the rules.

2. Since Winters is within 320 kilometers (199 miles) of the U.S.-Mexican border, the proposed assignment requires coordination with the Mexican Government.

3. In view of the fact that the proposed assignment could provide a first FM service to winters, the Commission proposes to amend the FM table of Assignments, §73.202(b) of the rules, as follows:

[1] Petitioner is the licensee of daytime-only AM Station KRWT, Winters, Texas.

City	Channel No.	
	Present	Proposed
Winters, Texas		240A.

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before December 13, 1982, and reply comments on or before December 28, 1982, and are advised to read the Appendix for the proper procedures.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § § 73.202(b), 73.504 and 73.606(b) of the Commission's rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 82-29913 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 2 and 97

[PR Docket No. 82-624; FCC 82-410]

Definition and Measurement of Transmitting Power in the Amateur Radio Service

AGENCY: Federal Communnications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend the Amateur Radio Service Rules to clarify the requirements pertaining to definition and measurement of transmitting power and to deregulate existing requirements for power measurement. The current rules have not been revised for several decades and cannot be adequately applied to modern technology and issues. The proposed rules eliminate ambiguities that exist in the present rules and define transmitting power in a manner that can be applied to the varied technologies of the service. The proposed rules would also delete an unnecessary requirement that operators provide a means, in some instances, to accurately measure transmitter power.

DATES: Comments are due by February 1, 1982 and replies by March 1, 1983.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Lett, Private Radio Bureau, Special Services Division, (202) 632-4964.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 97

Radio.

Adopted: September 1, 1982.

Released: October 1, 1982.

In the matter of definition and measurement of transmitting power in the amateur radio service, PR Docket No. 82-624.

Introduction

1. Notice of Proposed Rule Making in the above-captioned matter is hereby given.

2. The Commisssion is initiating this proceeding because the present rules governing maximum transmitting power [1] in the Amateur Radio Service are archaic and unsuitable.[2] They do not adequately apply to modern operating methods and place a variety of unnecessary burdens upon amateur radio operators. These rules are also difficult to enforce and require measurement techniques which can be hazardous to amateur operators and Commission enforcement personnel. Furthermore, the Commission has had to deal with a variety of substantive issues involving transmitting power in the past, and has consistently found the existing rules unsatisfactory for addressing such issues. Accordingly, it is evident that the time has come to resolve the vexing questions of transmitting power definition and measurement. It is also important to make clear that the intention of this proceeding is limited to improving the definition and measurement of transmitting power. We desire to avoid changing the actual power that amateur radio stations use.

Background

3. At one time, amateur radio transmissions consisted solely of on-off telegraphy (emission type A1, also referred to as "CW") and full carrier, amplitude modulated voice (emission type A3, also referred to as "AM DSB") emissions. For these emissions, the average final amplifier current of a transmitter remains fairly constant during measurement, permitting the

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[1] We are defining the term "transmitting power" to refer, generically, to different classifications of radio frequency (RF) power generated by, and defined for, operations of an amateur radio station. Within this broad term, we are defining "transmitter power" to describe the RF power produced by the transmitter itself and we are defining "effective radiated ppower" ("ERP") to describe the energy radiated by the station's antenna system.

[2] The subject rules are those entitled "Maximum authorized power" and are found in § 97.67 of the Commission's Rules. Other rules affected include § 97.61, "Authorized frequencies and emissions," and § 2.106, "Table of Frequency Allocations."

input power to the amplifier to be determined with inexpensive galvanometers.[3] Today however, the most widely used emission mode on the high frequency amateur radio bands is single sideband voice (emission type A3J, also referred to as "SSB"). When transmitting SSB voice emissions, the final amplifier current of a transmitter fluctuates with the modulating signal. The pointer of a meter, indicating this varying current, swings up and down the scale as the operator speaks and cannot be read with any reasonable degree of accuracy. Also, differences in the mechanical damping of conventional meters leads to differences in the apparent measurement. Thus, it is very difficult, if not impossible, to measure input power while transmittig SSB voice emissions. Transmitter power is equally, or even more difficult to measure for other modern and innovative modulation schemes used by amateur radio operators.

4. Despite the many advances in radio transmission techniques used by amateurs, many rules pertaining to these techniques have remained unchanged. For example, the present rules refer to obsolescent vacuum tube technology and have no clear meaning for the solid-state transmitters and amplifiers which are now commonly used in the Amateur Radio Service. For most of these amplifiers and some modern transmitters, a rather complex, and often hazardous procedure involving partial disassemly is necesary to measure input power. The present rules also burden many amateur radio operators with a requirement that they provide a means to accurately measure their transmitter input power. This rule was conceived to compel operators to be cognizant of their transmitter power at all times and thus avoid inadvertent use of unauthorized levels of power. However, with a variety of means other than "accurate measurement" available to operators to determine compliance with the power limitation rules, it is difficult to envision this rule serving a useful purpose.

5. The subject of amateur transmitter power limitations has been a part of two recent Commission rule making proceedings. In 1974 the Commsission initiated a proceeding, in Docket 20282, that dealt comprehensively with operator classes, privileges and requirements.[4] The Commission proposed, as part of that proceeding, to "* * * specify the maximum transmitter output in terms of peak envelope power (PEP) * * *" in order to "* * * improve the technique specified in the Rules for determining power." Other techniques under consideration for power measurements and regulatory requirements included PEP input, average power input, ratios of peak-to-average power output and limitations on dissipation ratings of final amplifier devices.

6. The comments filed in response to our proposal in Docket 20282 were mostly negative. Some expressed concern that amateur operators might be required to obtain relatively expensive (at that time) commercial quality, peak-reading instruments to measure PEP output. In the final Report and Order in that proceeding,[5] the Commission decided not to amend the transmitter power requirements at that time. However, the Commission stated:

> (W)e are still of the opinion that the state of present-day amateur communications warrants the use of better procedures to determine transmitter power than the "plate voltage times current" method. We intend to revisit this matter at a later time, and we encourage amateurs, in the interim, to develop and disseminate data which could be used as a basis for a workable and state-of-the-art measurement technique.

Since the time when comments were received in that proceeding, articles have appeared in amateur radio periodicals describing practical transmitter power output measuring techniques, and construction of power output measuring devices. Also, relatively inexpensive output power meters are now widely available commercially.

7. In 1980 the issue of amateur transmitter power was also addressed in the Commission proceeding dealing with revision of the Amateur Radio Service Rules into "Plain Language."[6] The Commission proposed to specify the use of no more than 1000 watts or 2000 watts peak envelope power input to the final amplifier stage, depending on the emission type used. The Commsssion stated, "(R)ewriting the current requirements into plain language is not a straightforward task in itself. The current rules are so far out of date with modern design practice in the (Amateur Radio) Service, and with present FCC station inspection practices, more than rewording is called for." This proposal was considered "* * * a satisfactory interim step until such time as the matter of transmitter power can be more fully addressed." That particular proceeding has since been terminated without action.[7]

8. Finally, in an Order adopted January 27, 1982, addressing issues of power limitations for Morse telegraphy and Earth-Moon-Earth operations, the Commission stated that it found "* * * it difficult to address substantive issues involving transmitter power since present regulations are inadequate when applied to current operating methods and emission modes." The Commission concluded by once again calling on the "* * * amateur community to develop * * * data which could be used as the basis for a workable * * * power measurement technique and as the basis for Commission rule makings in this area."

Proposal

9. The Commission can find no salient reason to continue to specify transmitter power limits in terms other than output power. As noted earlier, equipment disassembly and meter attachments necessary to accurately measure input power present hazards to amateur operators and Commission enforcement personnel. Input power measurements can also be complex or ambiguous for certain amplifying devices and amplifier configurations. These complexities can be especially confusing to less experienced operators. And ultimately, due to differences in amplifier efficiences, power input limitations are not properly related to the intent behind the power limitations specified in the rules, only output power is germane to interference potential.

10. Consideration was given to a variety of other methods for controlling transmitter power. For example, we considered limiting final amplifier devices to those with certain maximum dissipation ratings. However, such a rule would suffer from having to rely on poorly standardized or ambiguous rating methods. Such a rule would also be unenforceable due to the large amount of equipment currently available, and in use, which exceeds any appropriate dissipation limit. Other means considered for regulating transmitter power are inadequate for the same or similar reasons. Furthermore, there appears to be no means to define and measure transmitter power, other than by output, which can be adequately

[3] This measurement technique involves using a voltmeter and a current meter to determine the average DC power supplied to the final amplifying circuit, other than that power which is not delivered to the plate circuit. Power for heating vacuum tube cathodes is not included.

[4] Notice of Proposed Rule Making, 29 FR 44042, December 20, 1974.

[5] Third Report and order, 44 FR 16460, March 19, 1979.

[6] Notice of Proposed Rule Making in PR Docket 80-729, 45 83592, December 19, 1980.

[7] Order in PR Docket 80-729, 46 FR 60033, December 8, 1981.

applied by Commission enforcement personnel. Accordingly, the Commission is proposing to define and measure amateur transmitter power in terms of output.

11. Defining transmitter power in terms of output has a number of advantages for amateur operators. A practical constraint which radio operations have always had to face is that for most amplifying devices, the efficiency of the device (power output as compared to power input) decreases as the operating frequency increases. By defining power in terms of output amateur operators interested in operating at higher frequencies, particularly in the VHF, UHF and higher frequency bands, would no longer be constrained by amplifier efficiency. Furthermore, operators would no longer have cause to "push" amplifiers to the margins of their capability; a poor engineering practice which often leads to undesirable spurious and harmonic emissions. Amateur operators would be able to transmit at the same maximum power across all bands while using good engineering practice.

12. The Commission is further proposing to specify the power output measurement in terms of peak envelope power. The only reasonable alternative to specifying PEP would be to specify mean power. However, mean power measurements, like the present "average DC input" measurement, have little meaning when applied to SSB and certain other emissions. In addition, as amateur operators continue to pursue such technological developments as digital communications, mean power measurements may become even less applicable. PEP measurements, on the other hand, can be unambiguously applied to virtually all emission types and can also be easily computed from carrier power for many popular emission modes.[8]

13. In arriving at a figure to specify as the authorized maximum limit for transmitter PEP output, the Commission has endeavored to avoid any significant change in the power actually authorized to amateurs currently. However, since the current rules, in effect, authorize different maximum PEP outputs for amateur transmitters, depending on the emission type used, finding a single, suitable number for the maximum limits is no easy task.[9] We have considered establishing different PEP output limitations for different emission modes in order to avoid any significant change in actual present operating power. This would entail classifying each amateur emission mode into a group, with each group having a distinct power limitation figure. Taking this approach, we believe, would lead to complexity and confusion in the rules, and inhibit the opportunities for operators to use emission modes not easily classified (controlled carrier AM emissions for example). Consequently, we find that this approach is not acceptable.

14. Since we are committed to setting forth power limitation figures which are simple (that is, void of unnecessary exceptions) and unambiguous (that is, easily applied to various emission modes without any question as to whether the mode falls into some excepted category), we believe that ideally there should be only one figure specified for amateur transmitter power (with the exception of the power limits for Novice class operators and others operating in the "Novice subbands"). Again, arriving at a single power-limit figure is a difficult task. We have considered authorizing a maximum of 1000 watts PEP output for amateur transmitters. This is a number which amateur operators are accustomed to associating with transmitter power limitations and which effects the least average change in actual maximum operating power for most common emissions. This specification would result in an approximate 1 decibel (dB) increase in the maximum power authorized for FM and CM (A1) emission modes. However, this specification would result in some loss in the maximum power authorized for most other AM emission modes.

15. Limitations on AM DSB emissions would be changed significantly and this issue is addressed separately in paragraph 17 below. Limitations on SSB emissions would be more restrictive by approximately 1 dB. While the Commission finds it difficult to consider this change significant in terms of actual communications capability, we recognize that, considering the equipment that amateur operators may already own, some operators may consider a 1 dB decrease in the maximum authorized power to be significant. Consequently, a 1000 watt specification may not be well accepted for all amateur operations.

16. The Commission, therefore, proposes to authorize 1500 watts as the maximum PEP output of an amateur station transmitter. This specification would result in no decrease in the actual authorized power for the popular emission modes. CW and FM emission mode operations would realize an approximate 3 dB increase in actual authorized power. Transmitter power in the frequency bands 3700–3750 kHz, 7100–7150 kHz (7050–7075 kHz when not within Region 2), 21,100–21,200 kHz and 28,100–28,200 kHz (the "Novice subbands") would be limited to 200 watts PEP output. The power limitations for protection of LORAN–A, in the band 1900–2000 kHz, would be converted from DC input power to peak envelope power output. Transmitter power in the 420–450 MHz band would be limited to 50 watts peak envelope power output when operating in the protected military zones (except as authorized by §§ 97.421 and 97.422 of the rules for satellite operations). We invite comments as to the appropriateness of the maximum limits we have selected, considering our commitment to specifying a single figure for maximum authorized power (excepting the "Novice subband," LORAN–A and military zone restrictions).

17. Amateur operations utilizing AM DSB would be significantly affected by our proposal to specify transmitter power in terms of a single PEP limit. These operations, when subjected to our maximum 1500 watt PEP specification, would be limited to approximately half of their current maximum operating power. And while this power reduction might be appropriate for an emission type which, by today's standards, is spectrum inefficient, the Commission recognizes that there is still some interest in this mode. Consequently, we propose to "grandfather" such operations of those amateurs who currently use AM DSB. They would be allowed to continue to use the transmitter power definitions, measurements and limitations currently specified in the Rules for a period of five years when using that mode. After that time, transmitter power for AM DSB emissions would be defined, measured and limited the same as for all other emissions. We specifically invite comments as to whether a five year period is an appropriate length of time for the "grandfather" term.

18. The Commission further proposes to delete the requirements of 97.67, paragraph (a) of the rules which requires amateur operators under some circumstances, to provide a means for accurately measuring transmitter

[8] For example, PEP is the same as carrier power for frequency modulation (FM) and CW (A1) emissions. For AM DSB (A3) emissions, modulated 100 percent, the PEP is approximately four times the carrier power.

[9] For example, transmitters operating at the current maximum authorized power of 1000 watts input to the final amplifier stage can develop approximately 750 watts of PEP output for FM and CW emission modes, but can develop approximately 1300 watts of PEP output for SSB emissions and approximately 3000 watts for AM DSB emissions.

power.[10] The Commission believes that each operator should determine individually the best means for ensuring compliance with the power limitations. Removing this regulation would relieve amateur operators of the burden to have specific equipment on hand. In place of this current rule, we propose to include a description of the method which the Commission will use to determine transmitting power. In this way, operators will be fully aware of the methods used by us to determine compliance. We wish to stress that we have no intention of requiring operators to purchase any equipment for making transmitting power measurements.

19. Our proposals also include a revised definition of effective radiated power (ERP). The current definition[11] is ambiguous in that it does not specify whether the power delivered to the antenna should be measured in terms of mean power, carrier power, peak envelope power, or in accordance with some other measurement specification. The definition we are proposing would be based on the *transmitter power* delivered to the antenna. Since transmitter power would be defined earlier in the Rules in terms of PEP, ERP would also be based on a peak envelope measurement.

20. We believe that while eliminating an ambiguity, our proposed definition of ERP would have no impact on most practical amateur operations. The ERP limitations only apply to stations in repeater operation and virtually all such operations use frequency modulation (FM). Since PEP, mean power and carrier power are the same for FM emissions, FM repeater operations could continue to use the same power levels regardless of how operators may have measured power previously. We are aware, however, that some repeater operations exist which use amplitude modulation (AM) and which may be adversely affected by our proposed ERP definition. But since there are only a handful of AM repeater operations, we believe that any adversely affected operations could be relieved from power reduction, if necessary, by a Special Temporary Authorization (STA).

21. The Commission specifically invites comments on the following issues which we have not sufficiently resolved to make specific proposals. The first is that of an acceptable standard for audio input level to be used during those power measurements that would required a source of modulation. For example, with an SSB transmitter the power output varies according to the level of audio fed into it from a microphone or some other source. Therefore, in order to get an appropriate value for transmitter power during a station inspection it would be necessary for Commission engineers to simulate the normal audio input. This would, however, be an impossible task since it would be necessary to emulate an infinite number of human voices or other forms of modulating signals. Consequently, we believe that a more reproducible standard in required. One possibility would be to use a two-tone audio generator as the modulating signal, with the generator output level set just below that which causes overload distortion in the emitted radio frequency waveform. Another possibility would be to use an audio input signal level which produces the same field strength readings as those detected by Commission engineers during monitoring which may have taken place prior to the station inspection. Comments on these possibilities, or recommendations for other schemes, would be welcomed since it would be desirable to specify in the rules the actual methods which may be used by Commission enforcement personnel.

22. We also invite comments on the question of impedance matching of measuring equipment to amateur transmitters during a station inspection. Ideally, there would be a standard impedance which could be used to simplify power measurements for operators as well as Commission personnel. Nonetheless, we are prepared to accept the burden ourselves of matching Commission measuring equipment to individual transmitters in order to obtain accurate measurements. However, we welcome any suggestions which might mitigate this problem for station inspections.

23. Finally, we invite comments as to whether some exception to the PEP output definition should be made for pulse transmissions (type P emissions). Since pulse width may be narrow and pulse repetition infrequent for many pulse transmissions, it may be appropriate to factor these parameters into power limitations applied to this emission mode.

Conclusion

24. The Commission recognizes that the issue of transmitting power limitations is an emotional one for many amateurs. However, it is plain that the current definitions and measurement techniques are inadequate and we must take action. We cannot stress enough our commitment to be fair to the interests of all amateur operators. In the past, the Commission has found the comments of the amateur community quite helpful in its rule making proceedings. We anticipate that, in this proceeding, amateur operators will recognize the many benefits that our proposals offer to them and provide constructive comments to aid us in our final decision on this matter.

25. Accordingly, notice is hereby given that it is proposed to amend 47 CFR Parts 2 and 97 in accordance with the proposal set forth in the attached Appendix.

Procedural Matters

26. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested persons may file comments on or before February 1, 1983, and reply comments on or before March 1, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

27. In accordance with § 1.419 of the Commission's rules, 47 CFR 1.419, formal participants must file an original and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal

[10] Section 97.67, paragraph (a) of the Commission's rules states, in part, that, "An amateur transmitter operating with a power input exceeding 900 watts to the plate circuit shall provide means for accurately measuring the plate power input to the vacuum tube or tubes supplying power to the antenna."

[11] Section 97.3 paragraph (t) of the Rules currently defines effective radiated power as, "The product of the radio frequency power, expressed in watts, delivered to an antenna, and the relative gain of the antenna over that of a half-wave dipole antenna."

Communications Commission, Washington, DC 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

28. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231. A summary of the Commission's procedures governing *ex parte* contacts in informal rule makings is available from the Commission's Consumer Assistance Office, FCC Washington, DC 20554, (202) 632-7000.

29. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) do not apply to this rule making proceeding since this proposal would simply redefine certain technical terms in the Rules and specify the procedures used by the Commission in determining compliance with those rules. All substantive proposals are either insignificant in effect or deregulatory. No new equipment would be required to be purchased by amateur radio operators. Consequently, there would be no economic impact on small businesses, small organizations or small governmental jurisdictions.

30. It is ordered that the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

31. For further information on this proceeding, contact Steve Lett, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

It is proposed that Parts 2 and 97 of the Commission's Rules and Regulations, 47 CFR Parts 2 and 97, be amended as follows:

PART 2—[AMENDED]

§ 2.106 [Amended]

1. In § 2.106, under the heading "NG FOOTNOTES," the heading of the table in Footnote NG 15, paragraph (a)(4) would be revised from "Maximum DC plate input power in watts" to read "Maximum transmitter peak envelope power output in watts".

2. In § 2.106, under the heading "U.S. FOOTNOTES," Footnote US7, the introductory paragraph would be amended to read as follows:

US7 In the band 420-450 MHz and within the following areas, the peak envelope power output of a transmitter used in the Amateur Radio Service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer-in-Charge at the applicable District Office and the Military Area Frequency Coordinator at the applicable military base:

PART 97—[AMENDED]

3. In § 97.3, paragraph (t) would be revised to read as follows:

§ 97.3 Definitions.

* * * * *

(t) Transmitting power. The radio frequency (RF) power generated by operations of an amateur radio station, including the following:

(1) Transmitter power. The peak envelope power (output) present at the antenna terminals (where the antenna feedline, or if no feedline is used, the antenna, would be connected) of the transmitter. The term "transmitter" includes any external radio frequency power amplifier which may be used. Peak envelope power is defined as the average power during one radio frequency cycle at the crest of the modulation envelope, taken under normal operating conditions.

(2) Effective radiated power. The power of the transmitter (peak envelope) power, expressed in watts, delivered to an antenna, and the relative gain of the antenna over that of a half-wave dipole antenna.

* * * * *

4. In § 97.61, paragraph (b)(2), the heading of the table would be revised form "Maximum DC plate input power in watts," to read "Maximum trnsmitter peak envelope power output in watts".

5. In § 97.61, paragraph (b)(7) would be revised to read as follows:

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) * * *

(7) In the following areas, the peak envelope power output of a transmitter used in the Amateur Radio Service shall not exceed 50 watts, except when authorized by the appropriate Commission Engineer-in-Charge and the appropriate Military Area Frequency Coordinator:

* * * * *

6. In § 97.67, the title and paragraphs (a), (b) and (d) would be revised, and paragraph (e) would be added, to read as follows:

§ 97.67 Maximum authorized transmitting power.

(a) Notwithstanding other limitations of this section, amateur radio stations shall use the minimum transmitting power necessary to carry out the desired communications.

(b) Each amateur radio transmitter may be operated with a peak envelope power output (transmitter power) not exceeding 1500 watts, except as provided in paragraph (e) of this section. Other limitations of this section and § 97.61 also apply.

(c) * * *

(d) The peak envelope power output (transmitter power) of each amateur radio transmitter shall not exceed 200 watts when transmitting in any of the following frequency bands:

(1) 3700-3750 kHz;

(2) 7100-7150 kHz (7050-7075 kHz when the terrestrial location of the station is not within Region 2);

(3) 21100-21200 kHz;

(4) 28100-28200 kHz.

(e) Any amateur radio station transmitting A3 emissions on or before

(the release date of this Notice) in accordance with applicable rules, but with a transmitter power exceeding that authorized by paragraph (b) of this section, may continue to do so until (five years after the effective date of the rule amendments by this proceeding) provided that the power input to the final amplifying stage supplying radio frequency power to the antenna feedline does not exceed 1000 watts, exclusive of power for heating the cathodes of vacuum tubes. Limitations of paragraphs (a), (c) and (d) of this section and limitations of § 97.61 still apply.

7. A new § 97.68 would be added to read as follows:

§ 97.68 Transmitting power measurements.

During a station inspection, FCC representatives will use the following methods to determine station transmitting power and operator compliance with § 97.67:

(a) Transmitter power will be measured using a calibrated, peak-reading radio frequency power meter attached to the antenna terminals of the transmitter.

(b) Effective radiated power will usually be determined by making the measurement in paragraph (a) of this section and multiplying the transmitter power by the theoretical gain or loss of the antenna system (including the antenna itself, the feedline, and any other devices such as duplexers, cavities or circulators). Alternatively, effective radiated power may be determined by multiplying the peak envelope power measured at the antenna connection of the transmission line (using a calibrated, peak-reading radio frequency power meter) by the theoretical antenna gain. In either case, the antenna gain figure used will be with reference to a half-wave dipole.

(c) For stations operating under the provisions of § 97.67, paragraph (e), power input to the final amplifying stage will usually be determined by multiplying the carrier power (the average power during one radio frequency cycle, taken under the condition of no modulation) measured at the antenna terminals of the transmitter (using a calibrated, radio frequency power meter) by a factor of 1.25. This assumes a final amplifier efficiency of 80 percent. Alternatively, power input to the final amplifying stage may be determined by multiplying the measured average direct currents to the final amplifying stage by the corresponding measured average voltages and summing these products. Filament voltages and currents would be excluded.

[FR Doc. 82-29911 Filed 10-29-82; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administraton

49 CFR Part 571

Denial of Petition for Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice records the denial of a petition for rulemaking to substitute reflex reflectors for clearance lamps on the front of trailers whose overall width is 80 inches or more.

FOR FURTHER INFORMATION CONTACT: Nelson Erickson, Accident Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On February 25,1982, the Truck Trailer Manufacturers Association (TTMA) petitioned for rulemaking to amend Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment,* to substitute reflex reflectors for clearance lamps on trailers whose overall width is 80 inches or more. Currently two amber lamps are required to indicate the overall width of the vehicle, to be located as near the top of the vehicle as practicable.

TTMA requested the substitution of amber reflex reflectors for the clearance lamps, and deletion of location specification. It argued that the lamps are now redundant since modern truck tractors have the same width as trailers, 96 inches. TTMA further argued that the increasingly common air deflectors on the top of truck tractor cabs, further obscure the trailer front clearance lamps, and that it is not aware of any studies to support the existing lamp location requirements. Petitioner submitted no studies or statistics in support of its request.

The agency concluded that TTMA's petition was without merit. The existing location requirement for clearance lamps is based upon a standard of the Society of Automotive Engineers in effect since 1937 and last revised in 1977, established and supported by logical analytic and judgmental processes of the Lighting Committee over the years. Informed sources consulted by NHTSA estimated that less than 50 percent of Class 7 and 8 truck tractors are of the wide cab type. Therefore, clearance lamps are not redundant today. The agency believes that the existing requirement should be maintained until there is a clear showing that the lamps are redundant. The agency also notes several other points. One is that clearance lamps are not generally obscured by air deflectors. Such air deflectors as are in use vary widely in shape and size and have been installed on only a minor portion of the wide cab population. The other is that reflective material is not as effective as the lamps under conditions of fog and reduced visibility.

Based on these reasons, the agency denied the petition on October 22, 1982.

(Sec. 124, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1410a); delegation of authority at 49 CFR Part 1.50 and 501.8)

Issued on: October 22, 1982.

Courtney M. Price,

Associate Administrator for Rulemaking.

[FR Doc. 82-29976 Filed 10-29-82; 8:45 am]
BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 47, No. 211
Monday, November 1, 1982

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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 82-347]

Khapra Beetle Eradication Program; Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: The Animal and Plant Health Inspection Service has prepared an environmental assessment for the proposed khapra beetle eradication program in New York City, New York. On the basis of the assessment, the Animal and Plant Health Inspection Service has determined that no significant adverse impact on the environment of the area will result from the implementation of any of the identified alternatives. Therefore, an environmental impact statement (EIS) on this program will not be prepared.

FOR FURTHER INFORMATION CONTACT: B. Glen Lee, Emergency Programs Coordinator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 609 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection service (APHIS) of the United States Department of Agriculture (USDA), in cooperation with the New York Department of Agriculture and Markets (NYDAM), (State), intends to eradicate an outbreak of khapra beetle on two infested premises in New York City, New York. If these infestations are not eradicated, it could have a significant adverse effect on international, national, State, and local agriculture, and commerce due to damage to plant products, control costs, increased costs to consumers, and decreased exports due to quarantine action by foreign governments.

Khapra beetle, *Trogoderma granarium* Everts, is considered to be the most destructive stored product pest in the world. It feeds on most stored plant products and some animal products and derivatives. The pest occurs in Asia, the Middle East, and Africa. It is also found in protected environments in Great Britain, Japan, and Germany. The economic importance of the khapra beetle is well documented in scientific literature.

The beetle was found in California in 1953 and subsequently in Arizona, New Mexico, Texas, and adjacent areas of the Republic of Mexico. It was eradicated from this country primarily by methyl bromide fumigation of infested premises. This operation required several years and large expenditures to accomplish. Surveys for khapra beetle infestation have been conducted since the 1950's. Other than infestations found at ports-of-entry on import products, the nation has been free of this pest until October 30, 1980, when a khapra beetle infestation was detected at the Mincing Spice Company premises in Moonchie, New Jersey. Between that time and August 1982, 23 khapra beetle infested properties were found at scattered locations within the United States. Fourteen of these infestations were concentrated in four Northeastern States.

Actions by APHIS and State personnel, to eradicate khapra beetle from infested premises have included careful cleaning of the structures involved, methyl bromide fumigation, including separate fumigation of contents and susceptible commodities if necessary, and the proper disposal of all trash. In metal or newer structures malathion high pressure broadcast and crack and crevice treatments have been carried out in lieu of fumigation with methyl bromide. Actual treatments were applied under the supervision of certified pesticide applicators experienced in pest control and certified pursuant to section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136b).

Currently, one structure location Brooklyn, New York and one structure located in New York City, New York are known to be infested with khapra beetle. A series of alternatives to eradicate the pest are available and were considered. These alternatives are:

(a) No action.

(b) Methyl bromide fumigation.

(c) Surface spray and crack and crevice treatment.

(d) Dursban/DDVP fogging.

APHIS has selected alternative (b), methyl bromide fumigation, to eradicate khapra beetle from the two sites because alternative (b) is the only viable choice. With alternative (b) a single application of methyl bromide gas fumigation would occur. Fumigation with methyl bromide has been successfully utilized to eradicate prior khapra beetle infestations. Alternative (a) is not acceptable because no control or eradication measures would be undertaken allowing the pest to persist in the premises. Alternative (c), which involves the use of an insecticide applied in accordance with label directions to all accessible areas of the premises including cracks and crevices, has been utilized at the infested premise located in Brooklyn, New York for the past year. However, repeat inspections of the premise have detected living khapra beetle life forms. This indicates that there were locations in the building where this treatment failed to reach and eradicate the pest. Lastly, alternative (d), which prescribes cleaning of the building of trash or food residues and a 3 month treatment schedule using Dursban and DDVP applied as a fog, has not been proven to be effective for khapra beetle eradication.

APHIS and NYDAM after considering cumulative adverse effects of the implementation of any of the identified alternatives, has concluded that there will be no primary, secondary, or cumulative adverse effects on the quality of the human environment based on the properties and rates of application of the pesticide being proposed for use in this eradication program. No chain reactions or secondary adverse effects of interrelated activities are expected from any of the proposed alternatives. These officials have evaluated the uniqueness or rareness of resources being affected and have determined that the selected alternative will not have an effect on the continued existence of any endangered or threatened species or result in the destruction or adverse modification of the habitats of such species. APHIS and

NYDAM have the technical expertise to minimize any environmental disturbance which could result from the proposed alternative and also possess the expertise to conduct the selected alternative safely and efficiently.

This action has been reviewed under the requirements of the National Environmental Policy Act, as amended (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations (40 CFR Parts 1500–1508), and the APHIS Guidelines concerning Implementation of NEPA Procedures.

Done at Washington, D.C., this 28th day of November 1982.

William F. Helms,

Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 82-30069 Filed 10-29-82; 8:45 am]

BILLING CODE 3410-34-M

Federal Grain Inspection Service

Renewals of Designation of Idaho Grain Inspection Service (ID), Lewiston Grain Inspection Service, Inc. (ID), and Utah Department of Agriculture (UT)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the renewal of designation of Idaho Grain Inspection Service (Idaho), Lewiston Grain Inspection Service, Inc. (Lewiston), and Utah Department of Agriculture (Utah), as official agencies responsible for providing inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.) (Act).*

EFFECTIVE DATE: December 1, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405, Auditors Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The June 4, 1982, issue of the **Federal Register** (47 FR 24375) contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Idaho, Lewiston, and Utah's designations would terminate on November 30, 1982, and requesting applications for designation as the agency to provide official inspection services within each specified assigned area. Applications were to be postmarked by July 6, 1982.

FGIS announced the names of the applicants for designation for each agency and requested comments on same in the July 30, 1982, issue of the **Federal Register** (47 FR 32970). Comments were to be postmarked by September 13, 1982. Several favorable comments were received regarding the renewals of designation of Idaho and Lewiston; no comments were received regarding Utah. Idaho, Lewiston, and Utah were the only applicants for each respective designation.

After considering all available information in relation to the criteria for designation in section 7(f)(1)(A) of the Act, and in accordance with Section 7(f)(1)(B), it has been determined that Idaho, Lewiston, and Utah are able to provide official services in the geographic area for which their designations are being renewed. Each assigned area is the entire geographic area as desribed in the June 4 issue of the **Federal Register.**

Effective December 1, 1982, and terminating November 30, 1985, the responsibility for providing official inspection services in each geographic area as specified above will be assigned to Idaho, Lewiston, and Utah, respectively.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspection and where the agency and one or more of its licensed inspectors is located. In addition to the specified service points within the assigned geographic area, the agencies will provide official services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons may also obtain a list of the specified service points by contacting the agencies at the following addresses:

Idaho Grain Inspection Service, P.O. Box 4209, Pocatello, ID 83201

Lewiston Grain Inspection Service, Inc., 1450 Third Avenue North, Lewiston, ID 83501

Utah Department of Agriculture, 350 North Redwood Road, Salt Lake City, UT 84116

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: October 22, 1982.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 82-29794 Filed 10-29-82; 8:45 am]

BILLING CODE 3410-EW-M

Request for Comments on Applicants for Designation in the Areas Currently Assigned to Frankfort Grain Inspection, Inc. (IN), and Paris Illinois Grain Inspection (IL)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency in the areas currently assigned to Frankfort Grain Inspection, Inc. (Frankfort), and Paris Illinois Grain Inspection (Paris). The designations terminate February 28, 1983.

DATE: Comments to be postmarked on or before December 16, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382-0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The September 1, 1982, issue of the **Federal Register** (47 FR 38564) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et. seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by October 1, 1982.

Frankfort Grain Inspection, Inc., the only applicant, requested designation for all of the geographic area currently assigned to Frankfort. Paris Illinois Grain Inspection, the only applicant, requested designation for all of the geographic area currently assigned to

Paris. Frankfort and Paris each applied for a renewal of designation for a 3-year period.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than December 16, 1982.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: October 22, 1982.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 82–29795 Filed 10–29–82; 8:45 am]

BILLING CODE 3410–EW–M

Request for Applicants for Designation To Perform Official Services in the Geographic Area Currently Served by Grain Inspection Services, Inc. (MI), and Detroit Grain Inspection Services, Inc. (MI)

AGENCY: Federal Grain Inspection Service, U.S.D.A.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), designations of official agencies shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures provided in the Act. This notice announces that the designations of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, who are interested in being designated as official agencies to conduct official services in the geographic areas currently serviced by each of the specified agencies. The two official agencies are Grain Inspection Services, Inc., and Detroit Grain Inspection Service, Inc.

DATE: Application to be postmarked on or before December 1, 1982.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 2405 Auditors Building, Washington, D.C. 20250. All applications submitted pursuant to this notice will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*, at 79(f)(1)) (Act), specifies that the Administrator of the Federal Grain Inspection Service is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official inspection services after a determination is made that the applicant is better able than any other applicant to provide official inspection in an assigned geographic area.

Grain Inspection Services, Inc. (Battle Creek), 24 First Street, Battle Creek, Michigan 49017, was designated as an official agency under the Act for the performance of official inspection functions on August 31, 1978. Detroit Grain Inspection Service, Inc. (Detroit), P.O. Box 176, Emmett, Michigan 48022, was designated as an official agency under the Act for the performance of official inspection functions on September 11, 1978. The agencies' designations will terminate on April 30, 1983. This date reflects administrative extensions of official agency designations as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that designations of official agencies shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Battle Creek in Michigan and Ohio, pursuant to Section 7(f)(2) of the Act, and which is the geographic area that may be assigned to the applicant selected for designation is the following:

In Michigan, the area is:

Bounded: on the North by the northern and eastern Mason County lines; the northern and eastern Newago County lines; the northern Montcalm County line; the western, northern, and eastern Isabella County lines; the northern Gratiot and Saginaw County lines; the western Bay County line; the western and northern Arenac County lines; the western and northern Iosco County lines; the Lake Huron and Saginaw Bay shorelines south and east to State Route 53;

Bounded: on the East by State Route 53 south to State Route 46; State Route 46 west to Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan State line;

Bounded: on the South by the southern Michigan State line west to Lake Michigan; and

Bounded: on the West by the Lake Michigan shoreline north to the northern Mason County line.

In Ohio, the area includes Williams County.

The following location in Michigan, outside of the foregoing contiguous geographic area, is presently assigned to Battle Creek and is part of the geographic area that may be assigned to the applicant selected for designation: Crop Aid, Hudson, Lenawee County, Michigan.

An exception to the described geographic area is the following location, in Michigan, situated inside Battle Creek's area which has been and will continue to be serviced by Detroit Grain Inspection Service, Inc.: St. Johns Coop., St. Johns, Clinton County, Michigan.

The geographic area presently assigned to Detroit in Michigan, pursuant to Section 7(f)(2) of the Act, and which is the geographic area that may be assigned to the applicant selected for designation is the following:

Bounded: on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53' State Route 53 morth to the Michigan State line;

Bounded: on the East by the Michigan State line south to State Route 50;

Bounded: on the South by State Route 50 west to U.S. Route 127; and

Bounded: on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northen Clinton County line.

The following location in Michigan, outside of the foregoing contiguous geographic area, is presently assigned to Detroit and is part of the geographic area that may be assigned to the applicant selected for designation: St. Johns Coop., St. Johns, Clinton County, Michigan.

Interested parties, including Battle Creek and Detroit, are hereby given opportunity to apply for designation as the official agency to perform the respective official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in each specified geographic area are for the period beginning May 1, 1983, and terminating April 30, 1986. Parties wishing to apply for these designations should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than December 1, 1982, to be eligible for consideration.

In making a determination as to which applicant will be designated to provide official services in the geographic areas, consideration will be given to all applications submitted and all other information available.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873, (7 U.S.C. 79))

Dated October 22, 1982.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 82–29796 Filed 10–29–82; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Applicants for an Official Agency Weighing Designation in the States of Illinois and Indiana

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for designation as the official agency to provide official weighing services in a geographic area located in the States of Illinois and Indiana.

DATE: Comments to be postmarked on or before December 16, 1982.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Staff, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 1642, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–0231.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore the Executive Order and Secretary's Memorandum do not apply to this action.

The September 1, 1982, issue of the **Federal Register** (47 FR 38563) contained a notice from the Fededral Grain Inspection Service requesting applications for designation to perform official weighing services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in a specified geographic area located within the States of Illinois and Indiana. Applications were to be postmarked by October 1, 1982.

The applicants requesting designation for all of the geographic area available for assignment include the following: Mr. Robert H. Jinks, RR 1, Box 81, Homer, Illinois 61849; Mr. Al Johnson, 3204 West Greenwood Place, Peoria, Illinois 61615; and Mr. Larry King, RR 2, Box 158, Champaign, Illinois 61801. Each of these applicants proposes to establish an official agency.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their views and comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Staff, specified in the address section of this notice, and postmarked not later than December 16, 1982.

Consideration will be given to comments filed and to other information available before a final decision is made with respect to this matter. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 9, Pub. L. 94–582, 90 Stat. 2875 (7 U.S.C. 79a))

Dated: October 22, 1982.

Neil E. Porter,

Acting Director, Compliance Division.

[FR Doc. 82–29797 Filed 10–29–82; 8:45 am]

BILLING CODE 3410–EN–M

Office of the Secretary

Joint Committee on the Future of Cooperative Extension; Meeting

Notice is hereby given that the meeting of the Joint Committee on the Future of Cooperative Extension schedule for November 10, 1982, has been cancelled. (Original notice published October 21, 1982; 47 FR 46873.)

Denzil O. Clegg,

Acting Administrator, Extension Service.

[FR Doc. 82–29996 Filed 10–29–82; 8:45 am]

BILLING CODE 3410–01–M

ACTION

Fixed Income Consumer Counseling Program; Notice of Guidelines

AGENCY: ACTION.

ACTION: Final guidelines.

SUMMARY: The following notice sets forth guidelines under which applications for Fixed Income Consumer Counseling (FICC) project grants will be accepted when funding is made avilable. The notice describes the program authorization, history purpose, applicant eligibility, criteria for sponsor selection, sponsor responsiblilties, application procedures, application deadlines, and required reports and recordkeeping.

FOR FURTHER INFORMATION CONTACT: John Herbert, FICC, ACTION, Room 1007, 806 Connecticut Avenue, NW. Washington, D.C. 20525, telephone number (202) 254–5205, or call toll-free (800) 424–8580, Ext. 234. The addresses and phone numbers of State ACTION offices may also be obtained by calling either number.

EFFECTIVE DATE: These Guidelines will be effective December 16, 1982.

SUPPLEMENTARY INFORMATION: Proposed guidelines were published on pages 21286 and 21287 of the **Federal Register** of May 18, 1982 and invited comments for 30 days ending June 17, 1982. Comments were received from 5 sources including 2 county community action agencies, a county housing authority, a county human services planning council, and a state government department of aging. Inquiries for further information were received from more than 137 organizations.

Summary of Significant Changes

The following is a summary of comments, suggestions and actions taken, organized below by the section of the guidelines addressed by the respondents.

Purpose of the Program

The phrase *rural and urban* is added to the description of settings in which FICC volunteers are to serve. The Domestic Volunteer Services Act (DVSA 93-113), Section 414 requires that benefits and services under the Act are to be distributed equitably between residents of rural and urban areas.

Sponsor Responsibilities

1. Paragraph 6c. is revised to make clear the desirability of recruitment of the beneficiaries of FICC counseling services as volunteers.
2. Paragraph 6d. is revised to make clear the sponsor's responsibility to provide supervision for FICC volunteers continuously.
3. Paragraph 6b. is revised to make clear that the function of the FICC Advisory Council includes conducting an annual appraisal of the sponsor's performance of its responsibilities.

Suggested Changes Not Considered Necessary

Comment.—A respondent pointed to the need to emphasize strongly the sponsor's responsibility to provide for volunteer training.

Response.—Volunteer training is included with adequate emphasis as a sponsor responsibility in paragraph 6d. Performance of this responsibility can only be measured and enhanced through monitoring by ACTION staff and appraisal annually by the FICC Advisory Council. It is felt that on-site review of this very important activity is the best insurance of quality volunteer training.

Comment.—A respondent questioned the requirement in paragraph 6a. for a full-time FICC Project Director.

Response.—The requirement is retained in deference to ACTION's assumption, based on lengthy experience in administering volunteer projects nationwide, that a full-time director is in most instances criticaly necessary. However, paragraph 6a. stipulates that the hiring of a less than full-time Project Director may be allowed with written permission from ACTION.

ACTION has determined that this guideline is not a major rule as defined by Executive Order 12291. The guidelines will not result in any of the following:

(1) Any effect on the economy;

(2) Any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or

(3) Any adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Applications for FICC grants will be accepted under the following guidelines:

1. Program Authorization

The Fixed Income Consumer Counseling program is authorized under Title I, Part C, Section 122(a) of the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113), as amended.

2. Purpose of the Program

FICC is a program designed to respond to the economic needs of people living on fixed incomes. Its purpose is to recruit and train volunteers in rural and urban settings to work with people on fixed incomes—especially those who live near or below the poverty level—and to provide them with skills, information, and personal assistance to enable them to live better on their limited income, and help them find additional resources to supplement their net incomes.

3. Objectives of the Program

a. Recruit and train community professionals and neighborhood people to provide a variety of volunteer support services, including financial counseling and practical information in such areas as nutrition, low-cost transportation, energy conservation, and budget and credit counseling;

b. Assist fixed income consumer contacts with appropriate public and private service agencies to obtain relief or services to which they may be entitled;

c. Assist low-income consumers in building their own local self-help mechanisms to deal with inflation and promote energy conservation, such as food co-ops, energy/fuel co-ops, and shared housing.

4. Sponsor Eligibility

A FICC sponsor shall be a public or private non-profit organization, or a coalition of such organizations, in the United States which has the authority to accept and the capability to administer the grant. Any eligible organization may apply for a grant. Applicants may also be solicited by FICC pursuant to its objective of achieving equitable program resource distribution. Solicited applications are not assured of selection or approval and may have to compete with other solicited and unsolicited applications.

5. Criteria for Sponsor Selection

To be considered for FICC sponsorship, an organization must be able to demonstrate:

a. Proof of non-profit status;

b. Capacity to effectively manage fiscal resources and to fulfill program goals, including the goal of continuing fixed income consumer counseling operations after becoming financially independent of ACTION, which should occur in less than three (3) years;

c. Established credibility with community service organizations;

d. Prior experience with potential client groups or populations, such as the elderly, the disabled or handicapped, the unemployed or underemployed, displaced homemakers, dependent welfare recipients, refugees, and migrants;

e. Experience in the recruitment and utilization of volunteers.

6. Sponsor Responsibilities

The sponsor is responsible for all programmatic and fiscal aspects of the project and may not delegate or contract this responsibility to another entity. The sponsor has the responsibility to:

a. Employ, direct, and support the Project Director, who will be directly responsible to the sponsor for the management of the project, including selection, training, and supervision of project staff. The Project Director shall serve full-time with the FICC program and may not serve simultaneously in another paid or unpaid capacity during working hours without written permission from ACTION. The sponsor must obtain ACTION's concurrence in the selection of a Project Director prior to hiring;

b. Establish, orient, and support a FICC Advisory Council. The purpose of the Advisory Council shall be to advise and assist the project sponsor and staff in the formulation of local policy, promote community support and non-federal financial assistance, and conduct an annual appraisal of the sponsor's performance of its responsibilities;

c. Provide for the recruitment of volunteers, including persons who have benefitted from FICC services;

d. Provide for the training, assignment, and continuing supervision of the volunteers;

e. Provide for appropriate recognition of the FICC volunteers and their activities;

f. Provide for maintenance of project records in accordance with generally accepted accounting practice and the

preparation and submission of reports required by ACTION;

g. Orient project staff and volunteers to FICC and its activities;

h. Arrange for the training of project staff and volunteers in both content and techniques of training in consumer affairs;

i. Provide or arrange for reeimbursement for volunteer transportation in a timely manner;

j. Provide for staff and volunteer safety;

k. Comply with applicable regulations, policies and procedures prescribed by ACTION;

l. Ensure that appropriate liability insurance is maintained for owned, non-owned, or hired vehicles used in the project.

m. Provide for public awareness of the project and the volunteer activities.

7. Application Procedures

a. *Initial Award.* FICC applicants will complete ACTION Form A-1017, *Application for Federal Assistance,* in accordance with instructions printed on the form. The requirements of Part IV thereof will be responded to by completing ACTION Form A-1034, entitled *Title I, Part C, Program Narrative.* An original and two copies of the above forms are to be sent to the ACTION state office serving the applicant's State.

(1) Subject to the availability of funds, ACTION will award a grant to those applicants whose grant proposals indicate the best potential for achieving the purpose of the program.

(2) Grants are awarded for one-year periods and may be renewed for up to two additional one-year periods.

(3) Grant awards will not be made in excess of $40,000 for a twelve month period.

(4) A sponsor may receive a grant award for more than one ACTION program.

b. *Continuation Award.* The maximum project period will be for three (3) years, and shorter periods are often appropritate. Regardless of the length of the project period, the maximum funding period will be for one (1) year. After it is established by ACTION that the sponsor is fulfilling its current year goals and objectives, the sponsor may submit a request for a continuation award for the subsequent budget period. Only information not submitted in the original application or information changed substantively from that given in the initial application need be submitted in the continuation application to ACTION. The same forms used for the initial application will be used for continuations.

8. Application Deadlines

The deadline for submission of an application will be established by the ACTION state office.

9. Reports

a. *Fiscal Reports.* In accordance with ACTION Handbook No. 2650.2, *Grants Management Handbook for Grantees,* and on a schedule prescribed by ACTION, Grantees will be required to submit:

(1) *Request for Advance or Reimbursement*—Standard Form SF-270, and

(2) *Financial Status Report*—ACTION Form A-451

b. *Performance Report.* Grantees will be required to submit quarterly the FICC project progress report, entitled: *Title I, Part C, Project Progress Report*—ACTION Form A-1035.

10. Records

Grantees must retain all financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of three (3) years after submission of the final Financial Status Report. If any litigation, claim or audit is begun before the expiration of the three-year period, the records shall be retained until all litigation, litigation claims or audit findings involving the records have been resolved.

Signed at Washington, D.C., this 10th day of September 1982.

Thomas W. Pauken,

Director, ACTION.

[FR Doc. 82-29886 Filed 10-29-82; 8:45 am]

BILLING CODE 6050-01-M

COMMISSION ON CIVIL RIGHTS

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00p and will end at 10:00p, on November 15, 1982, at the Lao Family Community-Downtown YMCA, 475 Cedar Street, St. Paul, Minnesota. The purpose of this meeting is to discuss problems of the South East Asians in St. Paul and the treatment of American Indians in St. Cloud State University; also to plan for future projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Ruth A. Myers, 1006 East Second Street, Apt. #1, Duluth, Minnesota 55805, (218) 726-8878; or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago IL 60604, (312) 353-7371.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 27, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-29992 Filed 10-29-82; 8:45 am]

BILLING CODE 6335-01-M

New Hampshire Advisory Committee; Conference Cancellation

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a news conference of the New Hampshire Advisory Committee of the Commission originally scheduled for November 16, 1982, at Manchester, new Hampshire, (FR Doc. 82-28646, on page 46556) has been cancelled.

Dated at Washington, D.C., October 27, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-29991 Filed 10-29-82; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Rhode Island Advisory Committee to the Commission will convene at 6:00p and will end at 8:00p, on November 15, 1982, at 12 Chapin Road, Barrington, Rhode Island 02806. The purpose of this meeting is to hear reports from subcommittees on their activities and to review draft monitoring reports on reapportionment and hate groups.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Dorothy Zimmering, 12 Chapin Road, Barrington, Rhode Island 02806, (401) 245-3515; or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, MA 02110, (617) 223-4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 27, 1982.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 82-29990 Filed 10-29-82; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Tool Steel From Brazil; Postponement of Preliminary Countervailing Duty Determination

AGENCY: International Trade Administration, Commerce.

ACTION: Postponement of preliminary countervailing duty determination.

SUMMARY: The preliminary countervailing duty determination involving tool steel from Brazil is being postponed as the investigation has been determined to be extraordinarily complicated. We intend to issue the preliminary countervailing duty determination not later than December 27, 1982.

EFFECTIVE DATE: November 1, 1982.

FOR FURTHER INFORMATION CONTACT: David L. Binder, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, (202) 377-1273.

SUPPLEMENTARY INFORMATION: On August 24, 1982, we announced our initiation of a countervailing duty investigation to determine whether manufacturers, producers, or exporters of tool steel from Brazil receive any benefits which constitute subsidies (47 FR 36874). The notice stated that we would issue a preliminary determination by October 25, 1982.

For purposes of this investigation, the term "tool steel" covers hot-finished tool steel, cold-finished tool steel, high speed tool steel, chipper knife steel and band saw steel bars and rods as currently provided for in items 606.9300, 606.9400, 606.9505, 606.9510, 606.9520, 606.9525, 606.9535, 606.9540, 607.2800, 607.3405, 607.3420, 607.4600, 607.5405 and 607.5420 of the *Tariff Schedules of the United States Annotated.*

As detailed in the notice of initiation of the countervailing duty investigation, the petition alleges that the government of Brazil provides various programs which constitute subsidies to manufacturers, producers, or exporters of tool steel. The alleged subsidy practices are numerous and complex and respondents are having difficulty determining the extent to which they are used by each of the firms involved in the investigation.

We have determined that the government of Brazil and the other parties concerned are cooperating and that additional time is necessary to make the preliminary countervailing duty determination. For these reasons we determine that this case is extraordinarily complicated in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended (the Act), and we intend to issue a preliminary countervailing duty determination no later than December 27, 1982.

This notice is published pursuant to section 703(c)(2) of the Act.

October 22, 1982.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-29993 Filed 10-29-82; 8:45 am]

BILLING CODE 3510-25-M

National Technical Information Service

Intent to Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Quantum Dynamics, Incorporated, having a place of business at Chatsworth, California 91311 an exclusive right in the United States and in certain foreign countries to manufacture, use and sell products embodied in the invention, Serial No. 6-300,830 (dated September 10, 1981). Copies of the Patent Application may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquiries, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries, comments and other written materials received in response to this Notice and a record of all decisions made in this matter.

Dated: October 25, 1982.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 82-29872 Filed 10-29-82; 8:35 a.m.]

BILLING CODE 3510-04-M

National Oceanic and Atmoshpheric Administration

Taking of Marine Mammals: Notice of Receipt of Modification Request

Notice is herby given that Brent Stewart, Hubbs-Sea World Research Institute, San Diego, California 92109 has requested a modification of Permit No. 341 issued on June 4, 1981 (46 FR 30679) as modified on November 2, 1981 (46 FR 55129 and June 22, 1982 (47 FR 26883) under authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to mark, in addition to tagging, 450 Northern elephant seal pups currently authorized, and to mark an additional 675 adults over a three-year period.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 on or before December 1, 1982. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in the modification request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above request are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Richard B. Roe,

Acting Director, Office of Marine Mammals and Endangerd Species, National Marine Fisheries Service.

October 26, 1982.

[FR Doc. 82-30018 Filed 10-29-82; 8:45 a.m.]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Acceptance of Group Application Under Pub. L. 95-202 and DODD 1000.20—Civilian Employees, Pacific Naval Air Bases, Who Actively Participated in the Defense of Guam

Under the provisions of Section 401 of Pub. L. 95-202 and DODD 1000.20, the DOD Civilian/Military Service Review Board has accepted an application on behalf of Civilian Employees, Pacific Naval Air Bases, Who Actively Participated in the Defense of Guam. Persons with information or documentation pertinent to the determination of whether the service of this group was equivalent to active military service are encouraged to submit such information or documentation within 60 days to the DOD Civilian/Military Service Review Board, Secretary of the Air Force (SAF/MIPC), Washington, D.C. 20330. For further information contact Mrs. Simard, telephone No. 694-5204.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 82-29873 Filed 10-29-82; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Construction, Installation, and Operation of the AEGIS Combat System Center Wallops Island, Va.; Finding of No Significant Impact

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (§ 1508.13 of Title 40, Code of Federal Regulations), the Department of the Navy gives notice that an environmental impact statement is not being prepared for the construction, installation, and operation of the AEGIS Combat System Center on Wallops Island, Virginia.

Wallops Island is a 7-mile long, 1.5-mile wide (at its maximum point including wetlands), 3,000-acre barrier island located in Accomack County, Virginia. A two-mile causeway and bridge connect the island to the mainland. Wallops is an existing test facility operated under the jurisdiction of the National Aeronautics and Space Administration, Goddard Space Flight Center (NASA-GSFC). The island is bounded by the Atlantic Ocean on its southeastern side and by Chincoteague Inlet on the northeastern side. The remaining sides abut tidal flats, shallow bays, creeks, sloughs, and wetlands of neighbor barrier islands. The island has been designated a national landmark and is adjacent to a group of some twelve barrier islands lying to the immediate southwest which have been designated the Virginia Coastal Reserve and encompass some 35,000 acres. Operations in the area by the NASA/GSFC normally include rocket and ballon launchings, aircraft flight operations, chaff releases, and the use of lasers, and radars.

The proposed AEGIS Combat System Center will occupy approximately 5 acres immediately northeast of the existing industrial area and will consist of a main building (approximately 20,000 F^2), towers, parking lot, access road, and security provisions. The main building will house AEGIS system components, including radars, and will be utilized to verify operational characteristics, integrate engineering changes to the system, and perform various system-interface compatibility tests. The ACSC operation can be generally described as a "clean industry." It will neither use nor produce hazardous materials. The radars utilized do constitute a hazard zone extending some 2,000 feet seaward; however, the beam is elevated to keep radiation levels at the shoreline within the standard of $10m^w/cm^2$ for continuous exposure. Continuous monitoring and built-in system checks will automatically turn off the equipment if radiation levels are excessive so that there is no perceived hazard to operating personnel, shoreside or surface inhabitants.

The principal environmental impact is that associated with site preparation for construction. Approximately 3 acres of maritime forest and one acre of thicket will be destroyed. One acre of the site is already cleared. The forest and thicket communities do provide habitats for various wildlife forms but are not considered critical. Identical habitats are abundant as associated with neighbor islands and are extensive even on the remainder of Wallops Island.

No endangered species or its habitat will be affected by the construction. No wetlands are to be taken. No historic archeological resources were identified on the site as the result of surveys completed by the Virginia Research Center for Archeology. There are no associated socioeconomic impacts. The loss of ground cover will expose the soils to erosion; however, preventive measures will be employed to prevent siltation, and most of the site will be covered by buildings/paving when completed.

The Environmental Assessment of this action, completed in close cooperation with the NASA/GSFC, indicates that construction and operation will not cause significant impacts on the environment. Alternatives included: no action, or the siting of the AEGIS Combat System Center at the Naval Surface Weapons Center Laboratory, Dahlgren, Virginia. The assessment concludes that there is little, if any, difference between the environmental consequences of locating at either site, and therefore recommends the Wallops Island site on the basis of operational advantages. The Environmental Assessment prepared by the Navy addressing this action is on file and may be reviewed by interested parties at both the point of origin, Commander, Naval Surface Weapons Center, Dahlgren, Virginia, 22488 [Attention: Dr. E. C. Feiling, Code G502, (203) 633-8535], or at the Environmental Protection and Occupational Safety and Health Division (NOP-45), Office of the Chief of Naval Operations, Rm BD766, Pentagon, Washington, D.C. 20350, (202) 697-3639. Additionally, a limited number of copies of the Environmental Assessment are available to fill single-copy requests.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy, Alternate Federal Register, Liaison Officer.

[FR Doc. 82-29877 Filed 10-29-82; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA-FC-81-006; FC Case Nos. 55120-9200-01-12]

Georgia Kraft Co., Cottonton, Ala.; Proposed Modification of Order Granting Permanent Fuels Mixture Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice and proposed modification of an order granting a permanent fuels mixture exemption to Georgia Kraft Company, Cottonton, Alabama.Q03

SUMMARY: The Economic Regulatory Administration (ERA) of the Department

of Energy (DOE) has commenced a proceeding under 10 CFR Part 501, Supart G to modify the permanent fuels mixture exemption granted by Order to a new major fuel burning installation (MFBI), owned and operated by Georgia Kraft Company (Georgia Kraft) at its Alabama Draft Division plant, Cottonton, Alabama, under the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* (FUA or the Act).

Based upon its review of Georgia Kraft's September 15, 1982, modification request, ERA is proposing to modify the order on the basis of its determination that significantly changed circumstances as defined in 10 CFR 501.102(b) exist with respect to the applicability of the original exemption. Accordingly, ERA is hereby giving notice to all parties to the original proceeding of their right, pursuant to 10 CFR 501.101(d), to file a written response to ERA's proposal within 30 days of the publication of this notice in the **Federal Register** (see **DATE** section, below). If no responses are received within the established period, the Order modification, as proposed, for the boiler shall become final upon the expiration of that period, without further action by ERA.

A detailed discussion of the Order and Georgia Kraft's request for modification thereof is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATE: Written responses to ERA's proposed modification of the Georgia Kraft Order must be received no later than December 1, 1982.

ADDRESS: Written responses are to be addressed to Department of Energy, Economic Regulatory Administration, Office of Fuels Programs Case Control Unit, GA-093, 1000 Independence Avenue, S.W., Washington, D.C. 20585. FC-55120-9200-01-12, should be printed on the outside of the envelope and the documents contained therein.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, Forrestal Building, Room GA-073, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-8162

Allan Stein, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6B-178, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202) 252-2967

SUPPLEMENTARY INFORMATION: On June 15, 1981, ERA exempted, by Order, Georgia Kraft's new bark and woodwaste boiler at its Cottonton, Alabama, plant from the prohibitions of section 202 of FUA, which prohibit the use of natural gas or petroleum as a primary energy source by certain MFBI's (46 FR 32306, June 22, 1981). Subject to the terms and conditions set forth in the Order, the permanent exemption permitted the use of a fuels mixture of bark and woodwaste and petroleum or natural gas, the latter in an amount not to exceed 25 percent of the total annual BTU heat input of the primary energy sources of the MFBI. Georgia Kraft's exemption request was filed under the then effective 10 CFR 503.38 and was granted pursuant to section 212(d) of FUA.

By letter of September 15, 1982, Georgia Kraft requested that ERA modify the Order to delete the reporting requirement that Georgia Kraft must, pursuant to the former 10 CFR 503.38(g), annually file with ERA a certification that the amount of petroleum or natural gas used in the boiler during the preceding year did not exceed 25 percent of the total annual BTU heat input of the primary energy sources of that MFBI.

Georgia Kraft based its request on the fact that since the issuance of the Order with its annual reporting requirement, DOE has issued final rules amending 10 CFR 503.38 so as to delete therefrom reporting requirements for boilers granted fuel mixtures exemptions (46 FR 59872, December 7, 1981).

As requested, ERA has, pursuant to 10 CFR 501.101(a), commenced a proceeding to modify the above-described exemption Order. The procedures and criteria governing this proceeding are found in 10 CFR Part 501, Subpart G (46 FR 59872, December 7, 1981). Based upon the information contained in Georgia Kraft's modification request and upon the record as a whole, ERA proposes:

(1) To find that the revision of 10 CFR 503.38 in the final rules published on December 7, 1981, described *supra*, constitutes significantly changed circumstances that warrant a modification of the Order, as provided by 10 CFR 501.102(b); and

(2) To modify the Order to delete therefrom the required annual filing of a certification that the amount of petroleum or natural gas used in Georgia Kraft's boiler during the preceding year did not exceed 25 percent of the total annual Btu heat input of the primary energy sources of that MFBI.

Parties to the original Order proceeding are hereby notified of ERA's proposed modification of the Order exempting Georgia Kraft's bark and woodwaste boiler from the prohibitions in section 202 of FUA and of their right pursuant to 10 CFR 501.101(d) to file a response thereto within 30 days after the publication of this Notice in the **Federal Register.** If ERA receives no responses within the allotted period, the Order modification shall become final as proposed, without further ERA action, upon expiration of that period.

Issued in Washington, D.C. October 20, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-29874 Filed 10-29-82; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF EDUCATION

Institutional Aid Programs; Announcement of Workshops

AGENCY: Department of Education.

ACTION: Notice of locations for pre-application preparation workshops.

SUMMARY: This notice invites interested parties to participate in pre-application workshops under the Institutional Aid Programs. The overall goal of the workshops is to provide eligible applicant institutions with information that will help in their preparation of a competitive application and proposed project.

DATES: Pre-application preparation workshops will be conducted on the following dates:

November 1-2, 1982, Island of Ponape
November 4-5, 1982, Honolulu, Hawaii
November 15-16, 1982, Atlanta, Georgia
November 18-19, 1982, Rio Piedras, Puerto Rico
November 18-19, 1982, Albuquerque, New Mexico
November 22-23, 1982, Denver, Colorado

ADDRESSES: Pre-application workshops will be held at the following locations:

Island of Ponape—Ponape Community College of Micronesia Island of Ponape

Honolulu, Hawaii—Chaminade University of Honolulu, 3140 Waialae Avenue, Honolulu, Hawaii 96816 (808) 735-4711

Atlanta, Georgia—Clark College, 240 Chestnut Street, SW, Atlanta, Georgia 30314 (404) 681-3080

Puerto Rico—Colegio Universitario Metropolitano, Carretera Estatal No. 176 Z. 3KM, Rio Piedras, Puerto Rico 00928 (809) 751-0970

Albuquerque, New Mexico—University of Albuquerque, St. Josephs Place, NW, Albuquerque, New Mexico 87140 (505) 831-1111 ext. 200

Denver, Colorado—Community College of Denver, Auraria Campus, 1111 West Colfax Avenue, Denver, Colorado 80204 (303) 866-4530

FOR FURTHER INFORMATION CONTACT: Dr. Joan E. Duval, Institutional Aid Programs, Office of Postsecondary Education, U.S. Department of Education, Washington, D.C. Telephone: (202) 245-2715.

SUPPLEMENTARY INFORMATION: The Supplemental Appropriations Act of 1982 (Pub. L. 97-257) provides for two grant competitions under the Institutional Aid Programs authorized by Title III of the Higher Education Act of 1965, as amended. The two grant competitions provide for the following:

1. Five million dollars will be available for new Title III projects for those institutions:

—Which have an enrollment of at least 45% Hispanic, Native American and/or Pacific Islander students as reported on the latest available Higher Education General Information Survey (HEGIS);

—Which have not received a grant in Fiscal Year 1982 under the Strengthening Institutions or the Special Needs Programs;

—And which meet other eligibility criteria specified in the regulations for these programs, published in the **Federal Register** on January 5, 1982, 47 FR, 540-557.

2. Approximately eight million dollars will be available for new projects under the Special Needs Program for those institutions:

—Which historically have served substantial numbers of black students and are listed in the 1978 publication by the National Center for Educational Statistics entitled: *Traditionally Black Institutions of Higher Education: Their Identification and Selected Characteristics;*

—Which have not received a grant in Fiscal Year 1982 under the Strengthening Institutions or the Special Needs Programs;

—And which meet the other eligibility criteria in § 626.2 of the regulations for this program, 34 CFR Part 626, published in the **Federal Register** on January 5, 1982, 47 FR, 548-550.

The workshops are scheduled from 9:30 a.m. through 4:30 p.m. each day. They are designed specifically for the person(s) who will be writing the proposed project and the application. They are designed specially for representatives from institutions which are eligible to apply under these two competitions.

Dated: October 29, 1982.

(Catalog of Federal Domestic Assistance No. 84.031 Institutional Aid Programs)

Edward M. Elmendorf,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 82-30173 Filed 10-29-82; 12:07 pm]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. 82-12-LNG]

Trunkline LING Co. et al.; Joint Order

In the matter of Trunkline LNG Company and Trunkline Gas Company, Docket Nos. CP74-138-003, CP74-139-001, and CP74-140-001*; Association of Businesses Advocating Tariff Equity v. Trunkline LNG Company and Trunkline Gas Company, Docket No. CP82-517-000; State of Michigan and Michigan Public Service Commission, Docket No. CP82-519-000; Consumers Power Company v. Trunkline LNG Company and Trunkline Gas Company, Docket No. CP82-533-000; Laclede Gas Company v. Trunkline LNG Company and Trunkline Gas Company, Docket No. CP82-541-000; Trunkline LNG Company, Docket No. RP81-85-000; Michigan Consolidated Gas Company v. Trunkline LNG Company, Trunkline Gas Company, Panhandle Eastern Pipe Line Company and Sonatrach, Docket No. RP82-127-000; Poanhandle Eastern Pipe Line Company, Docket No. TA83-1-28-000 (PGA 83-1); Trunkline Gas Company, Docket No. TA83-1-30-000 (PGA 83-1); Joint order consolidating FERC Proceedings, initiating ERA Proceeding, setting joint ERA/FERC hearing, denying waivers, motions, and petitions, and granting and inviting interventions.

Issued October 28, 1982.

I. Introduction

The Administrator of the Economic Regulatory Administration (ERA) and the Federal Energy Regulatory Commission (Commission) have received numerous complaints, petitions, motions, and comments relating to Trunkline LNG Company's (TLC) authorizations to import, transport in interstate commerce, and resell liquefied natural gas (LNG) from Algeria. The agencies have been asked to review the authorizations granted to TLC in 1977 by the Federal Power Commission (FPC) [1] to import and resell the gas. Certain parties allege that the price is no longer reasonable, that the gas in not now needed, and that the supply is not reliable. Although the ERA of the Commission have jurisdiction over different aspects of this matter, their decisions may rest on a common set of facts.

The importance of there issues to the gas-consuming public and to the companies involved requires an expeditious decision. The issues of need and price are closely intertwined between the Administrator's responsibility under Section 3 of the Natural Gas Act and the Commission's responsibilities under Sections 3, 4, 5, and 7 of the Natural Gas Act. The two agencies have therefore decided that the interests of all parties would be served best by setting for joint hearing the issues designated below. This procedure will create the record necessary for decision by each agency in an expeditious manner without requiring the parties to address these intertwined issues before the two agencies separately. Once a record is compiled, it will be certified to both the ERA and the Commission for such further proceedings and decision as are deemed appropriate by each agency.[2]

This order summarizes the history of TLC's 1977 authorization, describes the filings now before the Commission and ERA, and addresses the joint concerns and respective jurisdiction of the two agencies. The order also designates the issues to be addressed in the joint hearing.

II. Background

In 1977, the FPC authorized TLC to import from Algeria approximately 165 Bcf equivalent of LNG annually, for a period of twenty years, and to construct and operate the necessary terminal facilities at Lake Charles, Louisiana. Opinion Nos. 796 and 796-A approved a price for the revaporized LNG delivered to the system of Trunkline Gas Company (Trunkline) of $3.37 per Mcf. Opinion No. 796-A approved a price change mechanism in the gas supply contract between TLC and Sonatrach, the Algerian national oil and gas

*In the show cause order issued in this proceeding on September 24, 1982, these dockets were mistakenly listed as Docket Nos. CP74-138-000, CP74-139-000, and CP74-140-000. The correct docket numbers are CP74-138-003, CP74-139-001, and CP74-140-001.

[1] Opinion No. 796, issued April 29, 1977 (58 FPC 726); Opinion No. 796-A, issued June 30, 1977 (58 FPC 2935). The import authorization was issued pursuant to Section 3 of the Natural Gas Act. The construction and operation of the terminal facility was authorized in a certificate of public convenience and necessity issued pursuant to Section 7(c) of the Natural Gas Act.

[2] *See* Department of Energy Delegation Order No. 0204-104 to the Administrator of ERA and ERA Delegation Order No. 0204-104A to the Commission.

company, by which the price of LNG, FOB Algeria, would change 10 cents per Mcf equivalent for each $1.00 change in the weighted average prices of No. 2 and No. 6 fuel oil in New York harbor. Opinion No. 796 fixed April 1, 1980 as the date by which the service was to begin. That date has been extended by the Commission from time to time, most recently on July 27, 1982, when the date was extended to July 1, 1983, based upon TLC's representation that Sonatrach was experiencing technical difficulties with its facilities in Algeria.

On July 1, 1982, TLC filed for arbitration before the International Chamber of Commerce, alleging Sonatrach's refusal to deliver LNG under the gas supply contract. TLC alleged that the Lake Charles terminal had been ready to receive LNG since August 7, 1981, and that the LNG liquefaction facilities in Algeria had been ready since June 21, 1981.

On August 9, 1982, TLC announced that it had reached agreement with Sonatrach on a shipping schedule under which the first ship of LNG would be loaded in September 1982 and that regular deliveries would be achieved shortly thereafter. At the same time TLC announced it had agreed with Sonatrach to amend the price change mechanism of the gas supply contract. TLC states that, in place of the formula based on No. 2 and No. 6 fuel oil, there would be substituted a formula that would change the price of LNG, FOB Algeria, by 17 cents for each $1.00 change in the average posted prices of five specified foreign crude oils. The amendment is subject to the approval of both the Algerian and U.S. regulatory authorities, which approval would not be sought until regular deliveries under the existing contract had been achieved. The request for arbitration was withdrawn at the same time.

TLC then announced that the projected cost of revaporized LNG delivered to the Trunkline system would be $7.13 per MMBtu. Part of the increase from the $3.37 per Mcf approved in Opinion No. 796 is attributable to operation of the original price change mechanism that was approved by the Federal Power Commission in Opinion Nos. 796 and 796–A; the remainder of the increase is attributable to cost overruns on the construction of the Lake Charles terminal and the two U.S. flag ships, which additional costs have not been approved by the appropriate U.S. regulatory authorities.

Following these announcements by TLC, a number of complaints and protests were filed, both with the Commission and the ERA, as discussed below.

III. Commission Proceedings

A. Cases Filed With the Commission

1. *Docket No. CP82–517–000.* On August 27, 1982, the Association of Businesses Advocating Tariff Equity (ABATE) filed a complaint with the Commission that requests an expedited order directing TLC and Trunkline to show cause why they should not be required to cease and desist from importing LNG from Algeria under terms and conditions inconsistent with the existing authorization. ABATE, a group of industrial gas customers in the State of Michigan that are served through the Trunkline system, alleges a significant change in cirsumstances on the Trunkline system since the authorization was granted in 1977. Specifically, ABATE alleges that Trunkline has no present need for the Algerian LNG and that Trunkline has more gas available to it today than it requires to meet the needs of its existing markets. It further alleges that the price of LNG, even under the existing contract, is much higher than was expected when the project was originally proposed.

ABATE also questions the reliability of Algeria as a long-term supplier of gas. ABATE alleges that deliveries by Algeria under the original contract have been withheld for two years, apparently because of Algeria's insistence on a price higher than is permitted under the contract. ABATE also notes that deliveries by Algeria to other U.S. importers have been unilaterally interrupted by Algeria since 1980 because of its demands for higher prices. Finally, ABATE alleges that, because of the agreement to modify the price change mechanism of the gas supply contract, TLC will be importing LNG pursuant to a new contract that differs from the contract that was considered in Opinion Nos. 796 and 796–A.

2. *Docket No. CP82–519–000.* On August 27, 1982, the State of Michigan and the Michigan Public Service Commission (Michigan) filed a petition for an order to show cause and for expedited declaratory relief. In all material respects, Michigan raises the same issues as does ABATE. Michigan places special emphasis on its view that, but for the agreement to revise the price change mechanism, Sonatrach would not have begun shipments of LNG to the Lake Charles terminal. Michigan requests that the Commission issue an order declaring that the importation of LNG is without lawful authority because of the "supersession and abrogation of the previous contract and certificate of public convenience and necessity by the new agreement," and ordering that TLC and Trunkline cease and desist from the importation of LNG under the new contract.

3. *Docket No. CP82–533–000.* On September 15, 1982, Consumers Power Company (Consumers), a public utility rendering natural gas service to more than one million residential, commercial, and industrial customers in the State of Michigan, filed a complaint and request for expedited interim relief. Consumers is a substantial customer of Trunkline, accounting for approximately 35 percent of Trunkline's revenues.

As do ABATE and Michigan, Consumers alleges that there has been a major change in the pricing formula under the contract and that circumstances concerning the need for the gas and the security of the supply from Algeria have changed significantly since entry of the FPC's 1977 order authorizing the import. Consumers requests the Commission to suspend the import authorization and certificate immediately and then to determine whether to vacate the import license and certificate on the ground that importation of this LNG is inconsistent with the public interest.

Consumers also states that it recognizes that the relief it seeks places at issue the recoupment by TLC and Trunkline of their investment in the facilities constructed for the project. Consumers states the facilities were constructed in good faith on the basis of the certificates issued by the FPC. It requests that the Commission determine the extent and methodology upon which the proper costs of the project may be recouped from Trunkline's customers. Consumers suggests the possibility of holding the facilities on standby, pending the determination requested.

4. *Docket No. CP82–541–000.* On September 17, 1982, Laclede Gas Company (Laclede) filed a complaint and request for an order directing Trunkline to show cause why the certificate issued authorizing the sale of revaporized LNG from Algeria should not be amended or rescinded, due to TLC's alleged violation of its certificate and the drastic change in circumsances that has occurred since the project was originally certificated. Laclede, like ABATE, Michigan, and Consumers, raises questions concerning the amended price change mechanism, the reliability of LNG from Algeria, and the changed gas supply situation.

5. *Docket No. RP81–85–000.* On July 1, 1981, TLC filed a general rate change, pursuant to Section 4 of the Natural Gas Act, that proposes a change from the fixed rate approved in Opinion Nos. 796 and 796–A to a cost-of-service tariff. The filing also seeks an increase in the level

of the rate approved in Opinion Nos. 796 and 796-A to reflect the cost overruns experienced on the ship and terminal construction. On July 31, 1981, the Commission accepted the proposed tariff sheets for filing and suspended them for one day after the date of initial delivery by TLC. The question of the justness and reasonablenes of the proposed tariff changes, including the cost-of-service tariff and the cost increases, was set for hearing. (16 FERC ¶61,102). No decision has been reached in that case; hearings in the case are scheduled to commence on January 17, 1983.

6. *Docket No. RP82-127-000.* On August 12, 1982, Michigan Consolidated Gas Company (Michigan Consolidated) filed a complaint against TLC, Trunkline, Panhandle Eastern Pipe Line Company (Panhandle) and Sonatrach that seeks to bar the passthrough to customers of Trunkline and Panhandle the costs of the Algerian LNG. In all material respects, Michigan Consolidated raises the same issues as are raised in the various complaints discussed above.

7. *Docket No. TA83-1-30-000 (PGA83-1).* On September 16, 1982, Trunkline filed a "limited revision in the [purchased gas adjustment (PGA)] rate which became effective September 1, 1982, designed to reflect only the inclusion of gas from the new supply from TLC." The proposed effective date of the revised tariff sheet is November 1, 1982. Trunkline requests waiver of § 154.38(d)(4)(iv) of the Commission's regulations, which allows only semi-annual filing for PGA rate adjustments. The effect of including the cost of the revaporized LNG in Trunkline's PGA increases Trunkline's projected unit cost of purchased gas from 270.73 cents per dekatherm to 347.32 cents per dekatherm.

8. *Docket No. TA83-1-28-000 (PGA83-1).* On September 16, 1982, Panhandle also filed a "limited revision" in its PGA which became effective September 1, 1982, designed to reflect only the effect of the purchase by Trunkline from TLC in Panhandle's own rates. The proposed effective date is November 1, 1982. Panhandle also requests waiver of § 154.38(d)(4)(iv) of the Commission's regulations. The effect of including the cost of the revaporized LNG in Trunkline's PGA increases Panhandle's estimated unit cost of gas from 254.6 cents per Mcf to 282.63 cents per Mcf.

B. Order To Show Cause (Docket Nos. CP74-138, 139 and 140)

Based upon the protests and complaints received by the Commission as well as the Commission's own concerns with respect to the cost of the revaporized LNG delivered to Trunkline and the circumstances surrounding the commencement of deliveries by Sonatrach, the Commission, on September 24, 1982, issued an order directing Trunkline and TLC to show cause:

(1) Why the proposed deliveries of LNG are not pursuant to what amounts to a new contract,

(2) Why Trunkline and TLC should not be required to seek authorization to import LNG under the contract (as amended, modified or superseded) prior to any shipments of LNG from Algeria,

(3) Why the proposed delivery will not be in violation of the Natural Gas Act or other applicable statutes, and

(4) Why the operation of the Lake Charles facilities should not be found to be no longer in the public convenience and necessity.

The September 24 order directed Trunkline and TLC to file information with respect to the August 6, 1982 agreement with Sonatrach and the arbitration proceedings. The September 24 order also requested interested parties to submit legal memoranda with respect to the basis for revision of the certificates issued to TLC and the rate implications of such an action.

Trunkline and TLC filed their response to the order to show cause on October 1, 1982. The companies assert that the importation and revaporization are being conducted strictly in accordance with the authorization and certificates issued by the FPC in 1977 and pursuant to the gas supply contract approved in Opinion No. 796. The Trunkline companies assert that the August 6, 1982, modification to the contract is not relevant to present purposes because it is subject to regulatory approvals, and regulatory approvals have not yet been sought (and will not be until regular deliveries under the existing contract are accomplished). The companies assert that the Commission lacks the authority to revoke or suspend TLC's authorization to import Algerian LNG and its certificate of public convenience and necessity to operate its facilities. The companies further assert that the state commissions and customers who are now seeking to stop the project strongly supported it in 1977, and those persons should not now be heard to oppose the project. The companies emphasize that the Algerian LNG project is a long-term gas supply project and that the opponents of the project are reacting only to a short-term market situation. The companies acknowledge that the LNG is not needed for the next year or two, but stress that in future years, this LNG will play a crucial role in enabling Trunkline and Panhandle to serve their market requirements. The companies caution the Commission against periodic reviews of the authorizations for major energy projects lest the incentive to embark on such projects be destroyed by the risk that once substantial dollars have been spent, the government may change its mind and the investment may be jeopardized. Finally, the companies request an evidentiary hearing to consider the issues in the event that the Commission does not dismiss the complaints.

Those who now object to the importation of the Algerian LNG make four basic points in response. First, they assert that, because Algeria did not agree to begin shipments of LNG until TLC agreed to revise the price change mechanism in the contract, there is in effect a new contract for the sale of the LNG that has not received the appropriate regulatory approvals. Second, they assert that circumstances have changed substantially since the project was authorized in 1977, both in terms of gas supply and marketability of the revaporized LNG. Third, they assert that, in view of Algeria's action in terminating deliveries to Cove Point and Elba Island because of pricing disagreements, Algeria cannot be relied upon as a secure, long-term source of supply. Finally, certain of the opponents recognize that TLC's investment in the project should not necessarily be placed at risk, even if the project were to be suspended. The project was undertaken and substantial dollars expended in good faith, pursuant to valid authorization and certificates from the FPC. These persons indicate a willingness to explore appropriate rate mechanisms so as not to penalize the companies because of whatever decisions may be made as to the future of the project.

IV. ERA Proceedings

A. Filings Before the ERA

1. *State of Michigan and Michigan Public Service Commission (Michigan).* On August 27, 1982, Michigan filed a petition requesting the ERA to issue an order to Panhandle, Trunkline, and TLC to show cause why the scheduled LNG import should not be considered unlawful. Additionally or alternatively, Michigan requested the ERA to issue an order granting the declaratory relief sought by finding the importation unlawful and unauthorized and subject to refunds, penalties and appropriate enforcement actions.

Michigan cited two basic reasons in support of its petition. First, Michigan

alleges that TLC violated Article 24 of its existing gas purchase contract with Sonatrach by renegotiating a change in the price escalation formula during a time in which it was strictly prohibited by the contract that was approved by the FPC in 1977. As a consequence, neither Trunkline nor Panhandle can lawfully pass LNG costs through to their customers until TLC has obtained the requisite governmental approval of the new contract. Second, Michigan contends that conditions have changed since the import authorization was granted by the FPC in 1977, that the gas is neither currently needed nor marketable at the prices provided for in the existing contract, and that Algeria is an unreliable long-term supplier of natural gas.

On October 19, 1982, Michigan filed a memorandum in further support of its August 27, 1982 petition citing the factual basis and legal arguments for the ERA to take such proposed action. Moreover, Michigan maintains that the ERA has full power and authority, in the circumstances of this case, to suspend or, revoke the existing authorization.

2. *Michigan Consolidated Gas Company (Michigan Consolidated).* On August 27, 1982, Michigan Consolidated filed with the ERA a complaint, request for hearing, and petition for the issuance of a declaratory order on an expedited basis or, alternatively, an order to show cause why this LNG import is not unlawful and unnecessary.

In support of its filing, Michigan Consolidated reiterated many of the same arguments stated in Michigan's August 27 petition. Michigan Consolidated states that renegotiation of the price escalation formula was inconsistent with Article 24 of the gas purchase contract. Furthermore, the company alleges that Sonatrach's failure to begin deliveries of gas as stipulated in the old sales contract terminated that contract and requires TLC to obtain new governmental authorization to import the LNG and to pass through those costs to its customers. Like Michigan, Michigan Consolidated also alleges that conditions have changed and that the gas is not currently needed, that the gas is unmarketable because of the price, and that Sonatrach has been proven to be an unreliable supplier of gas.

3. *Association of Businesses Advocating Tariff Equity (ABATE).* On August 30, 1982, ABATE filed with the ERA a complaint and request for the issuance of an order to TLC to show cause why it should "* * * not be required to cease and desist from importing LNG from Algeria under terms and conditions inconsistent with its existing authorization." ABATE, like Michigan and Michigan Consolidated, argues that TLC and Sonatrach have altered significantly their gas sales contract and that the alteration has never been subject to governmental review. ABATE also contends that there is no current need for the gas, its price is higher than anticipated when the import authorization was granted in 1977, and events subsequent to the FPC approval have raised questions concerning the reliability of Algeria as a gas supplier.

4. *Consumers Power Company (Consumers Power).* On September 2, 1982, Consumers Power petitioned the ERA to issue an order requiring TLC to show cause why the existing authority to import LNG should not be vacated. Additionally, Consumers Power requested the ERA to issue an order suspending TLC's import license pending an expedited hearing. The reasons cited in support of the requested actions were identical to those given by other parties in earlier filings. Consumers Power alleges that TLC had violated its existing sales contract and that "changed circumstances" since the 1977 FPC approval make this import no longer desirable. The company also maintains that the renegotiated pricing formula would result in higher priced gas which, in turn, would drive industrial customers off its system.

5. *Laclede Gas Company (Laclede).* On September 10, 1982, Laclede filed with the ERA a complaint and request for immediate suspension of TLC's import authorization pending an expedited hearing. Laclede states that the ERA should have a hearing to determine whether TLC's import authorization should be amended or rescinded due to the "* * * drastic change in circumstances which has occurred since the authorization originally was issued." Laclede maintains that changes in the need for and price of the gas, as well as in the reliability of the supply, cause this project no longer to be in the public interest. The company further asserts that "ex post facto review of the renegotiated contract cannot and will not adequately protect the public interest."

6. *Illinois Power Company (Illinois Power).* On September 10, 1982, Illinois Power filed with the ERA a petition to issue an order requiring TLC to file an application requesting approval of modification to its gas purchase contract with Sonatrach. Illinois Power also requested immediate suspension of the authorization pending an expedited hearing. Illinois Power, like the other persons filing with the ERA, maintains that TLC has violated its existing contract and that circumstances have changed causing this project to be no longer in the public interest.

7. *Congressman Robert H. Michel and Paul Findley, the Illinois Commerce Commission, Associated Natural Gas Company, Battle Creek Gas Company, Central Illinois Light Company, Central Illinois Public Service Company, Citizens Gas Fuel Company, Michigan Gas Utilities Company, Missouri Utilities Company, Ohio Gas Company, Richmond Gas Corporation, Southeastern Michigan Gas Company, and Toledo Edison Company (the General Sevice Customer Group).* On September 10, 1982, these joint petitioners filed with the ERA a petition to reopen the proceedings that resulted in the issuance of FPC Opinion No. 796 authorizing TLC to import LNG from Algeria. They also want the ERA to issue a supplemental order revoking TLC's current import authorization on the basis of significant "changed circumstances." The General Service Customer Group alleges that since the 1977 FPC authorization, there have been dramatic changes in the factual circumstances and applicable law concerning security of supply, need for the gas, and the price of this LNG import. They also maintain in their petition that continuation of this import project will have an adverse impact on the U.S. balance of payments.

On September 21, 1982, the General Service Customer Group, ABATE, and Consumers Power filed with the ERA a joint motion on behalf of all those that filed petitions, complaints or motions with the ERA, to consolidate the proceedings and establish expedited procedures. On October 8, 1982, the General Service Customer Group, ABATE, Consumers Power, Laclede and Michigan Consolidated filed a joint motion requesting the ERA to comply with the requirements of the Natural Gas Act and applicable rules of practice and procedure by acing on all the filings before it on this matter.

8. *Central Illinois Public Service Company (CIPS).* On September 21, 1982, CIPS filed a petition with the ERA requesting the reopening and revocation of TLC's import authorization on the grounds of "changed circumstances" with respect to security of the supply, the price of the gas and need for this LNG import. The firm also requested that the ERA temporarily suspend TLC's current authorization pending the outcome of an evidentiary proceeding.

9. *State of Illinois, the People of the State of Illinois, the Attorney General of the State of Illinois (Illinois).* On September 24, 1982, Illinois filed a petition with the ERA to reopen and

revoke TLC's import authorization and a motion for temporary suspension of the authorization pending the outcome of the proceeding. The bases for these requested actions were identical to those cited by other petitioners and complainants: "changed circumstances" and violation of TLC's sales contract.

10. *TLC's Responses to Complaints and Petitions.* On September 27, 1982, TLC filed a response to the complaints filed by Michigan Consolidated, ABATE, and Laclede. On October 12, 1982, TLC filed a response to the petitions of Illinois Power, the General Service Customer Group, and CIPS.

In response to the petitioners' and complainants' request that the ERA revoke, rescind, or suspend TLC's import authorization, TLC contends that there is no statutory, policy, or legal basis for the requested action. TLC asserts that the complainants have not addressed the statutory authority, legal precedent, or judicial pronouncement that would allow the ERA to terminate an existing import authorization.

TLC also expresssed concern about the effect such action would have on "* * * a long-term project created by private industry, supported by these petitioners, complainants and their allies, and sanctioned and fostered by the United States Government, merely because of temporary economic conditions which are affecting the availability of energy today." TLC includes an appendix of statements made by many of the complainants and petitioners during the earlier authorization proceedings before the FPC supporting the project to import Algerian LNG.

TLC claims that the petitioners and complainants have made erroneous assertions with respect to alleged violations of TLC's sales agreement with Sonatrach and that the current LNG shipments are being delivered under the 1975 contract, and in accordance with its existing import authorization. TLC asserts that the amended pricing clause would only become effective "* * * following achievement of full deliveries and upon the obtaining of government approvals, the timing of which cannot now be predicted."

In response to the claims that there is no longer a need for this gas supply because of "changed circumstances," TLC argues that such allegations are both self-serving and wrong. In addition, TLC states that any review of the petitioners' and complainants' assertions would require the ERA to grant the opportunity for discovery, submission of market data, and cross-examination at an evidentiary hearing.

B. ERA Conferences

The ERA held public conferences in Peoria and Springfield, Illinois, on October 14 and October 15, 1982, respectively. The purpose of the conferences was to permit interested persons to comment on various complaints and petitions recently filed with the ERA regarding TLC's import authorization and TLC's subsequent response to the complaints. The ERA received views on whether it should initiate a "proceeding" to review TLC's import authorization and, if so, what issues it should address, what kind of evidence it should gather, and what kind of procedures and timetable for action it should adopt.

C. Initiation of Proceedings and Solication of Petitions To Intervene In ERA Docket No. 8-12-LNG

Issuance of this order constitutes the commencement of an ERA proceeding to determine whether the petitioners' and complainants' allegations of "changed circumstances" since the 1977 FPC import authorizatoin would warrant the ERA taking steps to amend or revoke TLC's current import authorization issued pursuant to Section 3 of the Natural Gas Act.

Although the ERA did not have a proceeding on TLC's import authorization until issuance of this order, many persons have filed petitions to intervene and notices of intervention in any proceeding the ERA might conduct on this subject matter. All of these petitioners are granted intevention status and will be able to participate in this joint FERC/ERA hearing, as well as any further proceeding the ERA may conduct on this matter. A list of these parties is contained in Appendix A of this order. Additionally, all persons that have made filings before the Commission on this subject are also granted intervention in this ERA proceeding. A list of these parties is contained in Appendix B of this order.

The ERA invites protests or petitions to intervene in the proceeding. Until the conclusion of this hearing, all such protests or petitions are to be filed with the Secretary of the Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Such protests or petitions will be accepted for consideration if filed no later than 4:30 p.m., on November 5, 1982. Answers to petitions to intervene must be filed by November 8, 1982.

D. Procedural Requests

By initiating a proceeding in this docket and setting the matter for hearing, this order grants various parties' requests that the ERA address the issue of whether, under Section 3 of the Natural Gas Act, TLC's existing import authorization currently is not consistent with the public interest.

With respect to several persons' requests that the ERA temporarily suspend TLC's import authorization pending further hearing, the ERA has determined that such action is not warranted at this time. The Commission's action in this order denying Trunkline's and Panhandle's requests for waiver of § 154.38(d)(4)(iv) of its regulations effectively precludes any immediate pass-through to their customers of any charges attributable to the importation of LNG purchased from Sonatrach. Further, none of the complainants and petitioners has asserted any basis other than the possibility of immediate cost increases in support of their assertions that they will be irreparably injured if TLC's current import authorization is not suspended immediately. *See, e.g., Virginia Petroleum Jobbers Association* v. *FPC,* 259 F.2d 921 (D.C. Cir. 1958). For these reasons, by this order ERA denies all pending requests for temporary suspension of TLC's import authorization, without prejudice to refiling at a later date.

A number of requests for other types of procedural relief have also been filed with the ERA. Many of the concerns expressed in these requests overlap with those expressed by persons equesting the ERA to initiate evidentiary hearings. The ERA believes that the procedures we are adopting by this order will provide all parties an opportunity to present relevant evidence and their concerns. This order therefore denies all pending requests for procedural relief not specifically addressed above, without prejudice to refiling.

V. Jurisdiction

TLC's importation of Algerian LNG and construction and operation of the necessary facilities were authorized by the FPC in 1977 prior to the creation of the Department of Energy. The Department of Energy Organization Act (DOE Act) transferred jurisidiction under Section 3 of the Natural Gas Act with respect to the importation of natural gas to the Secretary of Energy. DOE Act, Sections 301 and 402. Through a series of delegation orders, the Secretary assigned primary responsibility for imports to the ERA, and assigned to the Commission import jurisdiction over certain ancillary matters. DOE Delegation Order Nos. 0204-54 and 0204-55, I FERC Stat. & Reg. ¶ 9908 and 9909. The Commission has

jurisdiction with respect to matters arising under Sections 4, 5 and 7 of the Natural Gas Act.

VI. Hearing Required

The Commission and the Administrator recognize that TLC's importation of Algerian LNG and construction and operation of the facilities necessary in order to accomplish the importation were approved by the FPC in 1977, based upon the circumstances that then existed and that were anticipated to occur in the future. The pleadings filed in these several dockets allege a number of changes from the circumstances that exsited in 1977. Whether the changes are sufficient to warrant action by the Commission or the Administrator cannot be determined at this time. Material issues of fact are raised by the pleadings in these cases that cannot be answered on the basis of the records before the two agencies. Because these pleadings raise common issues of fact and law, they will be consolidated for hearing.

The basic issues to be addressed in the hearing and in the briefs are the following:

(1) Whether the Administrator can alter, amend modify, suspend, rescind or revoke the existing authorization of TLC to import natural gas from Algeria issued by the FPC in Opinion Nos. 796 and 796–A pursuant to Section 3 of the Natural Gas Act? If so, under what circumstances?

(2) Whether the Commission has the legal authority to alter, amend, or rescind the certificate of public convenience and necessity issued to TLC pursuant to Section 7 of the Natural Gas Act? If so, under what circumstances?

(3) What changes, if any, have occurred with respect to price and need since the 1977 FPC import authorization that would warrant the amendment or rescission of TLC's current authorization under Section 3 of the Natural Gas Act?

(4) Whether the Lake Charles LNG facility should be permitted to operate at this time?

(5) Whether the import of LNG from Algeria by TLC at this time is inconsistent with the public interest and whether the sale of revaporized LNG from the Lake Charles facility by TLC to Trunkline at this time would be inconsistent with the public convenience and necessity?

(6) Is there a national need for this LNG over the near term and the life of the project? What other sources of energy supply at what prices will be available during these periods to meet such needs?

(7) Whether any pricing terms of the existing authorization of TLC to import natural gas from Algeria are inconsistent with the public interest and should be modified? If so, in what respect?

(8) Is the price of this LNG import, when revaporized, reasonable compared to alternate fuel prices in the U.S. market?

(9) What is the effect of this LNG import on the U.S. balance of payments? Has this materially changed since 1977?

(10) What is the projected need for this LNG import to serve the market requirements of Trunkline and its customers currently over the near term, and over the life of the project? What other sources of energy supply may be available to meet future market requirements and at what prices over the near term and the life of the project?

(11) Is the revaporized LNG marketable at the rates proposed by TLC currently, over the near term, and over the life of the project? If not, at what lower rate would the gas be marketable?

(12) What impact would inclusion in Trunkline's rates of the cost of the revaporized LNG have on Trunkline's customers currently, over the near term, and over the life of the project?

(13) To what extent, if any, would Trunkline or its customers lose load if the costs of the revaporized LNG are included in Trunkline's rates? If so, what alternative fuel would replace gas, and at what price?

(14) What would be the impact on end-user prices per MMBtu given the sunk costs invested in the project if the project were not to go forward at this time?

(15) What rate methodologies or mechanisms might be available so as not to penalize TLC if the Lake Charles facility does not go into service at this time?

(a) Should TLC's minimum bill be placed in effect?

(b) Should the project be treated as abandoned, with the investment being amortized by ratepayers?

(c) Should the project be "mothballed" or treated as being held for future use, with a return of equity-related components? If so, to what extent?

(16) Has TLC violated the terms of the authorizations granted pursuant to Opinion Nos. 796 and 796–A?

(17) Have the actions of TLC and Sonatrach in amending the gas supply contract served to void the contract that was considered in Opinion Nos. 796 and 796–A? Do such actions require that TLC secure appropriate regulatory approvals of the amended contract prior to any importation of LNG from Algeria?

(18) Should Trunkline and Panhandle be permitted to make effective an out-of-cycle PGA filing?

(19) To what extent should the cost increases included in FERC Docket No. RP81–85 (other than increases in the cost of LNG FOB Algeria pursuant to the price change mechanism of the contract approved by Opinion Nos. 796 and 796–A) be permitted to be reflected in TLC's rates?

In order to assist the Administrator and the Commission in understanding the historical background and current context of the above-enumerated issues, a full factual record should also be developed with respect to the circumstances surrounding the renegotiation of the price change mechanism of the gas supply contract between TLC and Sonatrach, and with respect to the effect of the August 1982 amendment to the price change mechanism on the contract that served as a basis for the authorization issued by the FPC in 1977.

Because it appears that TLC has already begun to incur substantial costs for LNG shipped from Algeria, the Commission directs the administrative law judge to expedite this proceeding so that the record may be certified to the Commission and the Administrator of the ERA not later than December 14, 1982. After certification of the record, Commission and ERA participants shall have ten days to file simultaneous briefs with the Commission and ERA. The administrative law judge is directed to modify the procedural schedule already established for Docket No. RP81–85–000 to the extent necessary to meet the requirements established herein. The rate issues identified in item 19 may be deferred, if necessary, in order to complete the record on the remaining items in a timely manner.

VII. Decisions and Orders

A. Economic Regulatory Administration

Based on the ERA's review of the filings in ERA Docket No. 82–12–LNG, we have decided to initiate a proceeding in this docket. Accordingly, the Secretary of Energy and the Administrator have transferred jurisdiction in this docket to the Commission *see* DOE Delegation Order No. 0204–104 and ERA Delegation Order No. 0204–104A) for the sole purpose of developing a record on the issues discussed above, and in accordance with the hearing procedures specified by the Commission. All motions and requests for procedural relief or action not specifically granted by this order are denied.

For the reasons set forth above, pursuant to Section 3 of the Natural Gas Act,

The ERA orders:

(A) Pursuant to DOE Delegation Order No. 0204-104 and the ERA Delegation Order No. 204-104A, a hearing shall be held in this proceeding and shall be conducted in accordance with the procedures specified by the Commission.

(B) All petitioners for leave to intervene, complainants, and petitioners for procedural relief listed in Appendices A and B are hereby granted status as parties, subject to such rules of practice and procedures as may be in effect.

(C) All motions and requests for procedural relief or action not specifically granted by this order are denied.

B. Commission

In view of the foregoing procedures and the serious issues raised, the Commission will deny, at this time, Trunkline's and Panhandle's requests for waiver of § 154.38(d)(4)(iv) to permit the filing of a PGA adjustment more frequently than simi-annually. We expect the hearing in these matters to consider whether good cause exists to grant waiver of § 154.38(d)(4)(iv). We deny such waiver at this time, because we expect to decide expeditiously the question of whether the Lake Charles facility should be permitted to go into service. If resolution of that issue becomes unduly prolonged, Trunkline and Panhandle are free to renew their motions for waiver.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that the proceedings in Docket Nos. CP74-138-003, CP74-139-001, CP74-140-001, CP82-517-000, CP82-519-000, CP82-533-000, CP82-541-000, RP81-85-000, RP82-127-000, TA83-1-28-000, and TA83-1-30-000 be consolidated and set for hearing.

(2) Good cause has not been shown to exist for waiver of the provisions of § 154.38(d)(4)(iv) of the Commission's regulations.

The Commission orders:

(A) The proceedings in Docket Nos. CP74-138-003, CP74-139-001, CP74-140-001, CP82-517-000, CP82-519-000, CP82-533-000, CP82-541-000, RP81-85-000, RP82-127-000, TA83-1-28-000, and TA83-1-30-000 are consolidated for hearing.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 3, 4, 5, 7, 15 and 16, and DOE Delegation Order No. 0204-55, a hearing shall be held in the proceeings consolidated in ordering paragraph (A). The consolidated hearing shall also consider ERA Docket No. 82-12-LNG, which has been delegated to the Commission by ERA for the sole purpose of compiling a record.

(C) An administrative law judge to be designated by the Chief Administrative Law Judge shall preside at a prehearing conference and subsequent hearings in this proceeding. The administrative law judge shall have full authority to establish all procedural dates and to phase the consideration of issues so that the record is certified to the Commission and the Administrator of the ERA consistent with the text of this order.

(D) Pursuant to Rule 709 of the Commission's Revised Rules of Practice and Procedure, the initial decision shall be waived and the record certified for decision by the Commission and the Administrator of the ERA.

(E) Panhandle's and Trunkline's requests in Docket Nos. TA83-1-28-000 and TA83-1-30-000 for a waiver of § 154.38(d)(4)(iv) of the Commission's regulations are denied, and their respective tariff filings in those dockets are rejected.

By the Commission.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

Kenneth F. Plumb,

Secretary, Federal Energy Regulatory Commission.

Appendix A—List of Parties, ERA Docket No. 82-12-LNG

1. Trunkline LNG Company.
2. State of Michigan and Michigan Public Service Commission.
3. National Hydrocarbons, Inc.
4. Public Utilities Commission of Ohio.
5. Missouri Public Service Commission.
6. Indiana Gas Company, Inc.
7. Lachmar.
8. Northern Illinois Gas Company.
9. Kansas State Corporation Commission.
10. Boston Gas Company.
11. Honorable Tom Corcoran, M.C.
12. Honorable Dan Costs, M.C.
13. Honorable Clarence Brown, M.C.
14. Panhandle Eastern Pipe Line Company.
15. Northern Indiana Public Service Company.
16. Mississippi River Transmission Corporation.
17. Glass Packaging Institute.
18. Industrial Gas Users Conference Companies.
19. The Process Gas Consumers Group.
20. Indiana Industrial Energy Consumers Group.
21. Consumers Power Company.
22. Honorable Robert H. Michel.
23. Honorable Paul Findley.
24. Central Illinois Public Service Company.
25. Associated Natural Gas Company.
26. Battle Creek Gas Company.
27. Central Illinois Light Company.
28. Citizens Gas Fuel Company.
29. Michigan Gas Utilities Company.
30. Missouri Utilities Company.
31. The Illinois Commerce Commission.
32. Ohio Gas Company.
33. Richmond Gas Corporation.
34. Southeastern Michigan Gas Company.
35. Toledo Edison Company.
36. State of Illinois and The People of Illinois.
37. Illinois Power Company.
38. Michigan Consolidated Gas Company.
39. Association of Businesses Advocating Tariff Equity.
40. Laclede Gas Company.

Appendix B

Docket number and name	Dated filed
CP74-138, et al.:	
Honorable Charles H. Percy, United States Senate.	Sept. 29, 1982.
Lachmar	Oct. 1, 1982.
Laclede Gas Company	Oct. 1, 1982.
Process Gas Consumers Group	Oct. 1, 1982.
National Hydrocarbons Inc	Oct. 1, 1982.
Kansas State Corporation Commission.	Oct. 4, 1982.
Northern Illinois Gas Company	Oct. 13, 1982.
General Service Customer Group	Oct. 13, 1982.
Panhandle Eastern Pipe Line Company.	Oct. 15, 1982.
Indiana Industrial Energy Consumers Group.	Oct. 20, 1982.
John D. Dingell, Member of Congress, Washington, D.C.	Oct. 20, 1982.
CP82-517-000:	
Indiana Gas Company, Inc	Sept. 23, 1982.
Great River Gas Company	Oct. 12, 1982.
Mississippi River Transmission Corporation.	Oct. 12, 1982.
Consumers Power Company	Oct. 13, 1982.
Michigan Consolidated Gas Company.	Oct. 13, 1982.
East Ohio Gas Company	Oct. 13, 1982.
CP82-517-000:	
Industrial Gas Users Conference Companies.	Oct. 13, 1982.
Glass Packaging Institute	Oct. 13, 1982.
CP82-519-000:	
Indiana Gas Company, Inc	Sept. 23, 1982.
Boston Gas Company	Oct. 18, 1982.
Consumers Power	Oct. 21, 1982.
CP82-533-000:	
Indiana Gas Company, Inc	Sept. 27, 1982.
Glass Packaging Institute	Oct. 13, 1982.
Industrial Gas Users Conference Companies.	Oct. 13, 1982.
Mississippi River Transmission Corporation.	Oct. 13, 1982.
Panhandle Eastern Pipe Line Company.	Oct. 15, 1982.
Lachmar	Oct. 20, 1982.
Boston Gas Company	Oct. 20, 1982.
East Ohio Gas Company	Oct. 22, 1982.
National Hydrocarbons, Inc	Oct. 22, 1982.
CP82-541-000:	
Northern Indiana Public Service Company.	Oct. 6, 1982.
Indiana Gas Company, Inc	Oct. 7, 1982.
Mississippi River Transmission Corporation.	Oct. 13, 1982.
Glass Packaging Institute	Oct. 13, 1982
Industrial Gas Users Conference Companies.	Oct. 13, 1982.
Panhandle Eastern Pipe Line Company.	Oct. 15, 1982.
The Missouri Public Service Commission.	Oct. 19, 1982.
CP82-541-000:	
Lachmar	Oct. 20, 1982.
Boston Gas Company	Oct. 20, 1982.
National Hydrocarbons, Inc	Oct. 22, 1982.
TA83-1-28-000:	
Tom Corcoran, Dan Coats, and Clarence J. Brown, Members of Congress.	Sept. 24, 1982.
Columbia Gas Transmission Corporation.	Sept. 29, 1982.
Charles H. Percy	Sept. 29, 1982.
Citizens Gas and Coke Utility	Sept. 29, 1982.
Illinois Power Company	Sept. 30, 1982.

Appendix B—Continued

Docket number and name	Dated filed
Consumers Power Company	Oct. 1, 1982.
Associated Natural Gas Company, et al.	Oct. 1, 1982.
Michigan Gas Utilities Company	Oct. 1, 1982.
The East Ohio Gas Company	Oct. 1, 1982.
Illinois Power Company	Oct. 1, 1982.
Association of Businesses Advocating Tariff Equity and the Process Gas Consumers Group.	Oct. 1, 1982.
Michigan Consolidated Gas Company.	Oct. 1, 1982.
Indiana Gas Company, Inc	Oct. 1, 1982.
Great River Gas Company	Oct. 1, 1982.
National Hydrocarbons, Inc	Oct. 1, 1982.
Frank J. Kelley, State of Michigan, Public Service Commission.	Oct. 1, 1982.
TA82-1-28-000	
Central Illinois Public Service Company.	Oct. 1, 1982.
Northern Illinois Gas Company	Oct. 1, 1982.
Northern Indiana Public Service Company.	Oct. 1, 1982.
Robert R. Michel and Paul Findley	Oct. 4, 1982.
Missouri Utilities Company	Oct. 5, 1982.
Illinois Commerce Commission	Oct. 6, 1982.
Missouri Power and Light Company	Oct. 7, 1982.
Missouri Edison Company	Oct. 7, 1982.
The People of the State of Illinois	Oct. 12, 1982.
Southeastern Michigan Gas Company.	Oct. 18, 1982.
TA82-1-30-000:	
Tom Corcoran, Dan Coats, and Clarence J. Brown, Members of Congress.	Sept. 24, 1982.
United Cities Gas Company	Sept. 29, 1982.
Charles H. Percy	Sept. 29, 1982.
Columbia Gas Transmission Corporation.	Sept. 29, 1982.
Illinois Power Company	Sept. 30, 1982.
Michigan Gas Utilities Company	Oct. 1, 1982.
General Service Customer Group	Oct. 1, 1982.
TA82-1-30-000:	
Consumers Power Company and Michigan Gas Storage Company.	Oct. 1, 1982.
The East Ohio Gas Company	Oct. 1, 1982.
National Hydrocarbons, Inc	Oct. 1, 1982.
Illinois Power Company	Oct. 1, 1982.
Indiana Gas Company, Inc	Oct. 1, 1982.
Mississippi River Transmission Corporation.	Oct. 1, 1982.
Association of Businesses Advocating Tariff Equity and the Process Gas Consumers Group.	Oct. 1, 1982.
Michigan Consolidated Gas Company.	Oct. 1, 1982.
Laclede Gas Company	Oct. 1, 1982.
Central Illinois Public Service Company.	Oct. 1, 1982.
State of Michigan and Michigan Public Service Commission.	Oct. 1, 1982.
Robert H. Michel and Paul Findley	Oct. 4, 1982.
Illinois Commerce Commission	Oct. 6, 1982.
Missouri Utilities Company	Oct. 5, 1982.
Northern Indiana Public Service Company.	Oct. 4, 1982.
Missouri Edison Company	Oct. 7, 1982.
Missouri Power and Light Company	Oct. 7, 1982.
TA83-1-30-000:	
The People of the State of Illinois	Oct. 18, 1982.
RP81-85-000:	
National Hydrocarbons, Inc	Sept. 10, 1982.
RP82-127-000:	
Indiana Gas Company, Inc	Sept. 7, 1982.
The Association of Businesses Advocating Tariff Equity.	Sept. 8, 1982.
Tom Corcoran, Dan Coats, and Clarence J. Brown, Members of Congress.	Sept. 10, 1982.
Illinois Power Company	Sept. 14, 1982.
Columbia Gas Transmission Corporation.	Sept. 14, 1982.
General Service Customer Group	Sept. 15, 1982.
Consumers Power Company	Sept. 15, 1982.
State of Michigan and Michigan Public Service Commission.	Sept. 15, 1982.
Mississippi River Transmission Corporation.	Sept. 15, 1982.
East Ohio Gas Company	Sept. 15, 1982.
Boston Gas Company	Sept. 16, 1982.

[FR Doc. 82-30066 Filed 10-29-82; 8:45 am]
BILLING CODE 6450-01-M

[Project No. 6277-001]

William L. Alcorn; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 27, 1982.

Take notice that on August 23, 1982, William L. Alcorn, (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6277 would be located on Willow Ranch Creek in Lassen County, California. Correspondence with the Applicant should be directed to: Fred R. Nagel, 45 South Roop Street, Susanville, California 96130.

Project Description.—The proposed project would consist of: (1) a 4-foot-high diversion structure; (2) a 12-inch-diameter, 3,600-foot-long penstock; (3) a powerhouse containing a generating unit with a rated capacity of 50 kW; and (4) appurtenant facilities. The Applicant estimates a 69,120 kWh average annual energy production.

Purpose of Exemption.—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project. Power would be sold to local utilities.

Agency Comments.—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the California Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application.—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before December 15, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Motions To Intervene.—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determing the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 15, 1982.

Filing and Service of Responsive Documents.—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must

also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29926 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6710-000]

Bergin Resources Development; Application for Preliminary Permit

October 26, 1982.

Take notice that Bergin Resources Development (Applicant) filed on September 27, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6710 to be known as the Junction City Power Project located on Soldier Creek, partially within Trinity National Forest in Trinity County, California. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. John H. Underwood, 2091 Phobos Court, Redding, California 96002.

Project Description—The proposed project would consist of: (1) a concrete diversion structure, 5 feet high, at elevation 2450 feet; (2) diversion conduits and an existing channel with a total length of 5170 feet; (3) a penstock, 30 inches in diameter and 1450 feet; (4) a powerhouse at elevation 2,000 feet containing one or more turbine generators with a total capacity of 1,120 kW and an average annual output of 7.36 GWh; and (5) a transmission line, one and one-half miles long, interconnecting with a Pacific Gas and Electric Company distribution line.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 36 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support application for license to construct and operate the project. The estimated cost of permit activities is $43,00.

Competing Applications—Anyone desiring to file a competing application for preliminary permit must file with the Commission, on or before January 10, 1983, the competing application itself, or a notice of intent to file such an application (see: 18 CFR 4.30 et. seq. (1981); and Docket No. RM81-15, issued October 29, 1981, 46 FR 55245, November 9, 1981.)

The Commission will accept applications for license or exemption from licensing, or a notice of intent to file such an application in response to this notice. A notice of intent to file an application for license or exemption must be filed with the Commission on or before January 10, 1983, and should specify the type of application forthcoming. Any application for license or exemption from licensing must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate).

Filing of a timely notice of intent to file an application for preliminary permit, allows an interested person to file an acceptable competing application for preliminary permit no later than March 1, 1983.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 10, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29927 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 5177-001]

Bluepond Associates: Surrender of Preliminary Permit

October 28, 1982.

Take Notice that Bluepond Associates (Bluepond), Permittee for the proposed Hampstead Hydro Project No. 5177 has requested that its preliminary permit be terminated. The preliminary permit was issued on December 10, 1981, and would have expired on May 31, 1983. The proposed project would have been located on the Little Cimarron River in Gunnison County, Colorado.

Bluepond filed its request on October 8, 1982, and the surrender of its permit for Project No. 5177 is effective as of the date of this notice.

Kennth F. Plumb,

Secretary.

[FR Doc. 82-29971 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-540-000]

Cities Service Gas Co.; Application

October 26, 1982.

Take notice that on September 20, 1982, Cities Service Gas Company (Applicant), P.O. Box 25128, Oklahoma City, Oklahoma 73125, filed in Docket No. CP82-540-000 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 pipeline and related facilities in Texas County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate facilities to redeliver volumes of gas to Mobil Oil Corporation (Mobil) after such gas is received and compressed at Applicant's Straight Compressor Station. Specifically, Applicant seeks authority to tap its Guymon-Blackwell 26-inch transmission pipeline, and construct and operate pipeline, measuring, regulating, and appurtenant facilities to redeliver volumes of gas to Mobil after such gas is compressed at Applicant's Straight Compressor Station. Applicant asserts it purchases gas from Mobil in the area pursuant to a contract whereby Mobil

reserves from dedication to Applicant volumes necessary to meet the requirements of the city of Guymon and due to a decline in pressures Mobil now requires compression and dehydration of such volumes to meet its delivery obligations to the city of Guymon. Mobil would deliver volumes of natural gas to Applicant at various points on Applicant's Oklahoma-Hugoton gathering system and Applicant would redeliver to Mobil equivalent volumes of gas necessary to serve the city of Guymon at the discharge side of the Straight Compressor Station. Applicant would make deliveries not to exceed 10,000 Mcf on a peak day with annual volumes not to exceed 1,500,000 Mcf. Applicant asserts that it has adequate capacity in its system to perform the service.

It is indicated that Mobil would reimburse Applicant for the total cost of the facilities which Applicant estimates to be $80,620. Applicant would charge Mobil an initial compression charge of 6.64 cents per Mcf, plus compression fuel for all gas redelivered to Mobil. In addition it is indicated Mobil would pay Applicant $250 per month for the operation and maintenance of measurement and regulation facilities required to deliver the subject gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority, contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29928 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6706-000]

City of Seattle, Washington; Application for Preliminary Permit

October 28, 1982.

Take notice that the City of Seattle, Washington (Applicant) filed on September 23, 1982, an application for preliminary permit [pursuant to Federal the Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6706 to be known as the Duffey Creek Waterpower Project located on Duffey Creek in Snohomish County, Washington. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: City of Seattle, City Light Department, City Light Building, 1015 Third Avenue, Seattle, Washington 98104.

Project Description—The proposed project would consist of: (1) a steel or concrete diversion structure at elevation 1,920 feet; (2) a steel pipeline 24 inches in diameter; (3) a powerhouse at elevation 450 feet containing a turbine generator with a 2.3 MW capacity and an average annual output of 9 GWh; and (4) a transmission line, 6,000 feet long, interconnecting with Snohomish County PUD No. 1 distribution lines.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a term of 30 months, during which engineering, economic and environmental studies will be conducted to ascertain project feasibility and to support an application for a license to construct and operate the project. The estimated cost of permit activities is $250,000.

Competing Applications—This application was filed as a competing application to Lawrence J. McMurtrey's application for Project No. 6185, filed on April 7, 1982, and the Town of Skykomish, Washington's application for Project No. 6530, filed on July 16, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et. seq. or 4.101 et. seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, of a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211, or 385.214, 47 FR 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the

Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29937 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-546-000]

Columbia Gas Transmission Corp.; Application

October 27, 1982.

Take notice that on September 23, 1982, Columbia Gas Transmission Corporation (Applicant), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, filed in Docket No. CP82-546-000 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 certain natural gas facilities in Chautaugua and Cattaraugus Counties, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to construct and operate approximately 42.4 miles of 6-inch, 8-inch and 12-inch transmission pipeline; a 1,080 horsepower compressor station and appurtenant facilities; a 360 horsepower compressor station and appurtenant facilities; and interconnecting measuring facilities, all in Chautauqua and Cattaraugus Counties, New York. Applicant states that these facilities are necessary in order to purchase available reserves of long-term natural gas supply and to transport such volumes to two points of exchange with National Fuel Gas Supply Corporation (National Fuel). One of the points of interconnection would be in the Town of Little Valley, Cattaraugus County, New York, and the second point of interconnection would be in the Town of Franklinville, Catarraugus County, New York, it is explained. The cost of the facilities to be constructed is estimated to be $7,938,000, which cost would be financed with funds generated from internal sources.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificte is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29952 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-49-000]

Connecticut Light & Power Co.; Filing

October 26, 1982.

Take notice that on October 20, 1982, Connecticut Light and Power Company (CL&P) tendered for filing a proposed rate schedule with respect to Transmission Agreement dated July 30, 1982 between (1) CL&P and Western Massachusetts Electric Company (WMECO) and (2) Fitchburg Gas and Electric Light Company (FG&E).

CL&P states that the Transmission Agreement provides for transmission services to FFG&E for the wheeling of 3,362 kilowatts of FG&E's generation entitlement obtained from Linweave, Incorporated during the period from August 4, 1982 to August 3, 1992.

CL&P further states that the transmission charge rate is a monthly rate equal to one-twelfth of the estimated annual average cost of transmission service on the Northeast Utilities system determined in accordance with Schedule A and Exhibits I, II and III thereto of the Transmission Agreement. The monthly transmission charge is determined by the product of (i) the transmission charge rate ($/kW-month), and (ii) the number of kilowatts FG&E is entitled to receive during such month. The monthly transmission charge is reduced appropriately to give due recognition for payments made by FG&E to other systems also providing transmission service.

CL&P requests an effective date of August 4, 1982, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing have been served upon WMECO, and FG&E.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29939 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2576-003]

Connecticut Light & Power Co.; Application for Approval of Recreational Resource Plan

October 28, 1982.

Take notice that on September 20, 1982, Connecticut Light and Power Company filed an application [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for approval of a Recreational Resource Plan, Exhibit R, pursuant to Article 33 of the license for the Housatonic Project No. 2576. The project is located on the Housatonic River in New Haven, Fairfield and Litchfield Counties, Connecticut. Correspondence with the Applicant should be directed to: Mr. William G. Counsil, Connecticut Light and Power Company, P.O. Box 270, Hartford, Connecticut 06101.

Licensee, under its proposed recreational use plan, proposes to develop canoe portages and related day-use outdoor recreational facilities at lake Zoar, Lake Lillinonah, Lake

Candlewood, and the Bulls Bridge Reservoir which are part of the Housatonic Project.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 17, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29972 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-16-000]

Florida Power & Light Co.; Notice of Filing

October 26, 1982.

Take notice that Florida Power & Light Company (FPL), on October 5, 1982, tendered for filing documents entitled Amendment Number Three to Agreement to Provide Specified Transmission Service Between FPL and Orlando Utilities Commission.

FPL states that under Amendment Number Three, FPL will transmit power and energy for Orlando Utilities Commission (Orlando) as is required by Orlando in the implementation of its interchange agreement with Utilities Commission, City of New Smyrna Beach.

FPL requests waiver of the Commission's notice requirements to allow proposed Amendment to become effective immediately.

FPL states that copies of the filing were served on the Orlando Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29973 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6661-000]

Frontier Technology, Inc.; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 26, 1982.

Take notice that on September 3, 1982, Frontier Technology, Inc. (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6661 would be located on Falls Creek within Willamette National Forest near the town of Sweet Home in Linn County, Oregon. Correspondence with the Applicant should be directed to: Mr. Gary P. Marcus, President, Frontier Technology, Inc., 3980 North Shasta Loop, Eugene, Oregon 97405.

Project Description—The proposed project would consist of: (1) a 5-foot-high, 25-foot-long diversion structure; (2) a 7,650-foot-long, 24-inch varying to 12-inch-diameter penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 2,700 kW, operating under a head of 2,200 feet; and (4) appurtenant facilities. The estimated average annual energy output is 15,298,000 kWh.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Oregon Department of Fish and Wildlife are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice apropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before December 6, 1982 either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

This application competes with a preliminary permit application (Project No. 6691) submitted by Mountain West Hydro, Inc. on September 20, 1982.

Comments, Protests, or Motions to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of

Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protest or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 6, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intevene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29929 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-50-000]

Holyoke Water Power Co.; Filing

October 26, 1982.

Take notice that on October 20, 1982, the Holyoke Water Power Company (Holyoke) tendered for filing a proposed rate schedule with respect to a distribution service agreement dated July 30, 1982 (Distribution Agreement) between (1) Holyoke (2) Fitchburg Gas and Electric Light Company (FG&E) and (3) Linweave, Inc. of Holyoke, Massachusetts (LINWEAVE):

Holyoke states that the Distribution Agreement provides for distribution services to FG&E for the delivery of 3,362 kilowatts of FG&E's generation entitlement obtained from Linweave, Incorporated during the period from August 4, 1982 to August 3, 1992.

Holyoke further states the distribution charge rate is a monthly rate equal to one-twelfth of the estimated annual average cost of distribution service on the Holyoke system. The montly distribution charge is determined as the product of (i) the distribution charge rate ($/kW-month), and (ii) the total kilowatts of claimed capability of the Linweave Units.

Holyoke requests an effective date of August 4, 1982, and therefore requests waiver of the Commission notice requirements.

Copies of this filing were served upon FG&E and LINWEAVE.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29940 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6663-000]

Jay A. Moyle; Application for Exemption for Small Hydroelectric Power Project of 5 MW or Less Capacity

October 27, 1982.

Take notice that on August 31, 1982, Jay A. Moyle (Applicant) filed an application under Section 408 of the Energy Security Act of 1980 (Act) (16 U.S.C. 2705 and 2708 *as amended*), for exemption of a proposed hydroelectric project from licensing under Part I of the Federal Power Act. The proposed small hydroelectric Project No. 6663 would be located on KTFI Creek, in Twin Falls County, Idaho. Correspondence with the Applicant should be directed to: Gordon B. Greaves, 266 3600 North, P.O. Box 901, Twin Falls, Idaho 83301.

Project Description—The proposed project would consist of: (1) a 6-foot-high diversion structure; (2) a 16-inch-wide, 16-inch-deep, 775-foot-long concrete canal; (3) a settling pond with a gross storage capacity of less than 1 acre-foot; (4) a 20-inch-diameter, 350-foot-long penstock; (5) a powerhouse containing a generating unit with a rated capacity of 34 kW; and (6) appurtenant facilities. The Applicant estimates a 293,000 kWh average annual energy production.

Purpose of Exemption—An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project. Power would be sold to Idaho Power Company.

Agency Comments—The U.S. Fish and Wildlife Service, The National Marine Fisheries Service, and the Idaho Department of Fish and Game are requested, for the purposes set forth in Section 408 of the Act, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Competing Application—Any qualified license applicant desiring to file a competing application must file with the Commission, on or before December 1, 1982, either the competing license application that proposes to develop at least 7.5 megawatts in that project, or notice of intent to file such a license application. Filing of a timely notice of intent allows an interested person to file the competing license application no later than 120 days from the date that comments, protests, etc. are due. Applications for preliminary permit will not be accepted.

A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing license application must conform to the requirements of 18 CFR 4.33 (a) and (d) (1980).

Comments, Protests, or Motions To Intervene—Anyone may file comments,

a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 1, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kennth F. Plumb,

Secretary.

[FR Doc. 82-29932 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA83-1-000]

Meeker and Co.; Filing of Petition for Review Under 42 U.S.C. 7194

October 26, 1982.

Take notice that Meeker and Company on October 20, 1982, filed a Petition for Review under 42 U.S.C. § 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before November 10, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before November 10, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29954 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-213-002]

Michigan Wisconsin Pipe Line Co.; Petition to Amend

October 27, 1982.

Take notice that on September 24, 1982, Michigan Wisconsin Pipe Line Company (Petitioner), One Woodward Avenue, Detriot, Michigan 48226, filed in Docket No. CP80-213-002, a petition to amend the order issued on July 24, 1980, in Docket No. CP80-213-000 as amended, pursuant to Section 7(c) of the Natural Gas Act, so as to authorize deliveries of gas for the account of Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), at an additional point of delivery, all as more fully set forth in the petition to amend, which is on file with the Commission and open to public inspection.

Petitioner states that it is currently authorized to transport for Northern's account up to 3,000 Mcf of natural gas per day from the production platform in Eugene Island Area Block 39, offshore Louisiana, to the existing interconnection between the pipeline systems of Petitioner and Trunkline Gas Company (Trunkline) at Applicant's Patterson Compressor Station in St. Mary Parish, Louisiana. Petitioner requests authorization to make redeliveries for Northern's account at the existing interconnection of the pipeline systems ofPetitioner and United Gas Pipe Line Company (United) located downstream of Petitioner's Patterson Compressor Station in St. mary Parish, Louisiana. Petitioner asserts that while this delivery point is one of four delivery points contractually provided for in the transportation agreement of the parties dated October 30, 1979, only the delivery point to Trunkline was previously authorized.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29955 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-551-000]

Midwestern Gas Transmission Co.; Application

October 26, 1982.

Take notice that on September 27, 1982, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP82-551-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that it was authorized in Docket No. CP80-565 to transport 50,000 Mcf of natural gas per day for Northern pursuant to the terms of a gas exchange agreement dated August 15, 1980, among Applicant, Northern and Michigan Wisconsin Pipe

Line Company (Michigan Wisconsin). It is explained that such volumes were to be delivered by Applicant to Northern at the North Branch delivery point and the quantities of natural gas requested by Michigan Wisconsin were to be reduced from deliveries to Michigan Wisconsin at the Marshfield delivery point. It is stated further that the agreement provided that the quantity of gas transported and delivered to Northern at the North Branch delivery point would be the equivalent volume of gas delivered by Northern to Michigan Wisconsin at an exchange point between them. Applicant asserts that the service was authorized to be performed during the periods October 1, 1980, through April 30, 1981, and October 1, 1981, through April 30, 1982.

It is alleged that the conditions which were anticipated to give rise to the need for the service did not occur, and that, consequently, no service was rendered pursuant to the authorization issued in Docket No. CP80-565. It is further stated that the agreement has expired by its own terms and Applicant, Northern, or Michigan Wisconsin do not desire to extend the term. Applicant alleges that the abandonment proposed would not have any impact on Midwestern's pipeline system or any of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposal abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29930 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-459-002]

Midwestern Gas Transmission Co.; Application

October 26, 1982.

Take notice that on September 24, 1982, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP77-459-002 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the sale of imported Canadian natural gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), and the leasing and operation of compressor units and related facilities used to effectuate the importation and sale of gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that in Docket No. CP77-459 it was authorized to sell these imported natural gas volumes to Tennessee and to lease and operate four compressor units totaling 9,200 horsepower and related facilities.

It is stated that Applicant seeks to abandon the sale of natural gas to Tennessee as a result of a letter from Tennessee dated June 1, 1982, informing Applicant that Tennessee wished to cancel their interim sales agreement because the service is no longer required. Applicant further proposes to abandon the compressor units and related facilities. Applicant states that because the facilities proposed to be abandoned are leased, payment for the leased equipment would cease. Applicant further states that the abandonment of service, sales, and facilities proposed herein would not have a significant impact on its system or on any of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in an subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearng will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29956 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST82-487-000]

Mississippi Valley Gas Co.; Application for Approval of Rates

October 27, 1982.

Take notice that on July 2, 1982, Mississippi Valley Gas Company, (Applicant), P.O. Box 3348, Jackson, Mississippi 39207, filed in Docket No. ST82-487-000 an application pursuant to § 284.123(b)(2) of the Commission's Regulations for approval of its rates for the transportation of natural gas on behalf of Texas Eastern Transmission Corporation and its division, Texas Eastern Gas Pipeline Company (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to a gas transportation agreement between Texas Eastern and Applicant, it proposes to transport gas between the delivery points in the Splunge and Four Mile Creek fields and the redelivery point at the point of interconnection between the facilities of Applicant and Texas Eastern, all in Monroe County, Mississippi. Applicant further states that the quantities of natural gas estimated to be delivered on a total and maximum daily basis are all gas that is purchased by Texas Eastern from the Splunge and Four Mile Creek fields.

It is asserted that the quantity of 5,000,000 Mcf of gas during a period not to exceed five years from the date of first delivery to Texas Eastern would be delivered to Applicant at a rate designated by Texas Eastern which shall be at least 1,000 Mcf per day and not more than 4,500 Mcf per day. It is further asserted that the rate to be charged for the transportation is 21.9 cents per million Btu, which Applicant states was computed pursuant to § 284.123(b)(1) of the Commission's regulations.

Applicant attests that the particular supplies of natural gas were not committed or dedicated to interstate commerce on November 8, 1978. Applicant further states that it intends to commence the transportation service and charge and collect said proposed rate, subject to refund, and subject to the provisions stated in § 284.123(b)(2)(ii) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29957 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6597-000]

Monadnock Paper Mills Inc.; Application for License (5 MW or Less)

October 25, 1982.

Take notice that Monadnock Paper Mills, Inc. (Applicant) filed on August 18, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for continued operation of a water power project to be known as Monadnock Paper Mills Hydro Project No. 6597. The project is located on the Contoocook River in Hillsborough County, New Hampshire. Correspondence with the Applicant should be directed to: James M. Rea, East Coast Engineering, P.O. Box 25, Barrington, NH. 03825 and Dom D'Ambruoso, Ransmeier & Spellman, 110 No. Main Street, Concord, NH. 03301.

Project Description—The proposed project is run-of-the-river and consists of the following developments (upstream to downstream):

1. (1) Powder Mill Dam, 366 feet long and 18.6 feet high, constructed of concrete with a 228-foot spillway section provided with 2-foot high flashboards; (2) a regulating reservoir with approximately four days pondage at a flow of 300 cfs or about mean flow of the river; (3) a 4-foot by 4-foot gated sluiceway at the left of the spillway, and a gatehouse and 4-foot diameter outlet works pipe, at the right of the spillway, regulating downstream flow.

2. (1) Monadnock Dam, 500 feet long and 22 feet high, located 0.8 miles downstream of Power Mill Dam and constructed of concrete with two spillway sections, 115 feet long and 50 feet long, provided with 2-foot high flashboards, and with earthen embankments containing concrete core walls at both abutments; (2) a reservoir having minimal pondage; (3) a gated intake structure and powerhouse, located near the left dam abutment, containing two turbine-generator units rated at 125 kW and 300 kW; (4) a tailrace re-entering the river approximately 100 feet downstream of the dam; (5) a transmission line; and (6) appurtenant facilities.

3. (1) Pierce Dam, 420 feet long and 28 feet high, located 900 feet downstream of Monadnock Dam and constructed of concrete with two spillway sections, 168 feet long and 122 feet long on a dogleg alignment, provided with 2-foot high flashboards; (2) a reservoir having minimal pondage; (3) a gated intake structure and powerhouse, located at the right dam abutment, containing two turbine-generator units rated at 220 kW and 550 kW; (4) a tailrace partially encircling an island and re-entering the main channel of the river approximately 600 feet downstream of the main dam; (5) a transmission line; and (6) appurtenant facilities.

4. (1) Paper Mill Dam, 280 feet long and 19 feet high, located 1,200 feet downstream of Pierce Dam and constructed of concrete with a 142-foot-long spillway section; (2) a canal headworks, just upstream of the right dam abutment, and a 300-foot-long canal with concrete walls leading to a forebay; (3) an intake structure and a steel penstock, 10 feet in diameter and approximately 160 feet long; (4) a powerhouse containing a turbine-generator unit rated at 750 kW; (5) a tailrace re-entering the river approximately 800 feet down-stream of the dam; (6) a transmission line; and (7) appurtenant facilities.

The combined total capacity of the project is 1,945 kW. The transmission lines are interconnected with those of the Public Service Company of New Hampshire. Average annual generation is approximately 6,000,000 kWh of which 75% is utilized by Monadnock Paper Mills, Inc., and 25% is sold to the Public Service Company of New Hampshire. All project works are owned by the Applicant.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—Anyone desiring to file a competing application must file with the Commission, on or before January 3, 1983, either the competing application itself [See 18 CFR 4.33(a) and (d)] or a notice of intent [See 18 CFR 4.33(b) and (c)] to file a competing application. Submission of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et. seq. (1981).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR (1982). In determining the appropriate action to take the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 3, 1983.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29669 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-1-000]

Montana-Dakota Utilities Co.; Application

October 27, 1982.

Take notice that on October 1, 1982, Montana-Dakota Utilities Co., (Applicant), 400 North Fourth Street, Bismarck, North Dakota 58501, filed in Docket No. CP83-1-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29958 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-51-000]

Montana Power Co.; Filing

October 27, 1982.

Take notice that on October 20, 1982, Montana Power Company (Montana) tendered for filing a Notice of Cancellation of the Rate Schedule agreement for the sale of nonfirm energy between Montana and Western Area Power Administration (WAPA). Montana states that this agreement has expired as of its own terms and has not been renewed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29941 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1869-003]

Montana Power Co.; Application for Amendment of License (Over 5 MW)

October 28, 1982.

Take notice that the Montana Power Company (Licensee) filed on August 27, 1982, an application for amendment of license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for modification and continued operation of a water power project known as the Thompson Falls Project No. 1869. The project is located on the Clark Fork River in Sanders County, Montana. Correspondence with the Licensee should be directed to: Mr. R. J. Labrie, The Montana Power Company, 40 East Broadway Street, Butte, Montana 59701.

Project Description—The modified project would consist of: (1) the existing, 913-foot-long Main Dam; (2) the existing Dry Channel Dam, with an overall length of 411 feet; (3) the existing 258-foot-long powerhouse-intake structure leading to the existing powerhouse, which contains an installed generating capacity of 30 MW; (4) a proposed powerhouse which will contain an installed generating capacity of 50 MW with both the existing and expansion plant operating at full capacity; (5) an existing 1,500-acre reservoir with a usable storage capacity of 15,000 acre-feet; (6) a proposed, 1,000-foot-long access road extension; (7) the proposed replacement of the 360-foot-long existing, access road bridge superstructure; (8) a proposed 1,000-foot-long tailrace channel; and (9) appurtenant facilities. The project

affects navigable water of the U.S. (Clark Fork River) and lands of the United States (Lolo National Forest). The Licensee estimates the increase in the average annual energy generation to be 197 Gwh.

Purpose of Project—The Licensee proposes to utilize the additional power output to meet its expected growth in electrical demand.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 Fed. Reg. 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before December 20, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29942 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6691-000]

Mountain West Hydro, Inc.; Application for Preliminary Permit

October 26, 1982.

Take notice that Mountain West Hydro, Inc. (Applicant) filed on September 20, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for Project No. 6691 to be known as the Falls Creek Project located on Falls Creek within Willamette National Forest in Linn County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Carl Rounds, President, GED, Inc., 1885 West Washington Avenue, Stayton, Oregon 97383.

Project Description—The proposed project would consist of: (1) a 6-foot-high, 31-foot-long diversion structure; (2) a 30-inch-diameter, 15,920-foot-long penstock; (3) a powerhouse to contain a single generating unit with a rated capacity of 6,400 kW, operating under a head of 2,453 feet; and (4) a 200-foot-long transmission line. The estimated average annual energy output is 29,276,000 kWh.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The Applicant seeks issuance of a preliminary permit for a period of 36 months during which the Applicant would conduct engineering, environmental and economic feasibility studies as well as prepare an application for an FERC license. No new roads will be constructed during this period. The estimated cost for conducting these studies and preparing an application for an FERC license is $140,400.

Competing Applications—This application competes with an exemption application (Project No. 6661) submitted by Frontier Technology, Inc. on September 3, 1982. Any competing applications or notices of intent should be filed pursuant to the notice for Project No. 6661. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license or exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations (see: 18 CFR 4.30 et seq. 4.101 et seq. (1981), as appropriate).

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 Fed. Reg. 19025–26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before November 19, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29931 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6018-000]

Murray City, Utah; Application for License (5 MW or Less)

October 27, 1982.

Take notice that Murray City, Utah (Applicant) filed on February 23, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for construction and operation of a water power project to be known as the Causey Hydro Project No. 6018. The project would be located on the South Fork, Ogden River in Weber County, Utah. Correspondence with the Applicant should be directed to: Mr. Jon C. Young, General Manager, Murray City Power Department, 153 West 4800 South, Murray, Utah 84107.

Project Description—The proposed project would utilize the existing Bureau of Reclamation's Causey Dam and Reservoir, operated and maintained by the Weber Basin Water Conservation District, and would consist of: (1) a 42-inch diameter steel penstock utilizing the existing outlet works near the left dam abutment and leading to (2) a new powerhouse containing two turbine-generator units having rated capacities of 250 kW and 1,000 kW for a total rated capacity of 1,250 kW; (3) a tailrace

approximately 80 feet long; (4) new and rebuilt 12.5-kV transmission lines; (5) a switchyard; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,346,000 kWh. Project energy would be utilized by Murray City.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Western Hydro Electric Incorporated's application for Project No. 5244 filed on August 18, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. [See: 18 CFR 4.30 et seq. or § 4.101 et seq. (1981), as appropriate.]

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 16, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29933 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-4-000]

National Fuel Gas Supply Corp.; Application

October 27, 1982.

Take notice that on October 4, 1982,[1] National Fuel Gas Supply Corporation (Applicant), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP83-4-000 an application pursuant to Section 7 of the Natural Gas Act and Subpart F of Part 157 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing the construction, acquisition, and operation of certain facilities and the transportation and sale of natural gas and for permission and approval to abandon certain facilities and service, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29959 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[1] The application was initially tendered for filing on October 4, 1982; however, the fee required by Section 159.1 of the Regulations under the Natural Gas Act (18 CFR 159.1) was not paid until October 5, 1982; thus filing was not completed until the latter date.

[Docket No. G-10632-005]

Northern Illinois Gas Co.; Application for Continued Exemption

October 27, 1982.

Take notice that on January 8, 1982, Northern Illinois Gas Company (NI-Gas), P.O. Box 190, Aurora, Illinois 60507, filed in Docket No. G-10632-005 an application pursuant to Section 152.5 of the Commission's Regulations for an order declaring that NI-Gas' exemption from Commission jurisdiction under Section 1(c) of the Natural Gas Act will not be affected by NI-Gas' participation in the natural gas storage arrangement for which Mid-Continent Gas Storage Company (Mid-Continent) is seeking certificate authority in Docket No. CP82-146-000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is submitted that NI-Gas is an intrastate gas distribution utility subject to the jurisdiction of the Illinois Commerce Commission and engaged in selling and distributing natural gas to customers in the State of Illinois. By order issued July 26, 1956, in Docket No. G-10632, NI-Gas, pursuant to Section 1(c) of the Natural Gas Act, was exempted from the provisions of such Act.

The transaction sought to be certificated in Docket No. CP82-146-000 is an arrangement by which NI-Gas leases storage space to Mid-Continent, and Mid-Continent uses this space to provide storage service to East Tennessee Natural Gas Company (East Tennessee). NI-Gas asserts that by merely leasing storage capacity, NI-Gas will not be transporting or selling gas in interstate commerce. Therefore, NI-Gas requests that the Commission issue an order declaring that the existing exemption of NI-Gas under Section 1(c) of the Natural Gas Act is not affected by its participation in the aforementioned leasing arrangement.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29960 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-528-000]

Northern Natural Gas Company, Division of InterNorth, Inc.; Application and Petition To Amend

October 26, 1982.

Take notice that on September 13, 1982, Northern Natural Gas Company, Division of InterNorth, Inc. (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP82-528-000 pursuant to Section 7 of the Natural Gas Act a petition to amend the orders issued August 29, 1977,[1] August 29, 1977,[1] September 30, 1977,[1] and July 31, 1981, in Docket Nos. CP77-11, CP77-54, CP77-450, and CP81-256-000, respectively so as to authorize the sale of certain volumes of natural gas to Trunkline Gas Company (Trunkline) and for permission and approval to abandon certain sales of natural gas to Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant asserts that on September 24, 1976, it entered into a transportation agreement with Panhandle and Trunkline which served to link Applicant's main transmission system with gas supply sources in the Gulf Coast area. It is claimed this agreement provides that Trunkline would receive natural gas from Applicant at Longville, Louisiana, and redeliver natural gas to Panhandle at the Interconnection of Trunkline's and Panhandle's facilities in Tuscola, Douglas County, Illinois, for further delivery by Panhandle to Applicant near Mullinville, Kiowa County, Kansas. It is further stated that Panhandle received an option to purchase up to 20 percent of the natural gas received by Trunkline for Applicant's account in consideration for its transportation services.

It is stated that the agreement was amended on June 26, 1979, to provide for a specified termination date and that as amended the agreement would terminate either on January 13, 1982, or upon commencement of deliveries of Alberta gas owned by United Gas Pipe Line Company (United) to the Northern Border project at the Northern Receipt Point, whichever occurs later. It is further asserted that the Northern Border Project is expected to commence service in September 1982.

Applicant states that on July 6, 1979, it filed an application in Docket No. CP79-396 requesting, *inter alia,* authority to exchange up to 450,000 Mcf of gas per day with United. It is stated that the exchange arrangement provides for Applicant to deliver its Gulf Coast area offshore production to United in exchange for like volumes United would cause to be delivered to Applicant at Ventura, Iowa, via the Northern Border Project. Applicant asserts that upon gas commencing to flow through the Northern Border system, Applicant's offshore production presently transported by Panhandle and Trunkline pursuant to the agreement, would be delivered to United in fulfillment of Applicant's exchange obligation, thereby eliminating the need for the agreement.

Applicant asserts that due to termination of the agreement, eight additional transportation agreements between Applicant, Panhandle, and Trunkline would terminate. It is further asserted that Applicant's offshore reserves transported pursuant to such agreement would be redelivered to United by various pipeline companies.

It is stated that Panhandle and Trunkline filed an application with the Commission on March 31, 1982, in Docket No. CP77-17-007, *et al.,* for permission and approval to abandon the transportation services of the agreement and certain associated transportation. Applicant states that it anticipates that Commission approval of Panhandle's and Trunkline's request for such abandonment would be issued by the in-serve date for Northern Border. Therefore, Applicant requests that the Commission permit and approve the abandonment of the following 20 percent sales to Panhandle which are related directly to transportation services Panhandle and Trunkline have filed to abandon.

Date of contract	Transportation authorization		Sale authorization	
	Panhandle/trunkline docket No.	Date of Commission order	Applicant's docket No.	Date of Commission order
7/19/77	CP77-613	12/29/77	CP77-557	11/29/77
3/01/78	CP78-510	4/17/79	CP78-407	4/17/79
6/19/78	CP78-511	1/02/79	CP78-480	1/02/79
7/24/78	CP78-516	4/23/79	CP78-505	4/23/79
7/10/80	CP80-489	2/26/82	CP80-579	2/26/81
9/18/80	CP81-7-000	6/04/81	CP81-97-000	6/04/82
10/22/81	CP81-109-000	1/05/82	CP81-254-000	10/08/81
11/05/80	CP81-101-000	9/08/81	CP81-255-000	7/31/81

Applicant further requests that four authorized 20 percent sales to Panhandle be amended to allow such sales to be made to either Panhandle or Trunkline. Applicant states that on June 16, 1982, Applicant, Panhandle and Trunkline amended four gas transportation and sales agreements to provide for the delivery of gas by Trunkline to United For Applicant's account. It is noted that the four amendments have replaced the Longville, Louisiana redelivery point of the original agreements with three points of interconnection between the facilities of Trunkline and United. The three delivery points, it is stated, are identified as Olla, LaSalle Parish, Louisiana; Centerville, St. Mary Parish, Louisiana; and, Garden City, St. Mary

[1] This proceeding was commenced before the FPC. By joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the Commission.

Parish, Louisiana. As partial consideration for the transportation services, Applicant asserts that it agreed to sell up to 20 percent of the natural gas attributable to the listed sources to Panhandle or Trunkline as partial consideration for transportation services provided on Applicant's behalf, for the following Docket Nos.

Date of gas transportation and sales agreement	Supply source	Sales authorization	
		Docket No.	Order date
9/23/76	West Cameron Area Block 480	CP77-11	8/29/77
10/27/76	West Cameron Area Block 543	CP77-54	8/29/77
5/24/77	West Cameron Area Block 616	CP77-450	9/30/77
10/30/80	Grand Isle Area Block 83	CP81-256	7/31/81

It is further stated that the gas would be sold to Panhandle or Trunkline on a monthly cost of service basis, which cost represents Applicant's cost of gas at the point of delivery to Trunkline.

Any person desiring to be heard or to make any protest with reference to said application and petition to amend should on or before November 15, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29961 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-006]

Pennzoil Co.; Application for Clarification or Abandonment Authorization

October 26, 1982.

Take notice that on October 25, 1982, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-006 an application for clarification or abandonment authorization. Pursuant to Sections 16 and 7(b) of the Natural Gas Act and the Commission's regulations thereunder, Pennzoil requests the Commission to grant clarification of its Order dated November 24, 1980 in the above-referenced docket as to the need for abandonment authority, or abandonment authorization for as much gas as is required for the following reasons: (a) to allow sales of gas to 67 specified applicants for residential service and one public elementary school in West Virginia pursuant to West Virginia law; (b) to allow the continuation of sales to approximately 220 existing small residential and commercial customers who have received service since the date of the 1980 Order; and (c) clarification or blanket abandonment authorization to allow sales of gas to new applicants, residential and commercial service in West Virginia to the extent required by West Virginia law and by the Public Service Commission of West Virginia.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the 68 current Pennzoil applicants in West Virginia who are depending on Pennzoil for their gas supply needs. Service to these 68 applicants would be provided, as permitted under the contract, from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Consolidated has indicated that it has no objection to an order of the Commission which would authorize Pennzoil to use gas to serve these West Virginia consumers.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before November 2, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the 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 Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Prcatice and Procedure a hearing will be held without further notice before the Commission on the application in the event no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29975 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6659-000]

Pioneer Hydropower, Inc.; Errata Notice

October 27, 1982.

Notice of the application for preliminary permit, issued by the Commission on September 29, 1982, for the Sardine Creek Hydroelectric Project No. 6659 to be located on Sardine Creek in Marion County, Oregon, published in the **Federal Register** on October 5, 1982, in volume 47, page 44006, incorrectly identified the applicant. The correct applicant for Project No. 6659 is Pioneer Hydropower, Inc.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29962 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-44-000]

Puget Sound Power & Light Co.; Filing

October 27, 1982.

Take notice that on October 18, 1982, Puget Sound Power & Light Company (Puget) tendered for filing Appendix 1 to Residential Purchase and Sale Agreement (Agreement), Contract No. DE-MS79-81BP90604, between the Bonneville Power Administration (BPA) and Puget, reflecting the Point Roberts Cost Pass Through, effective June 1, 1982, and a BPA report, dated September 28, 1982, pertaining to the Point Roberts Cost Pass Through.

Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29943 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-45-000]

Puget Sound Power & Light Co.; Filing

October 27, 1982.

Take notice that on October 18, 1982, Puget Sound Power & Light Company (Puget) tendered for filing Appendix 1 (Revised Schedule 5) to Residential Purchase and Sale Agreement between Puget and the Bonneville Power Administration (BPA), and a report, dated September 28, 1982, pertaining to the Energy Cost Adjustment Rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29944 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-46-000]

Puget Sound Power & Light Co.; Filing

October 27, 1982.

Take notice that on October 18, 1982, Puget Sound Power & Light Company (Puget) tendered for filing Appendix 1 to Residential Purchase and Sale Agreement between Puget and the Bonneville Power Administration (BPA), and a BPA report pertaining to the Washington Public Utility Tax (RIDER).

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29945 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3286-001]

Puget Sound Power & Light Co.; Application for License (5 MW or Less)

October 28, 1982.

Take notice that Puget Sound Power & Light Company (Applicant) filed on August 27, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. §§ 971(a)-825(r)] for construction and operation of a water power project to be known as Bear Creek Project No. 3286. The project would be located on Bear Creek, near Concrete in Skagit County, Washington. Correspondence with the Applicant should be directed to: Mr. Robert V. Myers, Vice President, Puget Sound Power & Light Company, Puget Power Building, Bellevue, Washington 98009, with a copy to: Perkins, Coie, Stone, Olsen and Williams, Attn.: Priscilla W. Derick, 1900 Washington Building, Seattle, Washington 98101.

Project Description—The proposed project would consist of: (1) an existing abandoned 24-foot-high by 235-foot-long concrete diversion dam with overflow spillway requiring minor cosmetic repairs; (2) an existing intake structure (to be rebuilt); (3) a new 2,800-foot-long, 45-inch diameter steel penstock; (4) a new powerhouse to contain two horizontal Francis-type, turbine-generators with a total rated capacity of 4 MW at an average head of 429 feet; (5) a switchyard; (6) a 2.5-mile-long, 34.5-kV transmission line to tie into Applicant's existing distribution system. The small impoundment behind the diversion dam (now completely silted in) would be dredged to a capacity of approximately 10 acre-feet. The surface area of the impoundment would remain unchanged from its present 1.7 acres. The spillway crest elevation is at 909.86 feet msl. Total cost of the project is $10.2 million. All of the project, with exception of portions of transmission line, would be located on lands owned by Lone Star Industries, Inc. Approximately 2.5 miles of the transmission line would be located on an easement within a Skagit County Highway right-of-way.

Purpose of Project—The power generated at the project would be used to meet the electrical needs of the Applicant's customers in the Puget Sound region. The average annual generation is about 20.8 million kWh.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments. Project No.

Competing Applications—Anyone desiring to file a competing application must file with the Commission, on or before January 7, 1983, either the competing application itself [See 18 CFR 4.33 (a) and (d)] or a notice of intent [See 18 CFR 4.33 (b) and (c)] to file a competing application. Filing of a timely notice of intent allows an interested person to file an acceptable competing application no later than the time specified in § 4.33(c) or § 4.101 et seq. (1981).

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Commission Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before January 7, 1983.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29946 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-3-001]

San Diego Entertainment, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

October 26, 1982.

On October 4, 1982, San Diego Entertainment, Inc., 3500 Sports Arena Boulevard, San Diego, California, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules.

The topping cycle cogeneration facility will be located at the Sports Arena at the above address. It will consist of a reciprocating engine, a generator, and appropriate heat recovery equipment. The primary energy source to the facility will be natural gas. The electric power production capacity of the facility will be 290 kilowatts. Thermal energy will be used for cooling and dehumidifying purposes. Installation will begin in November 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure All such motions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29963 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-54-000]

Southern California Edison Co.; Filing

October 26, 1982.

Take notice that on October 21, 1982, Southern California Edison Company (Edison) tendered for filing an agreement entitled "Edison-Los Angeles Economy Energy Agreement" which has been executed by Edison and Department of Water and Power of the City of Los Angeles (Los Angeles).

Edison states that under the terms and conditions of the Agreement, the Parties will make available to each other economy energy at various mutually agreeable points of interconnection.

Edison further states that the Agreement is proposed to become effective when executed by the parties and, as to Edison, when accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Los Angeles.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29947 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP77-520-004]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

October 26, 1982.

Take notice that on September 24, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001,

filed in Docket No. CP77-520-004 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas between Applicant and Northern Natural Gas Company, Division of InterNorth, Inc. (Northern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Tennessee and Northern were authorized by order issued on August 22, 1978, as amended, to exchange natural gas volumes imported from Canada by Midwestern Gas Transmission Company (Midwestern), and sold to Applicant and delivered to Northern for Applicant's account by Midwestern in the State of Minnesota in exchange for volumes delivered to Applicant in southern Louisiana by Northern.

Applicant states that in accordance with the provisions of the exchange agreement with Northern, Tennessee gave notice to Northern that it wishes to cancel their exchange agreement dated June 30, 1977, effective August 1982. Applicant maintains the agreement is contained in its FERC Gas Tariff, Sixth Revised Volume No. 2, Rate Schedule X-57, Original Sheets Nos. 741 to 748.

Applicant also states that it has notified Midwestern that it wishes to cancel the related gas sales agreement dated October 30, 1978, effective August 31, 1982, contained in Midwestern's FERC Gas Tariff.

Applicant further states that the abandonment of the natural gas exchange proposed herein would not have a significant impact on its pipeline system or any of its customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 15, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29934 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-529-000]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Application

October 27, 1982.

Take notice that on September 14, 1982, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP82-529-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity) authorizing the reimbursement of certain costs of CNG Producing Company (CNG), Wilshire Oil Company, and Denison Mines (V.S.), Inc. (Sellers), related to the leasing of compression facilities located in Ship Shoal Block 320, offshore Louisiana, and related operating and maintenance costs, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to gas purchase and sales agreements with CNG and Sellers, Applicant contracted to purchase the gas reserves underlying Ship Shoal Block 320, offshore Louisiana. Applicant states it also agreed to furnish the necessary compression facilities, to reimburse Sellers for all appropriate operating and maintenance expenses, including the cost of fuel gas, and to lease from Sellers platform space to be occupied by such compression facilities. Because compression on the Ship Shoal Block 320 A platform was required and CNG leased and installed the necessary compression facilities on March 1, 1980, Applicant requests authorization to reimburse Sellers for compressor rental charges attributable to the Superior MW 64 compressor unit driven by a 1,100 horsepower Superior 8 GTL-825 reciprocating gas engine, and related facilities, presently situated on the Sellers' existing A platform in Ship Shoal Block 320, offshore Louisiana, to reimburse CNG for thel installation costs, rental fees, and operating and maintenance expenses incurred since the compressor was placed in service on March 1, 1980.

It is stated that the lease expenses and operating and maintenance expenses, including fuel gas costs, were approximately $512,216.60, and that the installation cost was $54,830.74. It is estimated that the future annual lease expenses, and operating and maintenance expenses, including fuel gas cost, would be $296,650.00. It is stated that the lease arrangement entered into by CNG provides for a rental fee of $10,300 per month during the first 24-month period and for a rental fee of $9,500 per month for an additional 12-month period. It is further stated that Applicant has agreed to pay a one-time platform rental fee of $424,700.05.

Applicant states that the installed leased compression unit would allow Applicant to recover 12,446,000 Mcf of gas reserves and up to 15,000 Mcf per day deliverability from a dedicated reservoir that could not flow against Applicant's pipeline pressure and, thus, would substantially benefit all of Applicant's customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act

and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, of if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29964 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA82-12-000]

The Crude Co.; Filing of Petition for Review Under 42 U.S.C. 7194

October 26, 1982.

Take notice that Meeker and Company on January 12, 1982, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before November 10, 1982, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before November 10, 1982, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29953 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6647-000]

The Town of Rangely, Colo.; Application for Preliminary Permit

October 28, 1982.

Take notice that The Town of Rangely, Colorado (Applicant) filed on August 27, 1982, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for Project No. 6647 to be known as the Taylor Draw Project located on the White River in Rio Blanco County, Colorado. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Honorable Peggy Rector, Mayor of Rangely, P.O. Box 580, Rangely, Colorado 81648.

Project Description—The project would consist of: (1) an existing 1,150-foot-long reinforced earth dam with a maximum height of 70 feet and containing a 56-foot-high, 504-foot-long concrete spillway; (2) a 615-acre reservoir with a normal water surface elevation of 5,317.5 feet M.S.L. and a total storage capacity of 13,800 acrefeet; (3) a new powerhouse containing two 1.0 MW turbine-generators; (4) a transmission line; and (5) appurtenant facilities. The dam alone is currently being constructed for its primary purpose of municipal water supply and recreation. The run-of-river project would produce up to 11,800,000 kWh annually. The dam is owned by the Colorado River Water Conservation District. Energy produced at the project would be sold to the local utility or utilized by the Applicant.

Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would investigate project design alternatives, financial feasibility, environmental effects of project construction and operation and project power potential. Depending upon the outcome of the studies, the Applicant would decide whether to proceed with an application for FERC license. Applicant estimates the cost of the studies under the permit would be $100,000.

Competing Applications—This application was filed as a competing application to the Colorado River Water Conservation District's application for Project No. 6644 filed on August 26, 1982. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing application for preliminary permit, or notices of intent to file an application for preliminary permit or license will be accepted for filing in response to this notice. Any application for license of exemption from licensing, or notice of intent to file an exemption application, must be filed in accordance with the Commission's regulations [see: 18 CFR 4.30 et seq. or 4.101 et seq. (1981), as appropriate].

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time set below, it will be presumed to have no comments.

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of the Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-26 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before December 2, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E.

Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29938 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-47-000]

Tucson Electric Power Co.; Filing

October 27, 1982.

Take notice that on October 20, 1982, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of Supplement No. 1 to Tucson's Rate Schedule No. 41, which became effective October 1, 1981.

Tucson states that the aforementioned Supplement No. 1 is identified as a Letter Agreement dated October 2, 1981, between Tucson and the United States of America, Department of Energy, Western Area Power Administration, for the exchange of excess capacity between the Parties during the period from October 1981 through September 30, 1982. Tucson requests an effective date of September 30, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29948 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-5-000]

United Gas Pipe Line Co.; Proposed Blanket Authorization Activity

October 26, 1982.

Take notice that on October 4, 1982, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP83-5-000 a request pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Applicant proposes to abandon in place and by sale 2,340 feet of 2-inch pipleline under the authorization issued in Docket No. CP82-430-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to § 157.216(b) of the Commission's Regulations, as amended, Applicant intends to abandon approximately 2,340 feet of 2-inch pipeline located in the yard of Applicant's compressor station in Goodrich, Polk County, Texas. It is stated that the line was originally constructed to serve company-owned housing at the Goodrich station. It is also stated that the line is currently used to provide farm-tap service to Entex, Inc. (Entex), the distribution company serving the Goodrich, Polk County, Texas area under a service agreement dated December 13, 1979. It is further stated that Entex is in the process of rearranging its facilities, and that Applicant intends to sell 920 feet of the line to be abandoned to Entex at a cost of $1,130 for use in Entex's rearranged operations and to abandon the remainder of the pipeline in place.

Applicant states that it would henceforth make deliveries to Entex, previously attributable as farm-tap service, at the existing Goodrich city gate station. It is asserted that abandonment of said yard line would have no impact on the quantity of such deliveries or on the quantity of gas allocable to Entex under Applicant's curtailment plan. Applicant asserts that Entex has consented to the proposed abandonment.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the National Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29965 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP79-404-003]

Washington Natural Gas Co., as Project Operator; Supplement to Petition To Amend

October 27, 1982.

Take notice that on September 29, 1982, Washington Natural Gas Company, as Project Operator (Petitioner), 815 Mercer Street, Seattle, Washington 98111, filed in Docket No. CP79-404-003, a supplement to its petition to amend the order issued March 4 1982, in Docket No. CP79-404 (18 FERC ¶61,222) pursuant to Section 7(c) of the Natural Gas Act so as to authorize Petitioner to operate the Jackson Prairie Storage Project (Storage Project) to provide a maximum firm daily deliverability of 325,000 Mcf and a seasonal deliverability of 12,800,000 Mcf during each winter heating season beginning with the 1982-1983 heating season and continuing through the end of the 1989-1990 heating season, all as more fully set forth in supplement to the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that the basic function of the Storage Project[1] as a storage facility is to provde the seasonal and firm daily deliverability to support Northwest Pipeline Corporation's (Northwest) winter season service rendered under Rate Schedule SGS-1. Petitioner states that it is currently authorized to operate the Storage Project under certificates issued in Docket No. CP75-110 to provide not less than 10,800,000 Mcf of seasonal working gas, 300,000 Mcf of firm daily deliverability and 71,800 Mcf of daily best efforts deliverability in connection with the Rate Schedule SGS-1 service.

Petitioner avers that Northwest filed for authorization in Docket No. CP79-277-010 to extend its Rate Schedule WS-1 service through the 1989-1990 winter heating season, and Petitioner on

[1] The Storage Project is owned in joint and equal undivided interests by Petitioner, Northwest Pipeline Corporation and The Washington Water Power Company. Petitioner is the Project Operator pursuant to a certificate issued at 47 FPC 1527 and conducts the operations of the Storage Project pursuant to the Gas Storage Project Agreement on file with the Commission as Petitioner's Rate Schedule S-1, FERC Gas Tariff, Original Volume No. 1.

April 2, 1982, filed a petition to amend in Docket No. CP79-404-002 for authorization to operate the Storage Project for the same period at the level of 12,800,000 Mcf of seasonal working gas and at a firm daily deliverability rate of 325,000 Mcf to assist Northwest in rendering the proposed extension of the Rate Schedule WS-1 service. According to Petitioner, Northwest withdrew its proposal to extend the Rate Schedule WS-1 service through the 1989-1990 winter heating season, but requested Petitioner to continue to operate the Storage Project at the level of 12,800,000 Mcf of seasonal working gas and at a firm daily deliverability of 325,000 Mcf through the 1989-1990 winter heating season because Northwest desires to have such expanded capabilities of the Storage Project available as a margin of protection for meeting contract demands in two major metropolitan markets served by the pipeline, the Seattle-Tacoma area in Washington and the Portland area in Oregon.

Any person desiring to be heard or to make any protest with reference to said supplement to petition to amend should on or before November 17, 1982, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 384.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29966 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-52-000]

Washington Water Power Co.; Filing

October 26, 1982.

Take notice that on October 21, 1982, Washington Water Power Company (Washington) tendered for filing a service schedule applicable to what Washington refers to as a Letter Agreement which applies to the sale of 50,000 kilowatts of firm capacity. The Letter Agreement between Washington and the Montana Power Company is effective from October 1, 1982, through June 30, 1984.

Washington requests an effective date of October 1, 1982, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29951 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6453-000]

Weber Basin Water Conservancy District; Application for License (5 MW or Less)

October 27, 1982.

Take notice that Weber Basin Water Conservancy District (Applicant) filed on June 21, 1982, an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)—825(r)] for construction and operation of a water power project to be known as the Causey Hydro Project No. 6453. The project would be located on the South Fork, Ogden River in Weber County, Utah. Correspondence with the Applicant should be directed to: Keith G. Jensen, Manager, Weber Basin Water Conservancy District, 2837 E. Highway 193, Layton, Utah 84041.

Project Description—The proposed project would utilize the existing Bureau of Reclamation's Causey Dam and Reservoir, operated and maintained by the Weber Basin Water Conservancy District, and would consist of: (1) a 48-inch diameter steel penstock utilizing the existing outlet works near the left dam abutment and leading to; (2) a new powerhouse containing two turbine-generator units rated at 493 kW and 985 kW for a total rated capacity of 1,478 kW; (3) a tailrace approximately 80 feet long; (4) a new 12.5-kV transmission line, two miles long; (5) a switchyard; and (6) appurtenant facilities. The Applicant estimates that the average annual energy output would be 6,100,000 kWh. Project energy would be utilized by the Weber Basin Water Conservancy District for operation of its works and facilities.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time set below, it will be presumed to have no comments.

Competing Applications—This application was filed as a competing application to Western Hydro Electric Incorporated's application for Project No. 5244 filed on August 18, 1981. Public notice of the filing of the initial application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, no competing applications for licenses or exemptions, or notices of intent to file competing applications, will be accepted for filing in response to this notice. [see: 18 CFR 4.30 et seq. or § 4.101 et. seq. (1981), as appropriated].

Comments, Protests, or Motions To Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before December 6, 1982.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those

copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208 RB at the above address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29935 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-53-000]

Western Massachusetts Electric Co.; Filing

October 26, 1982.

Take notice that on October 21, 1982, Western Massachusetts Electric Company (WMECO) tendered for filing a proposed Purchase Agreement with Respect to Gas Turbine Units (Purchase Agreement) dated November 1, 1981 between WMECO and Village of Johnson Water and Light Department (Johnson).

WMECO states that the Purchase Agreement provides for a sale to Johnson of a specified percentage of capacity and associated energy from two gas turbine generating units during the period from November 1, 1981 to October 31, 1989, together with related transmission service.

WMECO requests an effect date of November 1, 1981, and therefore requests waiver of the Commission's notice requirements.

WMECO further states that the Capacity Charge for the proposed service was determined on a cost of service basis. The Transmission Charge rate is an annual average cost of transmission service on the Northeast Utilities (NU) system determined in accordance with Appendix E and Exhibits thereto of the Purchase Agreement. The monthly Transmission Charge is determined by the product of (i) the transmission charge rate divided by twelve ($/Kw-month), and (ii) the number of kilowatts of winter capability which Johnson is entitled to receive. The Variable Maintenance Charge is derived from historical costs and the Additional Maintenance Charge is twice the Variable Maintenance Charge based on manufacturer's recommendations.

WMECO states that copies of the filing have been served upon Johnson.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29949 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-48-000]

Wisconsin Public Service Corp.; Filing

October 27, 1982.

Take notice that on October 20, 1982, the Wisconsin Public Service Corporation (WPSC) tendered for filing annual contract demand quantities to the "Partial Requirements Service Agreement" with the City of Marshfield, Wisconsin, City of Manitowoc, Wisconsin, and the Consolidated Water Power Company. The agreement will revise the contract demand quantities for peak load, intermediate load, and base load in accordance with Exhibit 1 of the agreement, Paragraph 6, *Requirements.*

WPSC requests an effective date of October 1, 1982.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 15, 1982. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82-29950 Filed 10-29-82; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42018; TSH-FRL 2202-3]

Tris(2-Chloroethyl)phosphite; Decision Not To Require Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice contains EPA's response to the Interagency Testing Committee's recommendation that the Agency require health and environmental effects testing of tris(2-chloroethyl)phosphite (TCEP) under section 4(a) of the Toxic Substances Control Act (TSCA). EPA is not initiating rulemaking under section 4(a) to require testing of TCEP because available data indicate that production and use result in little risk of occupational or consumer exposure, and there is no known release to the environment. In addition, EPA finds no basis for believing that the compound may present an unreasonable risk to human health or the environment.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office, (TS-799), Office of Toxic Substances, Rm. E-511, 401 M Street, SW., Washington, D.C. 20460, Toll-free: (800-424-9065), In Washington, D.C.: (554-1404), Outside the USA: (Operator—202-554-1404).

SUPPLEMENTARY INFORMATION:

I. Background

Section 4(e) of TSCA (Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C. 2601 et seq.) established an Interagency Testing Committee (ITC) to recommend a list of chemicals for EPA to consider for promulgation of testing rules under section 4(a) of the Act. The ITC may designate substances for priority consideration by EPA. TSCA requires EPA to respond within 12 months of the date a substance is designated for priority response by either initiating rulemaking under section 4(a) or by publishing reasons in the **Federal Register** for not initiating rulemaking.

The ITC designated tris(2-chloroethyl)phosphite (TCEP) for priority consideration in its Ninth Report, published in the **Federal Register**

of February 5, 1982 (47 FR 5456), recommending that it be tested for the following health and environmental effects: Pharmacokinetics and metabolism, subchronic and reproductive effects, chemical fate, and acute toxicity to fish, aquatic invertebrates and algae.

The ITC based its testing recommendations upon reported annual TCEP production volumes of 2.1 to 21 million pounds, its reported use in consumer products, probable disposal of TCEP to the aquatic environment, and its potential for binding to sediment and transport along the food chain. Other factors included evidence of hydrolysis to 2-chloroethanol, a known toxic compound, reported variances in TCEP's acute toxic dose level and the lack of information on metabolism, teratogenicity and reproductive effects, chemical fate and toxicity to aquatic organisms.

This notice constitutes EPA's response to the ITC's designation of TCEP for testing consideration, as required under TSCA section 4(e).

II. Decision Not To Test

EPA has decided that section 4 testing of TCEP is not warranted at this time based on evidence demonstrating extremely limited exposure of TCEP to humans and negligible release to the environment.

There are currently three domestic manufacturers of TCEP. Available information indicates that there is no importation of the chemical since no import data were listed by the U.S. International Trade Commission or in the 1977 TSCA inventory. The Agency's efforts in researching publicly available data bases have yielded little information regarding health effects, production and exposure. Upon request by the Agency, the manufacturers of TCEP submitted information on production, exposure and environmental release. Much of the details submitted were claimed to be confidential business information; however, non-confidential summaries have been prepared and are included in the public record. EPA has critically reviewed this information and has included it as the basis for its decision. This information shows that production is a site-limited, non-continuous (batch) closed system process involving the reaction of phosporous trichloride with ethylene oxide. To comply with the Occupational Safety and Health Administration (OSHA) regulations controlling the release in the workplace of ethylene oxide and other organics used in the production of TCEP, the production system contains engineering controls designed to eliminate the release of volatile chemicals such as ethylene oxide. Consequently, TCEP, having a low vapor pressure, is highly unlikely to be released from the production system. When monitoring for release of organic reactants used in production, TCEP was not detected in the production plant's atmosphere (sensitivity = 0.01 ppm) during manufacture while other organics were. No other monitoring data were available.

TCEP is used solely as an intermediate in the manufacture of other products. The chemical may be used in the manufacture of flame-retardant additives for rigid urethane and flexible foams, adhesives and coatings, in the production of ethephon, a plant growth regulator, and in the preparation of extreme pressure lubricants. The principal current use reported for TCEP is in the production of flame retardant additives. Most of the TCEP produced is converted at the TCEP production site to a final product at a conversion efficiency significantly greater than 98 percent. The data also indicate that there is essentially no environmental release of unreacted TCEP from production facilities because of various waste treatment processes. Less than 0.1 percent of the annual volume is sold and is not converted to a final product at the production site. This amount comprises an insignificant volume either alone or when compared with the total annual TCEP yield. Those quantities sold outside the production site are also used as intermediates in the manufacture of products for similar uses, and here again the conversion efficiency to a final product is expected to be quite high. The information also shows that production facilities, including those of secondary users, pose a potential for exposure to fewer than 100 workers per year in total.

In light of its uses, production processes and the limited potential for release and exposure, EPA believes that there will be only minimal exposure to TCEP and negligible environmental release. Because of such limited exposure and release potential, there is no basis for believing that the compound may present an unreasonable risk to humans or the environment. Therefore, EPA believes that the statutory findings necessary to require testing under section 4 for tris(2-chloroethyl)phosphite cannot be made at this time.

III. Public Record

EPA has established a public record for this testing decision (docket number OPTS-42018) which is available for inspection in the OPTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days in Rm. E-107, 401 M St., SW., Washington, DC 20460. The record includes the following information:

1. **Federal Register** notice containing the designation tris(2-chloroethyl)phosphite to the Priority List.
2. Communications (public, intra-agency, and interagency) consisting of non-confidential memoranda and letters, confidential memoranda and letters (separately held), contact reports of telephone conversations, and meeting summaries.
3. Public comments on the ITC report.
4. Published and unpublished data.
5. Non-confidential summaries prepared by the manufacturers of information they submitted leading to EPA's testing decision.

This record includes all of the information considered by the Agency in developing this decision. Data claimed by the submitter to be Confidential Business Information and protected from disclosure by section 14(a) of TSCA are separately held.

(Sec. 4(a) TSCA (Pub. L. 94-469, 90 Stat. 2003; 15 U.S.C.))

Dated: October 25, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-29997 Filed 10-29-82; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Advisory Committee on Preparations for the ITU 1983 Region 2 Broadcasting Satellite Service Planning Conference

October 26, 1982.

Meeting: Thursday, November 18, 1982, 9:30 A.M.-6:00 P.M., Satellite Television Corporation, 1301 Pennsylvania Avenue, NW., 5th Floor Conference Room, Washington, D.C.

Agenda:

(1) Approval of agenda

(2) Presentation of unapproved sections of Addendum to Final Report

(3) Approval of unapproved sections of Addendum to Final Report

(4) Presentation and approval of Executive Summary

(5) Other Business.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82-29878 Filed 10-29-82; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket: FEMA-REP-4AL2]

Alabama Radiological Emergency Response Plan for Plant Browns Ferry

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of receipt of plan.

SUMMARY: For continued operation of nuclear power plants, the Nuclear Regulatory Commission requires approved licensee and State and local governments' radiological emergency response plans. Since FEMA has a responsibility for reviewing the State and local government plans, the State of Alabama has submitted its radiological emergency plan to the FEMA Regional Office. These plans support nuclear power plans which impact on Alabama and include those of local governments near the Tennessee Valley Authority's Browns Ferry Nuclear Power Plant located in Limestone County, Alabama.

DATE: Plans Received: September 17, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Major P. May, Regional Director FEMA Region IV, 1375 Peachtree Street, N.E., Atlanta, Georgia 30309 (404) 881-2400.

NOTICE: In support of the Federal requirement for emergency response plans, FEMA has proposed a Rule describing its procedures for review and approval of State and local government's radiological emergency response plans. Pursuant to this proposed FEMA Rule (44 CFR Part 350.8), "Review and Approval of State Radiological Emergency Plans and Preparedness," 45 FR 42341, the State Radiological Emergency Response Plan for the State of Alabama was received by the Federal Emergency Management Agency Region IV Office.

Included are plans for local governments which are wholly or partially within the plume exposure pathway emergency planning zones of the nuclear plants. For the Brown Ferry Nuclear Power Plant plans are included for Lauderdale, Lawrence, Limestone and Morgan Counties.

Copies of the Plan are available for review at the FEMA Region IV Office, or they will be made available upon request in accordance with the fee schedule for FEMA Freedom of Information Act requests, as set out in Subpart C of 44 CFR Part 5. There are 373 pages in the document; reproduction fees are $.10 a page payable with the request for copy.

Comments on the Plan may be submitted in writing to Mr. Major P. May, Regional Director, at the above address within thirty days of this **Federal Register** notice.

FEMA proposed Rule 44 CFR 350.10 also calls for a public meeting prior to approval of the plans. Details of this meeting were announced in the Huntsville Times of Tuesday, August 25, 1981, which was at least two weeks prior to the scheduled meetings. Local radio and television stations were requested to announce the meeting. This required public meeting was held at the Athens High School, on September 8, 1981, at 7:00 p.m. in Athens, Alabama.

Thomas P. Credle,

Deputy Regional Director.

October 4, 1982.

[FR Doc. 82-29988 Filed 10-29-82; 8:45 am]

BILLING CODE 6718-01-M

Proposed Meeting of FEMA Advisory Board

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, announcement is made of the following working committee meeting:

Name: Federal Emergency Management Agency Advisory board.
Date of Meeting: November 4, 1982.
Place: Federal Emergency Management Agency, Room 829, 500 C Street SW., Washington, D.C. 20472.
Time: 8:30 a.m. to 4:30 p.m.
Purpose: Internal classified discussions on progress of the four Ad Hoc Task Forces. The views of the Board will be discussed with the Director of FEMA and representative from the Office of the President.

The Director has determined that the Board meeting should be closed because disclosure is likely to reveal matters that are specifically authorized to be kept Secret in the interest of national defense or foreign policy and are properly classified pursuant to Executive Order.

Dalimil Kybal,

Science Advisor.

[FR Doc. 82-29987 Filed 10-29-82; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Federal Savings and Loan Advisory Council Meeting:

October 26, 1982.

Pursuant to section 10(a) of Pub. L. 92-463, entitled the Federal Advisory Committee Act, notice is hereby given to the Meeting of the Federal Savings and Loan Advisory Council on Monday, December 6; Tuesday, December 7; and Wednesday, December 8, 1982. The meeting will commence at 10:00 a.m. December 6; 9:30 a.m. December 7; and 9:00 a.m. December 8. The meetings will be held at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., Bank Board Conference Room. Sixth Floor.

Monday, December 6

10:00 a.m.—Opening of the Council Meeting; review subcommittee assignments; Staff briefing on the Mark-to-Market topic.
12:00 Noon—Lunch.
1:00 p.m.—Council briefing on New Asset—Liability Powers.
3:00 p.m.—Subcommittees begin deliberations; Mark-to-Market; New Asset - Liability Powers.

Tuesday, December 7

9:30 a.m.—Subcommittees complete work on resolutions.
12:00 Noon—Lunch.
1:00 p.m.—Council initiates discussion and votes on resolutions.

Wednesday, December 8

9:00 a.m.—Presentation and discussion of resolutions to the Chairman and Board Member.
10:30 a.m.—Adjourn.

The meeting of the Federal Savings and Loan Advisory Council is open to the public.

Richard T. Pratt,

Chairman.

[FR Doc. 82-30008 Filed 10-29-82; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

PLI, Inc., 7001 East Haven, Houston, TX 77017. Officers: Robert Dale Cowan, President, Connie Sue Cowan, Vice President.

International Freight Services, Inc., 161 Prescott Street, East Boston, MA 02128. Officer: Rodney C. Schonland, President/Sole Stockholder.

By the Federal Maritime Commission.

Dated: October 27, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-29994 Filed 10-29-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1901]

Robbins, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Robbins, Inc., P.O. Box 523025, Miami, FL 33152 was cancelled effective October 13, 1982.

By letter dated October 5, 1982, Robbins, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1901 would be automatically revoked unless a valid surety bond was filed with the Commission.

Robbins, Inc. has failed to furnish a valid bond.

By virtue of authority vested in my by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1901 be and is hereby revoked effective October 13, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1901 issued to Robbins, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Robbins, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-29995 Filed 10-29-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continues to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Arizona Bancwest Corporation,* Phoenix, Arizona (lending and leasing in the States of California, Nevada, Utah, Colorado, New Mexico and Texas): To engage through its subsidiary, Bancwest Financial Services Company, in making and/or acquiring for its own account and the account of others, loans and other extensions of credit and leasing personal property or acting as agent, broker, or adviser in connection with leasing such property. Such activities will be conducted from an office located in Phoenix, Arizona, serving customers throughout the State of Arizona and certain customers who require financing in the States of California, Nevada, Utah, Colorado, New Mexico and Texas. Comments on this application must be received not later than November 17, 1982.

Board of Governors of the Federal Reserve System, October 26, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-29879 Filed 10-29-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

October 26, 1982.

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo),* directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the office of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation,* San Francisco, California (industrial loan company, financing, servicing, and insurance activities; Tennessee, Alabama, Georgia, Kentucky and Mississippi): To engage through its indirect subsidiary, FinanceAmerica Credit Corporation, a Delaware

corporation, in the additional activity of acting as an industrial loan company under the Tennessee Industrial Loan and Thrift Companies Act; provided however, that no investment certificates will be offered to the public. FinanceAmerica Credit Corporation will continue to engage in the activities of making or acquiring for its own account loans and other extensions of credit such as are made or acquired by a finance or industrial loan company, servicing loans and other extensions of credit, and offering credit-related life, credit-related accident and health, and credit-related property insurance. There will however, be no credit-related property insurance offered in Georgia or Mississippi. Such activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, making loans secured by real and personal property and offering credit-related life insurance, credit-related accident and health insurance, and credit-related property insurance in connection with extensions of credit made or acquired by FinanceAmerica Credit Corporation. Credit-related life and credit-related accident and health insurance may be reinsured by BA Insuance Company, Inc., an affiliate of FinanceAmerica Credit Corporation. These activities will be conducted from a *de novo* office located in Goodlettsville, Tennessee, serving the States of Tennessee and Kentucky as well as two existing offices located in Chattanooga, Tennessee, serving the States of Alabama and Georgia and Memphis, Tennessee, serving the States of Tennessee, Kentucky and Mississippi. Comments on this application must be received not later than November 26, 1982.

2. *Security Pacific Corporation*, Los Angeles, California (commercial financing and factoring activities; United States): To engage through its subsidiary, Security Pacific Business Credit Inc. in making or acquiring for its own account or for the account of others, asset based business loans and other commercial or industrial loans and extensions of credit such as would be made by a factoring, rediscount or commercial finance company and engaging generally in the factoring business. These activities would be conducted from offices of Security Pacific Business Credit Inc. in Boston, Massachusetts and Philadelphia, Pennsylvania, serving the United States. Comments on this application must be received not later than November 26, 1982.

Board of Governors of the Federal Reserve System, October 26, 1982.

William W. Wiles,

Secretary of the Board.

FR Doc. 82-29880 Filed 10-29-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Peoples Bank Corporation of Berea*, Berea, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Bank and Trust Company, Berea, Kentucky. Comments on this application must be received not later than November 23, 1982.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Clay County Bancshares, Inc.*, Celina, Tennessee; to become a bank holding company by acquiring 80 percent or more of the voting shares of Clay County Bank, Celina, Tennessee. Comments on this application must be received not later than November 22, 1982.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ina Bancshares Inc.*, Cahokia, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Ina State Bank, Ina, Illinois. Comments on this application must be received not later than November 26, 1982.

2. *Wayne Bancshares, Inc.*, Monticello, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of City and County Bank of Wayne County, Monticello, Kentucky. Comments on this application must be received not later than November 23, 1982.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Western Commercial*, Fresno, California; to become a bank holding company by acquiring 100 percent of the voting shares of Fresno Bank of Commerce, Fresno, California. Comments on this application must be received not later than November 23, 1982.

Board of Governors of the Federal Reserve System, October 26, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-29881 Filed 10-29-82; 8:45 am]

BILLING CODE 6210-01-M

Princeton Agency, Inc.; Formation of Bank Holding Company

Princeton Agency, Inc., Princeton, Iowa, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Farmers Savings Bank, Princeton, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Princeton Agency, Inc., Princeton, Iowa, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue operating a general insurance agency.

Applicant states that the proposed subsidiary would engage in the activities of selling general insurance in a community with a population not exceeding 5,000. These activities would be performed from offices of Applicant's subsidiary in Princeton, Iowa, and the geographic areas to be served are Princeton, Scott County, Iowa and surrounding area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether

consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Reserve Bank not later than November 26, 1982.

Board of Governors of the Federal Reserve System, October 26, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-29882 Filed 10-29-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the GSA Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gregory Knott, Deputy Director of Personnel, General Services Administration, Office of Organization and Personnel, Office of Personnel, 18th & F Streets NW., Washington, DC, 20405 (202) 566-0664.

SUPPLEMENTARY INFORMATION: Sections 4314(c) (1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review the performance rating of each senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The members of the Performance Review Board are:

1. Bond Faulwell, Director of Organization and Personnel.
2. Steven Hammer, Associate Administrator for Operations.
3. Carroll Jones, Commissioner, Federal Property Resources Service.
4. Saul Katz, Special Counsel to the Administrator for Ethics.
5. Arlene Schley, Deputy Regional Administrator, National Capital Region.
6. Charles S. Davis III, Associate Administrator for Policy and Management Systems.

Dated: October 27, 1982.

Gerald P. Carmen,

Administrator.

[FR Doc. 82-30021 Filed 10-29-82; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Institute for Occupational Safety and Health; Occupational Safety and Health Field Research Projects

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control, PHS, HHS.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH is ready to begin data collection on a field research project entitled, "Reproductive History Study of Women Exposed to Polychlorinated Biphenyls in the Workplace." The purpose of this study is to determine the possible adverse health effects in women occupationally exposed to polychlorinated byphenyls. This project is part of the NIOSH industrywide research effort conducted under the Occupational Safety and Health Act of 1970. This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about December 13, 1982.

FOR FURTHER INFORMATION CONTACT: Michael Rosenberg, M.D., Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 684-3593.

SUPPLEMENTARY INFORMATION: On May 18, 1982, NIOSH published in the **Federal Register** (47 FR 21302) a list of proposed field research projects. That notice stated that more specific information would be provided to the public 6 weeks before starting field work on any of the proposed projects. Field investigation and data collection on the following study will begin on or about December 13, 1982.

Title: Reproductive History Study of Women Exposed to Polychlorinated Biphenyls in the Workplace.

Project Officer. Michael Rosenberg, M.D., Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH.

Purpose: The purpose of this study is to determine the possible adverse health effects in women occupationally exposed to polychlorinated biphenyls.

Background: Polychlorinated biphenyls (PCB's) are long-lived contaminants present in multiple sites in the environment. This material was formerly used in the manufacture of large transformers. In animals, PCB's have been associated with a variety of reproductive effects, including decreased fertility, increased fetal resorptions, and increased postnatal death. In animals and humans, PCB's have been found to be carcinogenic.

Between 1940 and 1976, PCB's were used in the manufacture of transformers at a plant in New York. Since these materials are stored in fatty tissue and have been demonstrated to be released over a long period of time, the exposure of women working at this plant can be considered to be cumulative.

Study Description: From among the 800 women directly exposed to PCB's, a sample of 200 married women will be selected. For comparison, 200 of the 2,500 women working in the plant who were unexposed will be interviewed.

A questionnaire covering demographic data, occupational history, and medical history will be completed for each of the 400 selected workers. The method of handling this information complies with the Privacy Act of 1974. The system of records is #09-20-0147.

The NIOSH field research project described will be conducted under the authority of section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Paperwork Reduction Act.

Dated: October 22, 1982.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 82-29883 Filed 10-30-82; 8:45 am]

BILLING CODE 4160-19-M

National Institute for Occupational Safety and Health; Small Grants for Occupational Safety and Health Research

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces that competitive grant applications for small grants to support occupational safety and health research will be accepted until January 3, 1983.

Purpose

This NIOSH Small Grant Program invites applications for research grants covering scientific areas relevant to occupational safety and health and is intended to provide financial support for investigators who do not have Federal or non-Federal research grant support. The grants may be used to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. Examples of programmatic areas of interest are traumatic injuries, reproductive effects, neurologic and cardiovascular effects, occupational respiratory diseases, occupational cancers, musculoskeletal injuries, noise-induced hearing loss, dermatologic problems, and psychologic disorders. Potential applicants with questions concerning the acceptability of their proposed work should contact the individuals listed in this announcement.

Authority

These grants will be awarded and administered by NIOSH under the research and demonstration grant authority of section 20(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)(1)) and section 501 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 951). Program regulations applicable to these grants are contained in Part 87 of Title 42, Code of Federal Regulations, "National Institute for Occupational Safety and Health Research and Demonstration Grants." Except as otherwise indicated, the basic grant administration policies of the Public Health Service are applicable to this program. Applications responsive to this announcement are not subject to OMB Circular A-95 Clearinghouse and/or Health Systems Agency review.

Eligible Applicants

This program is intended primarily for predoctoral graduate students and postdoctoral researchers; however, investigators from any scientific discipline and at any stage of their careers may apply for these grants. Support under this program may *not* be requested to supplement research projects receiving Federal or non-Federal support or to provide interim support of projects under review by the Public Health Service. A grant application responsive to this announcement, submitted simultaneously with a regular research grant application on the same topic, will *not* be accepted.

Availability of Funds

The total grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to two years and will not be renewable. It is anticipated that the total annual amount available for grants under this program will be $300,000. The specific amount to be funded will, however, depend upon the merit and scope of the applications received and the availability of funds. Grantees will be required to cost share a minimum of 5 percent.

Allowable Expenses (Direct Costs)

Support may be requested for the following categories:

—Supplies.

—Travel to attend a domestic meeting or visit another laboratory for the purpose of gathering more information or to learn a new technique or procedure relevant to the application. Relevance and importance must be justified in the application.

—Small items of equipment. The purchase of large equipment is discouraged.

—Salary for technical personnel. Salary of the principal investigator will be allowed only with strong justification.

Criteria for Review

Applications will be reviewed by an appropriate scientific review group on the basis of scientific merit and significance of the project, scientific competence of the proposed principal investigator and supporting faculty (where appropriate) in relation to the type of research involved, feasibility of the project, likelihood of its producing meaningful results, appropriateness of the proposed budget, adequacy of the applicant's resources available for the project, and the supportive nature of the research environment. For those applications from students, the review process will take into consideration the fact that the applicants do not have extensive experience with the grant process.

Application and Award

Applications should be submitted on a form PHS 398 (Revised 10/79). Application kits may be obtained from: Office of Grants Inquiries, Division of Research Grants, National Institutes of Health, 5333 Westbard Avenue, Room 448, Bethesda, Maryland 20205, Telephone: (301) 496-7441.

Care should be taken in following the instructions included with the application form, making certain to address the points identified under the heading "Review Criteria."

An original and six copies of the application must be received no later than January 3, 1983, in order to be considered in the February/March 1983 Study Section meeting. Completed applications must be sent or delivered to: Application Receipt, Division of Research Grants, National Institutes of Health, 5333 Westbard Avenue, Room 124, Bethesda, Maryland 20205.

A brief covering letter should accompany the application indicating that it is submitted in response to this announcement.

Applicants may meet the deadline by either delivering or mailing the application on or before the above specified date provided the following conditions are met:

1. Mailed applications. Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date at the Division of Research Grants, NIH, or

b. Sent by first class mail, postmarked on or before the deadline date, and received by the granting agency in time for submission to the independent review group. (Applicants must be cautioned to request a legible U.S. Postal Service postmark or to use express mail or certified mail and to obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Applications submitted by other means. Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadlines only if they are physically received at a place specified above before close of business on or before the deadline date (4:30 p.m. e.s.t., January 3, 1983).

3. Late applications. Applications which do not meet the criteria in either paragraph 1. or 2. are considered late applications. In that event, an application will not be considered in the

current competition and will be returned to the applicant.

It is anticipated that awards will be made as early as May 1, 1983.

FOR FURTHER INFORMATION CONTACT:

Jack E. McCracken, Ph.D., Acting Chief, Grants Administration and Review Branch, National Institute for Occupational Safety and Health, Parklawn Building, Room 8-63, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-4496

or

Mr. Joseph West, Grants Management Officer, NIOSH, Parklawn Building, Room 8-23, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3122.

(Catalog of Federal Domestic Assistance Program No. 13.262 Occupational Safety and Health Research Grants)

Dated: October 22, 1982.

J. Donald Millar,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 82-29884 Filed 10-29-82; 8:45 am]

BILLING CODE 4160-19-M

Health Resources and Services Administration

List of Recipients of Indian Health Scholarships Under the Indian Health Scholarship Program

The regulations governing Indian Health Care Improvement Act Programs (Pub. L. 94-437) provides at 42 CFR 36.334 that the Indian Health Service shall publish annually in the **Federal Register** a list of recipients of Indian Health Scholarships, including the name of each recipient, school and tribal affiliation if applicable. These scholarships were awarded under authority of section 338G of the Public Health Service Act (42 U.S.C. 294y-1). The following is a list of Indian Health Scholarship recipients for Fiscal Year 1982:

Abe, Winifred, University of New Mexico, Navajo
Allery, Ronnie, University of North Dakota, Chippewa
American Horse, Cora, Brigham Young University, Navajo
Anderson, Ella Mae, University of Albuquerque, Navajo
Anderson, Mitchell, Northeastern State University, Choctaw
Anderson, Sharon, Cheyenne River Nursing Program, Sioux
Antone, Lenora, Long Beach State University, Papago
Arbuckle, Katherine, University of Montana, Chippewa
Archuleta, Margaret, University of California, Paiute
Arthur, Lena, University of Montana, Chippewa
Ashley, Patrick, University of Albuquerque, Navajo
Atcitty, Candace, Arizona State University, Navajo
Attson, Francine, Loretto Heights College, Navajo
Azure, Lynette, University of North Dakota, Chippewa
Azure, Shelly, University of North Dakota, Chippewa
Azure, Vernon D. University of North Dakota, Chippewa
Bacon, Marie, Washington State University, Colville
Barsness, Linda, University of Utah, Sioux
Barton, Michael, University of New Mexico, Navajo
Battese, Francis, Clark College, Potawatomi
Bear, Sue Ann, East Central Oklahoma State University, Creek/Seminole
Bear, Walletta, Massachusetts College of Pharmacy, Penobscot
Beatty, Beverly University of Oklahoma, Apache
Becenti, Sandra, University of New Mexico, Navajo
Becker, Karen, University of North Dakota, Navajo
Beecher, Dorita, Mojave Community College, Hualapai
Beeson, Terri, University of Arizona, Navajo/Hopi
Begay, Linda, Northern Arizona University, Navajo
Begay, Lydia, University of Oklahoma, Navajo
Begay, Martha, Marion College, Navajo
Begay, Natalie, California State University, Navajo
Begay, Rita Weyrauch, University of California, Papago
Begay, Vida C., Bacone College, Navajo
Begaye, Michael, Fort Lewis College, Hopi
Belanger, Alanna, College of Saint Scholastica, Chippewa
Belcourt, Gordon, University of California, Blackfeet
Bell, Joseph, University of North Carolina, Lumbee
Bell, Michael, University of Oregon; Hopi
Bellinger, Thomas, University of North Dakota, Eskimo
Benally, Stanley, University of New Mexico, Navajo
Bender, Barry, University of North Dakota, Sioux
Bender, Le Ann, Mary College, Sioux
Bergen, Dellina; University of Arizona, Navajo
Bergen, Velina, University, of Arizona, Navajo/Pima
Berrey, Katherine, Arizona State University, Osage/Quapaw
Bigpond, Wendell, Tulsa University, Creek
Billedeaux, Louis, Brigham Young University, Blackfeet
Bird, Kerry Dean, University of North Carolina, Sioux
Blankenship, Ronald, Western Carolina University, Cherokee
Blodgett, Denise, University of California, Blackfeet
Bloom, Kelly Marie, University of Arizona, Taos/Paiute
Bluehouse, Orrin, Arizona State University, Navajo
Bluestone, James, University of North Dakota, Affiliated
Bochenski, Cindy, Madonna College, Chippewa
Bockius, Melissa, University of Oklahoma, Osage
Boham, Randall, Montana State University, Chippewa
Bohannan, Darla, Bartlesville Wesleyan College, Deleware
Boje, Maxine, College of St Scholastica, Cherokee
Boller, Rebecca, University of Wyoming, Shoshone
Bounds, Donna, Dakota Wesleyan University, Sioux
Boyiddle, Betty, SW Oklahoma State University, Blackfeet
Bradley, Teresa, Western Carolian University, Cherokee
Brafford, Debra, California State University, Sioux
Brewer, Michael, Portland State University, Sioux
Brewington, Belinda, University of North Carolian, Lumbee
Brewington, Robin, University of North Carolina, Lumbee
Brooks, Carlotta, University of Wyoming, Chippewa
Brooks, Paula, University of North Carolina, Lumbee
Brown, Loren East Central Oklahoma State, Choctaw
Brunell, Melissa, Eastern Montana College, Chippewa
Bryan, Michael, College of the Redwoods, Pawnee
Buckles, Dale, University of North Dakota, Sioux
Bullard, Wanda, Pembroke State University, Lumbee
Burt, Randy, Northeastern State University, Cherokee
Butler, Raymond Jr., Bringham Young University, Navajo
Byrum, Melanie, Oklahoma University, Cherokee
Calvin, Theresa, University of North Dakota, Choctaw
Cannon, Rex, Mesa Community College, Pima
Carter, Sandra, San Diego Mesa College, Shoshone
Castilla, Kim, University of North Dakota, Sponkan-Winneb
Cedarface, Frederick, South Utah State College, Sioux
Chapman, Phillip, Texas Wesleyan College, Cherokee
Chavis, Jean, Robeson Tech College, Cherokee
Chistensen, David, University of North Dakota; Affiliated
Christensen, Michael, University of North Dakota, Mandau/Hidatsa
Clay, Julie, University of Oklahoma, Omaha
Clevenger, James, Central State University, Cherokee
Click, James, Oklahoma University, Creek
Clifford, Gwendolyn, Sinte Gleska College, Sioux
Coburn, Dugan, Oregon Institute of Technology, Blackfeet
Cole, Gina, University of Oklahoma, Kiowa

Cole, Vicki, North Oklahoma State Univerity, Cherokee
Colhoff, Brian, University of North Dakota, Sioux
Collins, Betty, Murray State College, Coctaw
Conlan, Christopher, Dartmouth Medical School, Seneca
Conway, Keith, University of Montana, Blackfeet
Crawford, Georgia, University of New Mexico, Navajo
Cropp, Thomas, East Central University, Creek
Cully, Harold, East Central Oklahoma State University, Creek/Seminole
Cupp, Janette, Stanford University, Navajo
Curley, Linda, Bringham Young University, Navajo
Dakota, Shiela, St Mary's Jr. College, Chippewa
Dale, Regena, Arizona State University, Navajo
Daney, Elizabeth, Eastern Okahoma State College, Choctaw
Danielson, James, University of North Dakota, Cherokee
Danielson, Robert, George Mason University, Cherokee
Danielson, Thomas, University of Maryland, Cherokee
Dauber, Olivia, University of Albuquerque, San Juan
Dauphinais, Larry, University of North Dakota, Chippewa
Davenport, Jack, Pembroke State University, Lumbee
Davis (York), Donna, Bacone College, Creek
De Haas, Delores, Central State University, Sioux
De Rensis, Pamela, University of North Carolina, Lumbee
Decorse, Judith, Arizona State University, Quechan-Papago
Dee, Marilyn, San Juan College, Navajo
Delaney, Henry, Southern Oregon State College, Kalmath
Delaney, Niki, Southern Oregon State College, Cherokee
Demmert, Cynthia, University of Hawaii, Tlingit
Denetclaw, Deborah, New Mexico State University, Navajo
Deschenie, Maybelle, Northern Arizona University, Navajo
Detsoi, Fern, University of New Mexico, Navajo
Dexter, Donald, Portland State University, Klamath
Dial, Rhonda, University of North Carolina, Lumbee
Dillon, Marilyn, Oglala Sioux Community College, Sioux
Diver, Beverly, Granite Falls Avti, Chippewa
Dixon, Larry, Western Carolina University, Hupa
Dodge, Marilyn, Mesa Community College, Hoopa
Doney, Jessica, University of Montana, Chippewa
Dubray, Fernie, University of South Dakota, Sioux
Duganne, Martha, Texas Womans University, Seminole
Dulaney, Teresa, Phoenix College, Hopi
Dunigan, Aggie, East Central University, Pottawatomi
Dunn, Geraldine, University of North Dakota, Sioux
Eagle, Bernadine Presentation College, Sioux
Ecoffey, Patricia, School of Radiologic Technology, Sioux
Eder, Kathy, Rocky Mountain College, Souix
Ellery, Loren, Carroll College, Chippewa
Emerson, Noel, Kirksville College, Creek
Epps, Donald, Florida State University, Lumbee
Eskeets, Pearly, North Arizona University, Navajo
Eteeyan, William, Highland Community Junior College, Potawatomi
Everling, Linus, University of California, Chippewa
Failing, Allison, University of Montana, Sioux
Falcon, Gary E., University of North Dakota, Chippewa
Fastwolf, Frank, University of New Mexico, Sioux
Fields, Holly, Grossmont College, Paiute
Flanagan, Ronal, Northeastern State University, Cherokee
Flocken, Henry, University of Minnesota, Chippewa
Flores, Joy, College of the Desert, Navajo
Folster, Laddie, California State University, Sioux
Foreman, Tommy, East Central University, Cherokee
Fowler, Renda, University of Arizona, Navajo
Frank, Jo Ann, Mountain View College, Choctaw
Frank, Linda, University of New Mexico, Navajo
Franklin, Valerie, University of New Mexico, Navajo
Freeland, Bernadette, University of Arizona, Navajo
Freemont, Naomi, Oral Roberts University, Sioux
French, Gary, Western Carolina University, Cherokee
Friedlander, Rhonda, Gonzaga University, Kootenai
Gailey, Kimberly, University of Oklahoma, Cherokee
Galbreath, Donna, University, of Alaska, Athabascan
Gallo, Roel, University of North Dakota, Comanche
Gano, Mary Susan, Skagit Valley College, Cherokee
Garcia, Lori, University of North Dakota, Chippewa
Garcia, Timothy, University of North Dakota, Pueblo
Garrison, David, University of Arizona, Shoshone
George, Rozinna, University of Arizona, Shoshone
German, Betty, North Arizona University, Navajo
Ghachu, Jolene, Brigham Young University, Zuni
Gonzalez, Robin, Cameron University, Comanche
Gordon, Cynthia, University of Michigan, Chippewa
Gourneau, Dawn, Dartmouth College, Chippewa
Gourneau, Linda, University of North Dakota, 3 Affil Ft
Granger, Annette, Arizona State University, Navajo
Gray, Dawn Marie, University of New Mexico, Sioux
Guimaraes, Charles, College of Saint Thomas, Chippewa
Guimaraes, Christina, University of Minnesota, Chippewa
Gullickson, Janet, Mary College, Sioux
Gutierrez, Juanita, Mary College, Sioux
Hammond, Doylena, Appalachian State University, Lumbee
Hammonds, Karen, University of California, Lumbee
Hansen, Shelley, University of Portland, Aleut
Harjan, (Sandoval) Brenda, University of Albuquerque, Chippewa/Sioux
Harjo, Lucille, University of Oklahoma, Creek
Harris, Glenn, Pembroke State University, Lumbee
Harris, Manisha, University of Arizona, Apache
Harris, Marlene, Bacone Junior College, Navajo
Harrison, Carlene, Central State University, Navajo/Hopi
Hart, Patrice, University of Oklahoma, Cheyenne
Haukaas, Thomas, University of Dakota, Sioux
Hawronsky, John, University of North Dakota, Chippewa
Hensley, Eloise, Casper College, Arapahoe
Hernandez, Marie, Phoenix College, Pima/Pueblo
Hernandez, Rosanna, University of New Mexico, Laguna
Hernasy, Sarah, Phoenix College, Hopi
Higby, Gerogina, San Bernardino Valley College, Menominee
Higgins, Violet, Montanta State University, Blackfeet
Hill, Lucinda, University of Arizona, Navajo
Hill, Sammy, East Central Oklahoma State University, Creek
Hockert, Melissa, Saint Marys Junior College, Chippewa
Hollen, Toni, College of Saint Scholastica, Chippewa
Hopper, Melanie, Oklahoma State University, Choctaw
Hopper, Robert, University of North Dakota, Cherokee
Hoptowit, Sophie, University of Oregon, Takima
Hovland, Cynthia, Rapid City Reg Hospital, Sioux
Howard, Dean, Arizona State College, Pima
Howard, Kathleen, Central Arizona College, Pima
Howard, Rajean, Washburn University of Topeka, Hopi/Pueblo
Howard, Reyes, University of New Mexico, Pueblo Isleta
Hubbard, Joseph, Arizona State University, Navajo
Hummingbird, Linda, Northeastern State University, Cherokee
Humphrey, Irene, University of Montana, Blackfeet
Humphrey, Lisa Gay, Oklahoma State University, Cherokee
Hunt, Cassina, East Carolina University, Lumbee
Hunt, Marlene, Pacific University, Puyallup

Hunt, Peggy, Pembroke State University, Lumbee
Hyatt, John, Mount St. Mary's College, Cherokee
Hyatt, Margaret, Mount St. Mary's College, Cherokee
Ingram, David, Central State University, Chickasaw
Innis, Emma, Phoenix College, Seneca
Isaacs, Barbara, East Central Oklahoma State University, Chickasaw
Jackson, Delvin, Phoenix College, Pima
Jackson, Suzanne, Central Arizona College, Pima
James, Dorinda, Maricopa Technical College, Pima
Janke, Wendy, College of Saint Scholastica, Chickasaw
Jarman, Nola, Presentation College, Sioux
Jenkins, Patrick University of Texas, Creek
Jim, Francis, Weber State College, Navajo
Jimerson, Crystal, Syracuse University, Sioux
Jiminez, Betty A., Pt State University, New Perce
John, Sharon, Washington State University, Yakima
John, Sylvia, University of New Mexico, Navajo
Johnson, Doriann F., Pima Community College, Papago/Navajo
Johnson, Glenn, University of Oklahoma, Choctaw
Johnson, Lina, University of New Mexico, Navajo
Johnson, Sheila, Murray State College, Choctaw
Johnson, Virginia, S. University of Toledo, Cherokee
Johnston, Mary Ann, Fresno City College, Seminole
Johnston, Rosemary, Arizona State University, Hualapai
Jones, Alfreda, University of North Carolina, Lumbee
Jones, Carla, Oklahoma State University, Creek
Jones, Cynthia, Rapid City Reg. Hospital, Sioux
Jones, Kimberly, University of Minnesota, Sioux
Jones, Mitchel, Fayetteville Tech Institute, Lumbee
Jones, Terry, (Inmed) Ohio State University Cherokee
Jones, Tony, Pembroke State University, Lumbee
Juneau, Janet, Northeastern State University, Creek
Kalemsa, Eldon, Jr., University of New Mexico, Hopi
Kanouse, Charlotte, University of New Mexico, Navajo
Kaskuske, Geraldine, St. Gregory's College, Kickapoo
Keke, Emory, University of North Dakota, Sioux
Kepaa, Catherine, University of Norhtern Colorado, Sioux
Keshena, Kate, University of North Dakota, Menominee
Kewanimptewa, Dianna, Scottsdale Community College, Hopi
Killsprettyenemy, C., University of North Dakota, Sioux
King, Charles, University of North Dakota, Chippewa
Kinnear, Lesa, Oklahoma University, Cherokee
Kinsley, Molly, Pima Community College, Papago
Koomsa, Elisa, American University, Kiowa
Kurley, Charlene, University of New Mexico, Nevajo
Kurley, Charlene, Northern Arizona University, Navajo
Kuwanhoyioma, Peggy, Northern Arizona University, Hopi/Papago
La Marr, Thomazine, Bacone College, Cherokee
Labelle, Brian, University of North Dakota, Sioux
Lambert, James, Northeastern Oklahoma State University, Cherokee
Lambert, Valerie, University of Washington, Assiniboine
Lamebull, Ruth, East Washington University, Gros Ventre
Lara, Lorraine, College of the Redwoods, Yurok
Larocque, Brian, University of North Dakota, Chippewa
Larson, Richard, Michigan State University, Chippewa
Larson, Rodney, University of North Dakota, Chippewa
Larson, Ruby, Tidewater Community College, Aleut
Larvie, Aloysius, South Dakota State University, Sioux
Latham, Sherry, College of the Redwoods, Hopi
Lazo, Ronald Southeastern Louisiana University, Choctaw/Appache
Le Beau, Brenda, University of North Dakota, Sioux
Le Cornu, Andre, Anchorage Community College, Haida
Leadingfox, Hazel, University of Oklahoma, Pawnee
Lee, James K., University of New Mexico, Navajo
Leno, Donna, University of Hawaii, Navajo
Leonardelli, Lynn, Cameron University, Delaware
Lewis, Angelettia, Pembroke State University, Lumbee
Lightfoot, Judy, Rutgers University, Ponca
Livermont, Pauline, Presentation College, Sioux
Locklear, Anthony, University of North Carolina, Lumbee
Locklear, David, Duke University, Lumbee
Locklear, Gwendolyn, East Carolina University, Lumbee
Locklear, Lita, University of North Carolina, Lumbee
Locklear, Nan O Lene, University of North Carolina, Lumbee
Locklear, Roderick, Jr., University of North Carolina, Lumbee
Logan, Melynda, University of Arizona, Comanche
Long Tjaden, Laura Ann, University of Wyoming, Arapahoe
Long, Bernard, University of North Dakota, Sioux
Long, Reno Michael, University of Hawaii, Arapahoe
Lopez, Andrew, University of Arizona, Papago
Lowe, Diana, Seminole Junior College, Kiowa
Lowery, Jan Marie, University of North Carolina, Lumbee
Lowery, Phyllis, Pembroke State University, Lumbee
Lowery-Calvo, Cara, Portland State University, Lumbee
Lucas, Kelly, Oklahoma University, Cherokee
Lucio, Walter, Chico State University, Zoni
Lufkin, Eula Mae, East Central OK State University, Choctaw
Lujan, Ernestine, New Mexico State University, Pueblo
Magee, Cheryl, Montana State University, Blackfeet
Magee, Myra, Fort Wright College, Blackfeet
Maggard, Florence, California State University, Mi-Wok
Maloney, Ruthie, College of the Redwoods, Navajo
Malotte, Sharon, University of North Dakota, Shoshone
Mandelin, Melanie, Northern Arizona University, Choctaw
Manica, Mary Kathryn, Mount Marty College, Sioux
Manning, Clarice, University of New Mexico, Navajo
Mariano, Joanne, University of New Mexico, Acoma
Martin, Gwen, University of New Mexico, Navajo
Martinez, Cleoves, University of New Mexico, Non-Indian
Mason, Verna, University of Texas at Arlington, Comanche
Maynor, Bobby, University of North Carolina, Lumbee
Maynor, Wynne, University of North Carolina, Lumbee
McCrary, Leesa, Northeastern OK State University, Cherokee
McBride, Karen, Loma Linda University, Cherokee
McCabe, Matthew, University of New Mexico, Navajo
McCollough, David, University of Alabama, Cherokee
McKinley, Laura, Arizona State University, Northern Ute
Means, Lorelei, South Dakota State University, Winnebago
Mele, Christopher, Harvard University, Seneca
Mells, Colleen, Mary College, Sioux
Menzie, Terrold, University of South Dakota, Gros Ventre
Miezwa, Judith, University of North Dakota, Chippewa
Milane, Priscilla, Highlane Community Junior College, Zuni
Miller, Michael, University of New Mexico, Navajo
Miller, Mindy, East Carolina University, Lumbee
Miller, Sharon, Seminole College, Choctaw
Mills, Brenda, South Dakota State University, Sioux
Mitchell, Donna, Yavapai College, Yavapai
Monette, Robin, Tulsa University, Laguna
Moore, Henry, University of Washington, Sioux
Morgan, Robbie, University of San Francisco, Navajo
Moseley, Jeanette, Montana State University, Blackfeet
Moss, Bonnie, Oklahoma University, Potawatomi

Mouse, Joyce, Bacone College, Cherokee
Mowrer, Karla, South Dakota State University, Cheyenne
Moylan, Thomas, University of South Florida, Cheyenne
Myron, Nadenia, Witchita State University, Hopi
Nations, Elnora, Western Carolina University, Cherokee
Nelson, Lena, Oglala Sioux Community College, Navajo
Netterville, Juanita, Mary College, Sioux
Newood, Beverly, N New Mexico Community College, Navajo
Nez, Charity, University of Albuquerque, Navajo
Nuvamsa, Anthony, Phoenix College, Hopi
O'Daniel, Pamela, Dakota Wesleyan University, Sioux
O'Keefe, Dennis, University of California, Berkeley, Ojibwa
Olin, Rebecca, Yale University, Koyukuk
Olney, Arlene, Central Washington University, Yakima
Olney, Jeanne, Washington State University, Yakima
Olson, Donald, Oral Roberts University, Eskimo
One Feather, Mary, Rapid City Reg Hospital, Sioux
Owle, Sue, Western Carolina University, Cherokee
Oxendine, Diane, Sandhills Community College, Lumbee
Oxendine, Dwight, University of North Carolina, Lumbee
Oxendine, John, University of North Carolina, Lumbee
Oxendine, Sandra, Sandhills Community College, Lumbee
Parker, Myra, University of East Tennessee State, Cherokee
Pattea, Sandra, Arizona State University, Mohave/Apache
Pearson, Mark, Northeastern University, Choctaw
Pete, Deanne, University of Oklahoma, Navajo
Peters, Irene, University of Oklahoma, Cherokee
Peters, Mary L., University of Oklahoma, Cherokee
Peterson, Cheryl, Mary College, Chippewa
Piccotti, Wesley, James Madison University, Mandan/Hidatsa
Pierce, Cathy Massachusetts, Nanticoke
Pittman, Robert, University of Arizona, Sioux
Pittman, Russell, University of Arizona, Sioux
Plentyholes, Paul, Metro State College, Sioux
Porter, Harrisha, University of Arkansas, Cherokee
Porter, Linda, East Central Olkahoma State University, Cherokee
Porter, Mariaelena, Arizona State University, Pima
Powers, Yvonne Jean, Union College, Sioux
Pratt, Regina, Maricopa Tech Community College, Pima
Price, Randi, University of Oklahoma, Chickasaw
Queen, Kathryn, Western Carolina University, Cherokee
Queen, Steven, East Carolina University, Cherokee
Quisno, Michelle, Montana State University, Sioux
Quiver, Leola, Presentation College, Sioux
Rafelito, Alvin, Phoenix College, Navajo
Ramon, Leona, Southwestern State University, Navajo
Ransom, Betty, University of California, Berkeley, Lumbee
Ransom, Carol, University of North Carolina, Lumbee
Raymond, Arthur, University of North Dakota, Sioux
Reber, Richard, University of Houston, Osage
Redleaf, Betty, University of South Dakota, Non-Indian
Redwing, Lisa, University of Minnesota-Morris, Sioux
Reevis, Virginia, Yakima Valley College, Yakima
Reisinger, Nancy, Stanford University, Choctaw
Rhoades, Dorothy, Harvard University, Kiowa
Richard, Theresa, Sinte Gleska College, Sioux
Richards, Linda, Rapid City Reg Hospital, Sioux
Richards, Tammy, Arizona State University, Navajo
Riggs, Sarah, Arizona State University, Navajo
Ripley, David, University of North Dakota, 3 Affiliated
Rivera, Sherri, Oregon Institute of Technology, Klamath
Romsa, Daniel, University of North Dakota, Blackfeet
Roosevelt, Leeann, Arizona State University, Apache
Ropos, Kathleen, Dakota Wesleyan University, Chippewa
Roth, Beverly, University of Oklahoma, Tsimshiam
Roubidoux, Mary, Mt. San Antonio College, Kansas/Nebraska
Roubidoux, Susanne, University of of Utah, Iowa Tribe
Rourke, Janine, State University of New York, Mohawk
Roy, George, University of Oklahoma, Ponca
Sage, Freida, Arizona State University, Navajo
Sahmaunt, Lynda, University of Oklahoma, Kiowa
Sampson, Diane, Temple University, Lumbee
Sampson, Vanessa, University of North Carolina, Lumbee
Sanchez, Gary, New Mexico St University, Hopi
Savoy, Norma, University of Denver, Cheyenne
Schildt, Robin, Seattle University, Blackfeet
Schmidt, Sophie, University of South Dakota, Cheyenne
Schwaesdall, Joyce, Southwest Oklahoma State University, Cherokee
Scott, Karen, Seminole Junior College, Seminole
Scott, Marie, Norther Arizona University, Navajo
Sepeda, Catherine, California State University, Mi-Wok
Sepulvado, Donald, Catholic University of America, Apache
Sharp, Joan, University of Montana, Salish
Shinn, Cynthia, Western Nevada Community College, Paiute
Shipp, Darren, Southeast Oklahoma State University, Ponca
Short, Hanley, Arizona State University, Kiowa
Shunkamolah, Cleora, University of New Mexico, Navajo
Sigana, Diana, University of North Dakota, Chippewa
Silva, Michael, University of Albuquerque, Laguna
Silva-Boss, Janice, Phoenix College, Laguna,
Silver, Danny, University of North Carolina, Haliwa
Sinclair, Linda, University of North Dakota, Blackfeet
Singer, Bobby, Northern Arizona University, Navajo
Sisto, Linda, The College of Ganado, Hopi
Slack, Janet, College of Great Falls, Salish/Kootenai
Slim, Geraldine, University of New Mexico, Navajo
Smith, Carrie, Oregon State University, Navajo
Smith, Darrell, University of Oklahoma, Cherokee
Smith, Donald Lee, Arizona State University, Sioux
Smith, Frances, Western Carolina University, Cherokee
Smith, Jerald, Sandhills Community College, Lumbee
Smith, Linda, University of North Carolina, Peoria
Smith, Marvin, University of New Mexico, Navajo
Sollars, Bridgette, University of Wyoming, Shoshone
Sorrell, Darlene, Oregon Health Science University, Navajo
Sparks, Georgeline, George Washington University, Sioux
St. Claire, Tina, University of North Dakota, Chippewa
Stars, Lorenzo, University of South Dakota, Sioux
Stetter, Maria, Regis College, Tigua Isleta
Stevens, Elizabeth, South Dakota State University, Omaha
Stevens, Patricia, College of Saint Scholastica, Chippewa
Storch, Catherine, Everett Community College, Menominee
Stubbs, Kathy, Oklahoma College of Osteopathic, Creek
Summers, Tracy, Montana State University, Sioux/Assiniboine.
Sutter, Virginia Watan, University of Oklahoma, Arapahoe
Tabor, Twila J., College of Great Falls, Blackfeet
Tahmahkera, Garrison, Arizona State University, Comanche
Tahmahkera, Gary, Arizona State College, Comanche
Tanniehill, Jean, Carroll College, Chippewa
Tapscott, Frances, Sandhills Community College, Lumbee
Taylor, Debra Lee, University of Montana, Blackfeet
Tenorio, Mary Frances, University of New Mexico, Pueblo
Thomas, Dardene, Mesa Community College, Navajo
Thomas, Jeff, University of North Dakota, Yakima

Gibson, (Thomas), Marilyn, East Central University, Seminole/Creek
Thomas, Mark, Montana State University, Arapahoe
Thomas, Mary, University of North Dakota, Chippewa
Thomas, Rowena, East Central University, Choctaw
Thomas, Wilburn, N.E. Oklahoma A&M College, Cherokee
Thompson, Brian, Hamilton College, Oneida
Thompson, Deborah, Montana State University, Sioux
Thompson, Joyce Ellen, Oklahoma University, Cherokee
Thompson, Renee, University of Oklahoma, Cherokee
Thompson, Robert, University of Minnesota, Chippewa
Three Legs, Valarie, Standing Rock Community College, Sioux
Tobias, Betty, Dakota Wesleyan University, Sioux
Tohdacheeny, Adeltha, Weber State College, Navajo
Torabi, Sarah (Morrison), Eastern Oklahoma College, Creek
Tourtillott, John, Arizona Western College, Menominee
Town, Nathan, University of Montana, Yakima
Tracey, Gilbert, Grand Canyon College, Navajo
Trumbull, Kathryn, Massachusetts College, Penobscot
Tso, Flora, Phoenix College, Navajo
Tuma, Frances, Samuel Merritt Hospital, Sioux
Tutt, Michael, University of Arizona, Navajo
Tyler, Scott, University of North Dakota, Makah
Umtuch, Evelyn, Yakima Valley College, Yakima
Underbaggage, Alberta, South Dakota State University, Sioux
Valandra, Katherine, Mesa Community College, Sioux
Vallee, Marcia, East Central Oklahoma State University, Salish/Kootenai
Van Brunt, Kristy, University of Washington, Colville
Van Tuyl, Charles, University of Oklahoma, Cherokee
Vaughn, Helen, NE State University, Cherokee
Vivier (Cook), Mercal, U.S. International University, Chippewa
Walden, Henry, University of Hawaii, MPH, Pima/Hopi
Walker, Amy, University of Tennessee, Cherokee
Walker, Darlene, North Arizona University, Apache
Wallette, Janice, University of North Dakota, Chippewa
Warne, Beverly, Arizona State University, Oglala Sioux
Warner, Pauline, Oglala Sioux Community College, Sioux
Warren, Alice, Seattle Pacific University, Chetco
Warren, Sheila, Seattle Pacific University, Siletz
Wegehaupt, Paula, Pacific Lutheran University, Chippewa
Wendling, Bertrand, University of Minnesota, Chippewa
White Temple, Emmett, University of North Dakota, Sioux
White, Cindy, University of Washington, Suquamish
Whitemanrunshim, Karen, Montana State University, Crow
Whitethorne, Ruby, Weber State College, Navajo
Whitford, Lisa, Montana State University, Chippewa
Whitman, Darrel, Colorado State University, Pima
Wilkie, Timothy, University of North Dakota, Chippewa
Williams, Arica, University Oklahoma, Choctaw
Williams, Laura, Whittier College, Juaneno
Williams, Roberta, Arizona State University, Navajo
Wilson, Jeffrey, Oregon State University, Cherokee
Wilson, Timothy, University of North Dakota, Cheyenne
Winebrenner, Millie, College of Great Falls, Flathead
Wise, Toby, Oklahoma State University, Creek
Withers, Ruth, University of Alaska, Aleut
Wood, Lily, St. Mary's Junior College, Winnebago
Wood, Wanda, Catholic University, Oneida
Woodward, Mona, Tulsa Junior College, Cherokee
Wright, Richard, Portland State University
Wyaco, Berlinda, University of New Mexico, Zuni
Yazzi, Harlen, Arizona State University, Navajo
Yazzi, Martha, Arizona State University, Navajo
Ziegler, Donna, St. Mary's Junior College, Chippewa
Zizzo, Neva Jean, Southwestern Oklahoma State University, Wichita

FOR FURTHER INFORMATION CONTACT: Mr. Pierre Colombel, Indian Health Service, Health Resources and Services Administration, Parklawn Building, Room 6A-29, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: 301-443-5441.

Dated: October 15, 1982.

Robert Graham, M.D.,

Administrator, Assistant Surgeon General.

[FR Doc. 82-29989 Filed 10-29-82; 8:45 am]

BILLING CODE 4116-16-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Amendment of Final Wilderness Inventory; Decision in Washington

AGENCY: Bureau of Land management, Interior; Oregon State Office.

ACTION: Notice of Elimination of Little Patos Island from wilderness review.

On November 14, 1980, the final wilderness inventory decisions for Bureau of Land Management lands in Oregon and Washington were announced on pages 75597-75602 of Volume 45, Number 222, of the **Federal Register.** On page 75598, it was reported that Little Patos Island, located in San Juan County, Washington, was identified as a wilderness study area. It subsequently has been determined that the island was included in a withdrawal of certain lands and islands for marine navigational purposes by the Executive Order of July 15, 1875. The withdrawn lands are administered by the U.S. Coast Guard. Because little Patos Island is not administered by the Bureau of Land Management, it is not subject to the wilderness review authorized by Section 603 of the Federal Land Policy and Management Act of 1976. Accordingly, the November 14, 1980, decision on the wilderness inventory in Washington is hereby corrected by eliminating Little Patos Island from the lands subject to wilderness review.

This decision will become effective 30 days after the publication of this notice. Any person adversely affected by this decision may submit an appeal under the provisions of 43 CFR Part 4.

FOR FURTHER INFORMATION CONTACT: Roger Burwell, District Manager, Spokane District Office, Bureau of Land Management, E. 4317 Main Avenue, Spokane, Washington 99202. Telephone:(509) 456-2570.

William G. Leavell,

State Director.

[FR Doc. 82-29440 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Receipt of Application for Permit

Notice is hereby given that an applicant has applied in due form for a permit to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the regulations governing the taking and importing of Marine Mammals (50 CFR Part 18).

1. Applicant:

a. Name: Bolt Beranek and Newman Inc.

b. Address: 10 Moulton Street, Cambridge, MA 02238.

2. Type of permit: Take (harassment).

3. Name and number of animals: Sea otter (*Enhydra lutris*)—up to 7.

4. Type of Activity: Sea otters may be harassed by artificial noise that will be transmitted from research vessels investigating the response of migrating gray whales (*Eschrichtius robustus*) to the artificial noise.

5. Location of Activity: Coastal waters south of Monterey, California.

6. Period of Activity: December 1982–January 1983 and 15 April–5 May 1983.

7. Purpose: The purpose of this application is for the applicant to obtain a permit to authorize the taking (harassment) of sea otters that may be close to areas where the applicant plans to conduct research on the impacts of noise by oil and gas development activities to gray whales.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-9740. Written data or views, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements contained in this notice are summaries of those of the applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 605, 1000 North Glebe Road, Arlington, Virginia.

Dated: October 27, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-30910 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

Applicant: Los Angeles Zoo, Los Angeles, CA, PRT 2-9760.

The applicant requests a permit to import one pair of black rhinoceros (*Diceros bicornis*) for enhancement of propagation.

Applicant: San Diego Zoo, San Diego, CA, PRT 2-9758.

The applicant requests a permit to import one pair of captive-bred clouded leopards (*Neofelis nebulosa*) from the Chengdu Zoo, People's Republic of China, for enhancement of propagation.

Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: October 27, 1982.

R. K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 82-30011 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

California; Known Geothermal Resource Area

Pursuant to the authority vested in the Secretary of the Interior by section 21 (a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geoolgical Survey Manual) 220.2.1 G, and Secretarial Order 3071, the following described lands are hereby defined as the South Brawley Known Geothermal Resources Area, effective June 17, 1981:

(5) California

South Brawley Known Geothermal Resources Area

San Bernardino Meridian, California

T. 14 S., R. 14 E.,
Sec. 9, SE¼;
Sec. 10, S½;
Sec. 11, SW¼;
Sec. 13, W½;
Secs. 14, 15, and 16;
Sec. 17, E½;
Secs. 20, 21, 22 and 23;
Sec. 24, W½;
Sec. 25, W½;
Secs. 26, 27, 28, and 29;
Secs. 32, 33, 34, and 35;
Sec. 36, NW¼;
T. 15 S., R. 14 E.,
Sec. 2, N½;
Sec. 3, N½;
Sec. 4, N½.

The area described aggregates 12,640 acres, more or less.

Dated: October 15, 1982.

Frank W. Smith,

Acting Minerals Manager, Western Region.

[FR Doc. 82-29867 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-MR-M

Idaho; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by Section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1.G, and Secretarial Order 3071, the following described lands are hereby revoked as the Conda Known Geothermal Resources Area, effective October 1, 1982:

(12) Idaho

Conda Known Geothermal Resource Area

Boise Meridian, Idaho

T. 8 S., R. 42 E.,
Sec. 1;
Sec. 2;
Sec. 11;
Sec. 12;
Sec. 13;
Sec. 14.

The revoked area aggregates 3,846 acres, more or less.

The Bureau of Land Management has advised the Minerals Management Service that the subject lands will be made available to the first qualified applicant under regulations appearing at 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Dated: October 15, 1982.

Frank W. Smith,

Acting Minerals Manager, Western Region.

[FR Doc. 82-29868 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-MR-M

Nevada; Known Geothermal Resources Area; Revocation

Pursuant to the authority vested in the Secretary of the Interior by section 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1 G, and Secretarial Order 3071, the following described lands are hereby revoked as the Gerlach Northeast Known Geothermal Resources Area, effective October 1, 1982:

(28) Nevada

Gerlach Northeast Known Geothermal Resources Area

Mount Diablo Meridian, Nevada

T. 33 N., R. 24 E.,
Secs. 2 through 5.

T. 33½ N., R. 24 E.,
Secs. 25 through 29;
Secs. 32 through 36.
T. 34 N., R. 24 E.,
Secs. 35 and 36.

The revoked area described contains 7,971 acres, more or less.

The Bureau of Land Management has advised the Minerals Management Service that the subject lands will be made available to the first qualified applicant under regulations appearing at 43 CFR Part 3210 beginning with the first calendar month following the date of this notice.

Dated: October 15, 1982.

Frank W. Smith,

Acting Minerals Manager, Western Region.

[FR Doc. 82-29869 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Receipt of Proposed Development and Production Plan

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that The Superior Oil Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G4270, Block 243, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 22, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-29870 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-31-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Receipt of Proposed Development and Production Plan

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 3592, Block 87, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Minerals Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 22, 1982.

John L. Rankin,

Acting Minerals Manager, Gulf of Mexico OCS Region.

[FR Doc. 82-29871 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-31-M

Oil Shale Land Classification Order Colorado No. 10; Correction

In FR Doc. 81-19958, appearing at pages 35357, 35358, 35359, and 35360 of the issue for Wednesday, July 8, 1981, the following changes should be made:

Under *Prospectively Valuable Oil Shale Lands* (page 35357), T. 9 N., R. 92 W., the second line should read:

Secs. 16, 17, and 18.

Under *Prospectively Valuable Oil Shale Lands* (page 35357), after the 36th line insert the following:

T. 2 N., R. 95 W.,
Secs. 2 to 11, inclusive;
Secs. 14 to 23, inclusive;
Secs. 26 to 33, inclusive.
T. 3 N., R. 95 W.,
Secs. 7;
Secs. 17 to 20, inclusive;
Secs. 28 to 34, inclusive.

Under *Prospectively Valuable Oil Shale Lands* (page 35357), T. 2 N., R. 96 W., the first and second lines should read as follows:

Secs. 1 to 14, inclusive;
Secs. 25, 35, and to 36.

Under *Prospectively Valuable Oil Shale Lands* (page 35357), after the 51st line, insert the following:

T. 3 N., R. 96 W.,
Secs. 1 to 6, inclusive;
Secs. 10 to 15, inclusive;
Secs. 22 to 28, inclusive;
Secs. 31 to 36, inclusive.
T. 4 N., R. 96 W.,
Secs. 7 to 10, inclusive;
Secs. 14 to 23, inclusive;
Secs. 25 to 36, inclusive.
T. 5 N., R. 96 W.,
Sec. 19
Secs. 29 to 33, inclusive.

Page 35358, first column, T. 2 N., R. 97 W., the first line should read as follows:

Secs. 1 and 7.

Page 35358, first column, after the 16th line insert the following:

T. 4 N., R. 97 W.,
Secs. 12, 13, 24, 25, and 36.
T. 5 N., R. 97 W.,
Secs. 23, 24, 25, and 36.

Page 35358, second column, 49th line should read as follows:

T. 12 S., R. 92 W.,

Page 35359, first column, T. 11 S., R. 96 W., the description should read as follows:

Secs. 1 and 3;
Secs. 10 to 15, inclusive;
Sec. 19;
Secs. 21 to 36, inclusive.

Page 35359, first column, T. 12 S., R. 96 W.,

Secs. 1 to 28, inclusive;

Secs. 33 to 36, inclusive.

Page 35359, first column, T. 11 S., R. 97 W., the 4th and 5th lines should read as follows:

Secs. 20 to 29, inclusive;
Secs. 32 to 36, inclusive.

Page 35359, third column, the second line should read as follows:

Secs. 22, 23, 26, and 27.

Page 35359, third column, after 73rd line, insert the following:

Non Oil Shale Lands

T. 1 N., R. 95 W.,
Sec. 26.
T. 2 N., R. 96 W.,
Sec. 25.
T. 2 N., R. 97 W.,
Secs. 12, 35, and 36.
T. 3 N., R. 97 W.,
Sec. 36.
T. 4 N., R. 97 W.,
Sec. 11.
T. 8 N., R. 98 W.,
Secs. 19, 20, 26, and 27.
T. 10 S., R. 92 W.,
Sec. 33.
T. 11 S., R. 92 W.,
Secs. 4 and 28.
T. 5 S., R. 93 W.,
Secs. 5 to 9, inclusive, 16, 17, 21, 28, and 33.
T. 12 S., R. 93 W.,
Secs. 13, 17, 20, 21, and 24.
T. 4 S., R. 94 W.,
Secs. 23 and 36.
T. 6 S., R. 94 W.,
Secs. 1, 2, 3, 10, 11, and 16 to 20, inclusive.
T. 6 S., R. 95 W.,
Secs. 25 and 32 to 35, inclusive.
T. 7 S., R. 95 W.,
Secs. 5 and 6.
T. 12 S., R. 95 W.,
Sec. 31.
T. 6 S., R. 96 W.,
Sec. 34.
T. 7 S., R. 96 W.,
Secs. 1, 2, 12, and 13.
T. 8 S., R. 96 W.,
Sec. 12.
T. 11 S., R. 96 W.,
Secs. 16 and 18.
T. 11 S., R. 97 W.,
Sec. 12.
T. 12 S., R. 97 W.,
Secs. 9, 15, 16, and 22.
T. 6 S., R. 101 W.,
Sec. 7.

Page 35359, third column, the last two lines should read as follows:

The area described aggregates 2,815,864 acres (1,139,538 hectares), more or less, of

Page 35360, first column, should read as follows:

In which 2,776,464 acres (1,123,593 hectares) are classified as prospectively valuable for oil shale, and 39,400 acres (15, 945 hectares) are classified as non oil shale lands.

Dated: October 13, 1982.

Robert E. Boldt,

Acting Director, Minerals Management Service.

[FR Doc. 82-29866 Filed 10-29-82; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 125)

Burlington Northern Railroad Company—Abandonment—Between Ashland and Praque, NE; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its rail line between milepost 0.00 near Ashland to railroad milepost 31.42 at the end of the line near Praque, a distance of 31.42 miles in Saunders County, NE, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on BN, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-30024 Filed 10-29-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. 38848]

Elimination of Supplement 4 to Valuation Order No. 3; List of Units for Use of Carriers in the Preparation of Completion Reports

AGENCY: Interstate Commerce Commission.

ACTION: Proposed Elimination of Revised Supplement Number Four To Valuation Order No. 3.

SUMMARY: The Commission proposes to eliminate Revised Supplement No. 4 to Valuation Order No. 3, Second Revised Issue—List of Units for Use of Carriers in the Preparation of Completion Reports and the Record of Property Changes. This Order became effective January 1, 1933. In previous years this information was used in ratemaking decisions. However, the Commission now relies upon Annual Report Form R-1 for all data on net investment in railway operating property. Therefore, the Commission believes the recordkeeping required in Revised Supplement No. 4 is extraneous and should be eliminated.

DATES: Written responses should be filed within 45 days from publication in the **Federal Register.** The effective date of this proposed revision would be January 1, 1982.

ADDRESSES: An original and 15 copies, if possible, of any comments should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., (202) 275-7448.

SUPPLEMENTARY INFORMATION: Revised Supplement No. 4 to Valuation Order No. 3, Second Revised Issue (RS4), became effective January 1, 1933. This Order cancelled Supplement NO. 4 to Valuation Order No. 3, Second Revised Issue. It established a list of property units which affected carriers were to keep records of, including changes made to that property. Valuation Order No. 3, Second Revised Issue, prescribed the instructions to govern the recording and reporting of all extensions and improvements or other changes in physical property for every common carrier subject to the Interstate Commerce Act. In order to establish a uniform manner of reporting and recording this information, carriers were required to record changes in property subsequent to December 31, 1932, in accordance with the list of propety units specified in Revised Supplement No. 4 to Valuation Order No. 3, Second Revised Issue.

Until 1964, the information required in RS4 was used in ratemaking decisions. However, since then the Commission has used information from Annual Report Form R-1 to determine the book value of net investment in railway property. This data is also used for the Uniform Rail Costing System. In Ex Parte No. 393, Adequate Earnings Determinations, only the dollar amounts for the various propety accounts are needed. Instructions for Property Accounts (2-1 through 2-20), in Part 1201 contain all necessary instructions for the proper accounting of investment in carrier property. Thus, the Commission feels that the detail required in RS4 is extraneous and should be eliminated.

The Commission has proposed in Docket No. 36988, *Alternative Methods of Accounting for Railroad Track Structures,* served June 19, 1981 (46 FR 32289, June 22, 1981), that rail track structure be accounted for under the Depreciation method rather than the Retirement-Replacement-Betterment method. If that proposal is adopted, Instruction 2-19, List of Units of Property, and other instructions for property accounts will be revised as necessary.

The public and affected carriers are requested to study this proposal and submit their view and comments. Responses by affected railroads should include an estimate of the accounting and reporting burden hours saved by elimination of this requirement. After the comments have been reviewed, the Commission will publish a final notice.

Regulatory Flexibility Act

This proposal will not have a significant economic impact on a substantial number of small entities. In this proceeding, we do not propose new reporting requirements; rather we seek to eliminate the existing burden on railroads. However, the rule will only affect the reporting procedures of a small number of railroads and the economic impact, though beneficial, will not be significant.

This decision does not significantly affect the quality of the human environment or the conservation of energy resources.

This proposal is made under the authority of 49 U.S.C. 10781 and 5 U.S.C. 553.

Decided: October 22, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 82-29887 Filed 10-29-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. MC-166]

Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980

AGENCY: Interstate Commerce Commission.

ACTION: Notice opening proceeding to request comments.

SUMMARY: The purpose of this document is to open this proceeding to allow the public to comment on the pricing practices of motor carriers of property since passage of the Motor Carrier Act of 1980.

DATES: Comments must be received within 30 days of this publication.

ADDRESS: Send comments (original and 10 copies) to: Ex Parte No. MC-166, Interstate Commerce Commission, Office of Proceedings, Room 5340, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278,
or
Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: Two major goals of the 1980 Motor Carrier Act are to encourage individual carrier ratemaking, including a variety of quality and price options to meet diverse shipper needs, and to promote competition among carriers through liberalized entry. This combined emphasis on innovation and greater ease of entry, coupled with low start-up costs and current economic conditions, has resulted in significantly more independent rate actions.

The Commission believes that by initiating this proceeding and allowing the public to present its views; a greater understanding will be gained of the pricing techniques now being developed by the trucking industry. Public comment and some response by the Commission should promote certainty, clear the air, and encourage rate innovation.

To assist in its understanding of current pricing trends, the Commission requests voluntary participation by members of the motor carrier community, shippers and private carriers, independent truckers, owner-operators, and all other interested persons. The Commission recognizes that a voluntary survey could, if not executed carefully, give results that are weighted toward the concerns of larger and older firms since their relatively larger market shares provide both the incentive and the wherewithal for participation. Consequently, the Commission will utilize its Small Business Office to aid in eliciting comment from new entrants, smaller carriers, independent truckers and owner-operators.

Outlined below are a series of questions, some directed to differing categories of respondents. Several of the questions are designed to identify the respondent by type and to establish a summary of the respondent's experience since the passage of the Motor Carrier Act of 1980. These questions are central to a reliable evaluation of pricing trends. While some of the information sought is quantifiable, much of it is subjective. Consequently, respondents are advised that the Commission prefers that responses reflect individual judgments. This is not to minimize the long tradition of participation before this agency by carrier and shipper associations. These groups are requested to participate and several questions are addressed specifically to them where an industry-wide perspective will be as useful as that provided by individual firms. In addition to specific questions, all commentors should feel free to address any pricing practice or marketing technique in which they are interested.

General Category for All Respondents

1. What new pricing practices exist today that did not or could not exist before passage of the 1980 Motor Carrier Act?

(a) Which of these practices, if any, appear to be newly authorized by the 1980 amendments of the National Transportation Policy?

(b) What impact have these new practices had on carriers, shippers, independent truckers, owner-operators and consumers?

(c) To what extent has greater entry flexibility affected carrier pricing practices?

(d) Are the industry and the public interest served by elimination of inefficient carriers?

2. Are any of these new practices more attributable to the state of the economy, to recent regulatory reform, or to the Multi-employer Pension Plan? Will economic recovery modify these practices? How?

3. Have large and small carriers and large and small shippers benefitted equally from these new practices, and if any group has benefitted disproportionately, what, if any,

corrective action can or should be taken?

4. What is the relationship between general rate increases and independent actions? Do general increases create an economic environment which allows the non-competitive traffic to subsidize competitive traffic? Does a general increase give individual carriers the opportunity, through independent action, to decrease rates on competitive traffic to minimally compensatory or non-compensatory levels by artificially raising the rate level on non-competitive traffic?

5. There are substantially more independent rate actions today than prior to passage of the Motor Carrier Act, the majority of which have been decreases rather than increases. At the same time, the Commission has received numerous communications regarding alleged predatory practices and discriminatory ratemaking. Are some or most of the independent actions designed to meet the price/service needs of individual shippers?

(a) When, if ever, does a rate reduction become a predatory practice, and what findings must be made to determine that a particular pricing practice is predatory under the 1980 Act? If any pricing practice is found to be predatory, what action should be taken?

(b) What, if anything, would constitute a discriminatory action, and what findings must be made to determine that a particular pricing practice is discriminatory under the 1980 Act? If any pricing practice is found to be discriminatory, what action should be taken?

(c) Do relatively low start-up costs and eased entry act as safeguards against predatory practices?

(d) How should promotional rates be defined and dealt with?

6. Are you more concerned about the effects of predatory rates on individual carriers, or about the level of competition and the availability of service in affected markets?

7. Should carriers be permitted to file rate reductions on short notice, and if so, should carriers be allowed to file all rate changes on less than statutory notice?

8. Why have motor carriers made virtually no use of the zone of ratemaking flexibility adopted in the 1980 Act and found at 49 U.S.C. 10708? Should the Commission exercise its authority under section 10708(d)(2) to expand the zone? Since rates filed under the zone provisions are not subject to suspension, investigation, revision, or revocation, should the Commission issue a blanket special permission authorizing short-notice effectiveness for these rates?

9. What do you think the impact would be on carriers, shippers, independent truckers, owner-operators, and consumers if Congress decided next year to terminate all ICC regulation of rates charged by motor carriers of property? (Please indicate whether your answer presupposes the elimination of entry controls as well.)

10. Absent further legislation, what more can the ICC do to encourage competitive pricing?

Motor Carrier Group (for Regulated Carriers Only)

(Approximations are satisfactory for all of the following)

1. Please indicate the size of your operations according to the following:
- Annual tonnage.
- Gross transportation revenues.
- Number of full-time employees.
- Amount of motor equipment owned or leased long-term.
- Size of facilities owned or leased long-term.

2. Indicate the characteristics of your business according to the following:
- Principal geographic area.
- Contract or common carriage.
- Principal freight categories or commodity groups.
- LTL, TL, or distribution management.
- Use of intermodal hauling.

3. Indicate the characteristics of your firm's labor relations.
- Comparative use of employee-drivers vs. owner-operators used.
- Extent of unionization of work force.
- Other information concerning post Motor Carrier Act labor relations.

4. Indicate the general characteristics of your rate policy.
- Percent of traffic under contract rates.
- Percent of traffic carried at class rates.
- Percent of traffic carried at independent rates.
- The types of rate initiatives taken since 1980.
- Complaints to the ICC, formal and informal, alleging discrimination or predation.

5. Ownership characteristics.
- Privately owned.
- Publicly held, independent carrier.
- Parent, subsidiary or affiliate of other firms in publicly held corporate family.
- Affiliated with other motor carriers.
- Affiliated with other modes of freight transportation.
- Minority owned or controlled.

Shipper Group (Private Carriers)

(Approximations are satisfactory)

1. Please indicate the size and characteristics of your shipping requirements according to the following:
- Volume of freight shipped annually.
- Size of privately operated fleet.
- Use of common or contract carriers.
- Kind of freight shipped and range of distances.
- Use of modes other than motor.
- Use of piggyback transportation.

2. Indicate any effects that the Motor Carrier Act of 1980 and the possibility of future exemption from securities jurisdiction in the Bus Reform Act are having in your transportation planning according to the following:
- Plans to enter common or contract carriage.
- Investment or disinvestment in private carriage.
- Usage of contract or common carriage.

Shipper Group (Other Than Private Carriers)

(Approximations are satisfactory)

1. Please indicate the size and characteristics of your shipping requirements according to the following:
- Volume of freight shipped annually.
- Type of shipments (LTL, TL, bulk commodities, other).
- Control of rate and service arrangements on all, most, or some of your (a) inbound and (b) outbound freight.
- Number of carriers used regularly.
- Range of shipping distances.
- Use of modes other than motor.
- Use of piggyback transportation.

2. Indicate your purchasing preferences according to the following:
- Importance of service or price differences, sensitivity to changes in these categories.
- Willingness to contract for mid-term or long-term transportation service.

3. Indicate your experience since passage of the Motor Carrier Act of 1980 according to changes in preferences listed above, and experience in negotiating or initiating price or service changes.

Associations; Rate Bureaus; Government Agencies

1. Please indicate the nature of your activities according to the following characteristics. (Government agencies need not respond.)
- Kind of business represented.
- Major functions.
- Location of headquarters and principal staff.

2. Indicate which of the pricing provisions of the Motor Carrier Act are

functioning beneficially and which are not. (Carrier associations are requested to comment specifically on the zone of rate flexibility).

3. Indicate what future changes in pricing regulation are considered most important by your membership or your agency.

Commentors are requested to include in a preface to their comments the following information:

1. Name and address of Commentor.

2. Name and address of business or organization represented by Commentor.

The Departments of Justice, Transportation, and Agriculture, the Federal Trade Commission, and any other interested local, state or federal agency are also encouraged to comment.

This is not a major Federal action significantly affecting either the quality of the human environment or the conservation of energy resources.

It is ordered:

This proceeding is opened for the purpose of obtaining comments on pricing practices of motor common carriers of property since the enactment of the Motor Carrier Act of 1980.

Authority: Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat. 793.

Decided: October 15, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison. Vice Chairman Gilliam concurred in part and dissented in part with a separate expression. Commissioner Sterrett dissented in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

Vice Chairman Gilliam, concurring in part, dissenting in part:

I have no objection to receiving comments on the proposed questions. I do, however, have strong objections to the Commission's reversal of its vote of September 1, 1982, in Ex Parte No. MC-166, *Pricing Practices of Motor Common Carriers of Property Since the Motor Carrier Act of 1980.* There the Commission, by 4-2 vote agreed, among other things to (a) "consider relevant questions to be used in the formulation of a Commission policy statement" and (b)" "Set a target date for formal adoption of a comprehensive policy statement".

I have sought and urged a formal Commission policy statement in this area in No. 38728 (May 5, 1982) and No. 38872, *Petition for Declaratory Order—ATA—Discount Rates* (September 27, 1982). I believe that it is an especially sound course of jurispurdence that the Commission should have taken on its own initiative fully one year ago. Formal policy statements (1) allow detailed and comprehensive treatment of major policy areas, (2) provide clear guidance to industry and the public, and (3) carry legal sufficiency and precedential authority to prospective litigants.

Reversal of the Commission's prior vote and commitment to developing a formal policy statement means that the Commission is now left with a highly ambiguous proceeding leading nowhere in particular. Such an amorphous proceeding only invites characterization as a "make-work" effort designed to soothe emotions and demonstrate that the Commission is "doing something" (although not much).

Commissioner Sterrett, dissenting in part:

I disagree with the institution of this proceeding to the extent that it reopens the question of the Commission's policy on the matter of discount rates. It is most unfortunate that the notice strongly suggests that the Commission may be inclined to reverse its policy in this area.

The *Discount Rates* decision (issued in May (365 I.C.C. 711) and unanimously reaffirmed in No. 38872, *Petition for Declaratory Order—ATA—Lawfulness of Discount Rates)* is a thorough treatment of this policy question and offers interested parties clear and more than adequate guidance. While the Commission's pronouncement on discount rates may not be to everyone's liking, I believe it is unnecessary to revive this controversy and counterproductive for the Commission to appear to be indecisive.

[FR Doc. 82-29891 Filed 10-29-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service comtemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-211

The following applications were filed in Region I: Send protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 134806 (Sub-1-44TA), filed October 14, 1982. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East-West Highway, Suite 404, Bethesda, MD 20814. Contract carrier: irregular routes: *Maple syrup and foodstuffs,* between Brattleboro, VT, and Port Newark, NJ, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY, under continuing contract(s) with Spring Tree Corporation, Brattleboro, VT. Supporting shippper: Spring Tree Corporation, P.O. Box 1160, Brattleboro, VT 05301.

MC 134806 (Sub-1-45TA), filed October 14, 1982. Applicant: B-D-R TRANSPORT, INC., Vernon Drive, P.O. Box 1277, Brattleboro, VT 05301. Representative: Edward T. Love, 4401 East-West Highway, Suite 404, Bethesda, MD 20814. Contract carrier: irregular routes: *General commodities (except commodities in bulk, household goods and Class A and B explosives),* between Los Angeles, CA, on the one hand, and, on the other, points in ME, VT, NH, CT, MA and RI, under continuing contract(s) with Farley Terminal Co., Inc., Fullerton, CA. Supporting shipper: Farley Terminal Co., Inc., P.O. Box 5096, Fullerton, CA 92635.

MC 155235 (Sub-1-3TA), filed October 18, 1982. Applicant: DAVIDSON TRUCKING CO., INC., 140 Canal Street, Malden, MA 02148. Representative:

Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, MA 02181. Contract carrier: irregular routes: *Metal and metal products* between points in MA and RI, on the one hand, and, on the orther, points in ME, MA, CT, DE, MD, NH, NJ, NY, PA, RI, and VT, under continuing contract(s) with Bellesteel Industries, Inc., East Boston, MA. Supporting shipper: Bellesteel Industries, Inc., 150 McClellen Highway, East Boston, MA 02128.

MC 73866 (Sub-1-2TA), filed October 15, 1982. Applicant: LOUIS J. GARDELLA, INC., 111 Harbor Avenue, Norwalk, CT 06850. Representative: Gerald A. Joseloff, 410 Asylum Street, Hartford, CT 06103. *Such merchandise as is dealt in and used by a manufacturer of electronic equipment, radar systems and related commodities* between Norwalk, CT, on the one hand, and, on the other, points in ME, NH, VT, MA, RI, NY, NJ, PA, OH, WV, VA, MD, and DC. Supporting shipper: Norden Systems, Norden Place, P.O. Box 5300, Norwalk, CT.

MC 149431 (Sub-1-1TA), filed October 18, 1982. Applicant: HUDSON VALLEY BULK SERVICE, INC., Twinbrook Farm Road, East Chatham, NY 12060. Representative: John L. Alfano, Esq., Alfano & Alfano, P.C., 550 Mamaroneck Avenue, Harrison, NY 10528. *Contract carriers:* irregular routes: *Salt in bulk in dump vehicles,* from Beacon, NY, to points in CT, under continuing contract(s) with Internatioanl Salt Company of Clarks Summit, PA. Supporting shipper: International Salt Company, Abington, Executive Park, Clarks Summit, PA 18411.

MC 106958 (Sub-1-2TA), filed October 15, 1982. Applicant: KUPPER BROS., INC., Victory Circle, South Amboy, NJ 08879. Representative: Eugene M. Malkin, Suite 1832, 2 World Trade Center, New York, NY 10048. *Contract carrier:* Irregular route: *Copperas, in bulk, in dump trailers,* from Chester, PA, to points in DE, MD, NJ, NY and VA, under continuing contract(s) with Davis Water and Waste Industries, Inc., of Tallevast, FL. Supporting shipper: Davis Water and Waste Industries, Inc., P.O. Drawer A, Tallevast, FL 33588.

MC164032 (Sub-1-1TA), filed October 12, 1982. Applicant: MAERSK CONTAINER SERVICE COMPANY, INC., 231 Tyler Street, Fort Newark, NJ 07114. Representative: William J. Augello, Esq., Augello, Pezold & Hirschman, P.C., 120 Main Street, Huntington, NY 11743. *General commodities (except Class A and B explosives) in steamship containers having a prior or subsequent movement by water,* between points in ME, VT, NH, RI,CT, MA, NY, NJ, PA, MD, DE, WV, VA, NC, SC, GA, FL, AL, MS, LA, TX, and DC. Supporting shipper(s): There are eight statements in support with this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 158378 (Sub-1-1TA), filed October 12, 1982. Applicant: MARVIN BROS. EXPRESS, INC., 425 Harding Avenue, Stratford, CT 06497. Representative: Steven M. Gold, Esq., Schatz & Schatz, Ribicoff & Kotkin, One Financial Plaza, Hartford, CT 06103. *Norlite (shale aggregate-inert) in bulk (dump trailers)* from Albany and Cohoes, NY to Hartford, New Haven and Fairfield Counties, CT. Supporting shipper: Plasticrete Block & Supply Corp., 99 Stoddard Avenue, New Haven, CT 06473.

MC 156800 (Sub-1-7TA) (republication), filed September 24, 1982. Applicant: SEABOARD EXPRESS, INC., 565 Plank Road, Waterbury, CT 06705. Representative: Raymond A. Talipski, 121 S. Main Street, Taylor, PA 18517. *(1) Electric appliances and related products,* between Lehigh County, PA and Monroe County, NY, on the other hand, and, on the other, CA and WA, and; *(2) Paint and related products,* between Litchfield County, CT, on the one hand, and, on the other, points in the U.S. (except AK and HI), under contract(s) with General Electric Co., Bridgeport, CT and Keeler & Long, Inc., Watertown, CT. Supporting shipper(s): General Electric Co., Housewares and Audio Business Division, 1285 Boston Avenue, Bridgeport, CT 06602; Keeler & Long, Inc., Echo Lake Road, Watertown, CT 06795. Sole purpose of this republication is to change the commodity in (2) to Paint instead of Plant as published previously.

MC 163953 (Sub-1-1TA) (republication), filed September 22, 1982. Applicant: 248356 LEASING INC., 108 Annabelle Street, Hamilton, Ontario, CD L9C 3T6. Representative: William J. Hirsch P.C., 64 Niagara Street, Buffalo, NY 14202. *Lumber and lumber products and materials, equipment and supplies used in the manufacture and distribution thereof,* from ports of entry on the International Boundary Line between the U.S. and CD, located in NY and MI, to points in CT, DE, IL, IN, KY, MA, MD, ME, MI, NJ, NH, NY, OH, PA, RI, TN, VA, VT, WV and WI. Supporting shipper: Champion International Corporation Ltd., 1 Champion Plaza, Stamford, CT 06921. Purpose of this republication is to add the State of NH which was deleted from previous publication.

MC 5723 (Sub-1-2TA), filed October 15, 1982. Applicant: VANGUARD INTERSTATE TOURS, INC., 1 Westerly Road, Ossining, NY 10562. Representative: Jeremy Kahn, Suite 733, Investment Bldg., 1511 K Street, NW., Washington, DC 20005. *Common carrier:* regular routes: *Passengers and their baggage* (1) Between North Salem, NY, and New York, NY, serving all intermediate points between North Salem and the intersection of NY Hwy 22 and I Hwy 684; from North Salem via NY Hwy 121 to Cross River, NY, then via NY Hwy 35 to its intersection with NY Hwy 124 near South Salem, NY, then via NY Hwy 124 to Pound Ridge, NY, then via NY Hwy 172 to Bedford Village, NY (also from Cross River, NY, via NY Hwy 121 to Bedford Village, NY), then via NY Hwy 22 to its intersection with I Hwy 684, then via I Hwy 684 to its intersection with I Hwy 287, then via I Hwy 287 to its intersection with I Hwy 87, then via I Hwy 87 to the exit at 138th St, then west on 138th St over the Madison Ave Bridge to 5th Ave, then south on 5th Ave to its intersection with Broadway at 23rd St, then south on Broadway to Battery Park, and return over the same route; and (2) Between Croton Falls, NY, and New York, NY, serving all intermediate points between Croton Falls and the intersection of NY Hwy 22 and I Hwy 684; from Croton Falls via NY Hwy 22 to Purdys, NY, then via US Hwy 116 to its intersection with NY Hwy 100, then via US Hwy 202 to Somers, NY, then via NY Hwy 100 to its intersection with NY Hwy 138, then via NY Hwy 138 to Goldens Bridge, NY, then via NY Hwy 22 to its intersection with NY Hwy 35, then via NY Hwy 35 to its intersection with NY Hwy 117, then via NY Hwy 117 to its intersection with NY Hwy 120, then via NY Hwy 120 to Chappaqua, NY, then via NY Hwy 120 to its intersection with NY Hwy 22, then via NY Hwy 22 to its intersection with I Hwy 684, then via I Hwy 684 to its intersection with I Hwy 287, then via I Hwy 287 to its intersection with I Hwy 87, then via I Hwy 87 to the exit at 138th St, then west on 138th St over the Madison Ave Bridge to 5th Ave, then south on 5th Ave to its intersection with Broadway at 23rd St, then south on Broadway to Battery Park, and return over the same route. Supporting shipper(s): There are 15 statements of support with this application which may be examined at the Regional Office of the I.C.C. in Boston, MA.

MC 164034 (Sub-1-1TA), filed October 14, 1982. Applicant: ALMAC MOVING AND STORAGE OF NEW HAMPSHIRE, d.b.a. VISA INTERNATIONAL, 11 Park Avenue, Hudson, NH 03501.

Representative: Robert D. Hansen, P.O. Box 625, Framingham, MA 01701. *Containerized shipments of general commodities (except Class A and B explosives, household goods, and commodities in bulk) having prior to subsequent movement by water* between Hillsborough and Rockingham Counties, NH, on the one hand, and on the other, Boston, MA and Portsmouth, NH. Supporting shipper(s): Digital Equipment Corp., Cotton Road, Nashua, NH 03065; Lowell Shoe, Inc., 8 Hampshire Drive, Hudson, NH 03051; Centronics Data Computer Corp., One Wall Street, Hudson, NH 03051.

The following applications were filed in Region 3. Send protests to: ICC, Regional Authority Center, Room 300, 1776 Peachtree Street, N.E., Atlanta, GA 30309.

MC 143786 (Sub-3-5TA), filed October 19, 1982. Applicant: HAL MAST TRUCKING CO., INC., Route 1, Box 259, Sugar Grove, NC 28679. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Building, Charlotte, NC 28204. *Beef and beef products,* from Grand Island, York, Lincoln and Omaha, NE, Garden City, KS, and Greeley, CO to points in GA, NC, SC, MD, TN, VA, PA, OH, and NY. Supporting shippers: Monfort of Colorado, Inc., P.O. Box 2137, Grand Island, NE and Kansas Beef Processors, Inc., P.O. Box 957, Garden City, KS 67846.

MC 154108 (Sub-3-3TRA), filed October 19, 1982. Applicant: CALHOUN TRANSPORTATION SERVICE, INC., Old Route 11, P.O. Box 10, Calhoun, TN 37309. Representative: M. C. Ellis, 1001 Market Street, Chattanooga, TN 37402. *Food and related products* from Paris, IL to Chattanooga, TN. Supporting shipper: Illinois Cereal Mills, Inc., 616 S. Jefferson Street, P.O. Box 220, Paris, IL 61944.

MC 164092 (Sub-3-1TA), filed October 19, 1982. Applicant: EASTERN FUEL TRANSPORT, INC., P.O. Box 31, Ahoskie, NC 27910. Representative: Archie W. Andrews, P.O. Box 1166, Eden, NC 27288. *Contract Irregular: Petroleum Products* between Norfolk and Chesapeake, VA, on the one hand, and, on the other, points in NC in and east of Halifax, Edgecombe, Martin and Beaufort Counties, NC, under continuing contract(s) with Britton Oil Company, Inc., P.O. Box 216, Murfreesboro, NC 27855; Bounds Oil Co., Inc., P.O. Box 427, Weldon, NC 27890; Windsor Oil Company, P.O. Box 117, Windsor, NC 27983; Plymouth Oil Company of Washington County, N.C., P.O. Box 946, Plymouth NC 27962; Coastal Oil Co. of Belhaven, Inc., P.O., Box 125, Belhaven, NC 27180 and Eastern Fuels, Inc., P.O. Box 31, Ahoskie, NC 27910. Supporting shipper(s): There are 6 statements in support of this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 140902 (Sub-3-16TA), filed October 19, 1982. Applicant: DPD, Inc., 3600 NW. 82nd Avenue, Miami, FL 33166. Representative: Dale A. Tibbets (same address as applicant). *Contract;* irregular; *Prefabricated buildings and related materials equipment and supplies* between Algodones, NM on the one hand and on the other points in the States of AZ, UT, CO, KS, OK, NM & TX under continuing contract(s) with CC Housing Corporation. Supporting shipper: CC Housing Corporation, 400 West Brooklyn Street, Syracuse, IN 46567.

The following applications were filed in Region 4: Send protests to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 154457 (Sub-4-2TA), filed October 14, 1982. Applicant: ELKAY TRANSFER, INC., Polifka Road, Box 187, Francis Creek, WI 54214. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Contract;* irregular; *Alcohol, specially denatured in bulk in tank vehicles, and materials, equipment and supplies used in the manufacture, sale and distribution of such commodity* from points in Morrison Township, Brown County, WI to points in IL, IN, IA, MI, MN, MO & OH. Restriction: restricted to transportation performed under continuing contracts(s) with TCV Alcohol, Inc. Supporting shipper: TCV Alcohol, Inc., 11590 North Meridian Street, Carmel, IN 46032.

MC 160741 (Sub-4-2TA), filed October 15, 1982. Applicant: ASA FREIGHT SYSTEMS, INC., 45 West 6th Street, Oshkosh, WI 54901. Representative: Michael J. Wyngaard, 150 East Gilman Street, Madison, WI 53703. *General commodities (except commodities in bulk, household goods and Classes A and B explosives)* between points in the Upper Peninsula of MI, on the one hand, and, on the other hand, Chicago, IL, Milwaukee, WI, and points in Brown, Calumet, Dodge, Fond du Lac, Green Lake, Marinette, Oconto, Outagamie, Washington, Waupaca, Waushara, and Winnebago Counties, WI. There are 8 supporting shippers.

MC 161830 (Sub-4-2TA), filed October 14, 1982. Applicant: ESCANABA OIL COMPANY, INC., P.O. Box 606, Escanaba, MI 49829. Representative: John L. Bruemmer, P.O. Box 927, Madison, WI 53701. *Petroleum products,* in bulk, from Green Bay, WI to points in Delta and Schoolcraft Counties, MI. Supporting shipper: Erickson Petroleum Corporation, 4567 West 80th St. Minneapolis, MN 55437. An underlying ETA seeks 120 days' authority.

MC 161830 (Sub-4-3TA), filed October 14, 1982. Applicant: ESCANABA OIL COMPANY, INC., P.O. Box 606, Escanaba, MI 49829. Representative: John L. Bruemmer, P.O. Box 927, Madison, WI 53701. *Petroleum products,* in bulk, between points in WI on the one hand, and on the other hand, points in Marquette, Dickinson and Houghton Counties, MI. Supporting shipper: Erickson Oil Products Inc., 421 Second Street, Hudson, WI 54016.

MC 163104 (Sub-4-1 TA), filed October 14, 1982. Applicant: CANADIAN GREAT WESTERN EXPRESS LTD., 4055 Walker Road, Windsor, Ontario, Canada, N8W 3T6. Representative: Sam Erina (same address as applicant). *To Transport Lumber Rough or Dressed,* Including Plywood-From the Province's of British Columbia, Alberta, Saskatchewan, and Manitoba, Canada, to the States of: ND, SD, WI, IA, IL, IN, OH, MN, MI, KY. Supporting Shippers: Erb Lumber Co., 375 S. Eton Rd., Birmingham, Michigan 48012. T. W. Hager Lumber Co., P.O. Box 9040, Grand Rapids, Michigan 49509. Burrow Lumber Inc., 301-1200 Pembina Highway, Winnipeg, Manitoba, Canada.

MC 164225 (Sub-4-1 TA), filed October 15, 1982. Applicant: GILBERT G. SCHUMACHER, d.b.a. U. V. RENTAL CO., 508 Randall St., De Pere, WI 54110. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Road, Madison, WI 53719. *Metal and related products* between Chicago, IL on the one hand and on the other hand points in Fond du Lac, Winnebago, Outagamie, Brown, Calumet, Manitowoc and Sheboyan Counties, WI. Supporting shipper: House of Stainless, Inc., 4444 South Keldare Road, Chicago, IL 60632.

MC 164237 (Sub-4-1 TA), filed October 15, 1982. Applicant: EUGENE T. PRITT, d.b.a., E. PRITT LEASING, 5441 Whitney Court, Swartz Creek, MI 48473. Representative: David E. Jerome, 436 N. Center, Northville, MI 48167. *Contract irregular: Metal and plastic crates,* and supplies and materials used in the manufacture of metal and plastic crates between the facilities of United Steel and Wire Company in Battle Creek, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: United Steel & Wire Co., 27, Fonda St., Battle Creek, MI 49016

MC 290 (Sub-4-2), filed October 18, 1982. Applicant: JACK RABBIT LINES, INC., 301 North Dakota Ave., Sioux

Falls, SD 57102. Representative: James R. Becker, 412 West Ninth Street, P.O. Box 1443, Sioux Falls, SD 57101-1443. *Common, regular: Passengers, express, newspapers, or baggage of passengers in the same vehicle with passengers:* Between Sioux Falls, SD and Mankato, MN: from Sioux Falls, SD over SD Hwy. 115 to Interstate Hwy. 90, then over Interstate Hwy. 90 to junction U.S. Hwy. 71, then over U.S. Hwy. 71 to junction MN Hwy. 60, then over MN Hwy. 60 to Mankato, MN, and return over the same route, serving the intermediate points of Luverne, Adrian, Worthington, Jackson, Windom, Bingham Lake, Mountain Lake, Butterfield, St. James, Medelia and Lake Crystal, MN. Between Sioux Falls, SD and Mankato, MN: from Sioux Falls, SD over SD Hwy. 115 to Interstate Hwy. 90, then over Interstate Hwy. 90 to junction MN Hwy. 60, then over MN Hwy. 60 to junction U.S. Hwy. 71, then over U.S. Hwy. 71 to junction U.S. Hwy. 14, then over U.S. Hwy. 14 to junction MN Hwy. 68, then over MN Hwy. 68 to junction U.S. Hwy. 169-MN Hwy. 60, then over U.S. Hwy. 169-MN Hwy. 60 to Mankato, MN, and return over the same route serving the intermediate points of Luverne, Adrian, Worthington, Heron Lake, Windom, Sanborn Corner, Springfield, Sleepy Eye and New Ulm, MN. Between Sioux City, IA and Worthington, MN: from Sioux City, IA over U.S. Hwy. 75 to junction IA Hwy. 60, then over IA Hwy. 60 to junction IA Hwy. 10, then over IA Hwy. 10 to junction U.S. Hwy. 75, then over U.S. Hwy. 75 to junction U.S. Hwy. 18, then over U.S. Hwy. 18 to junction IA Hwy. 60, then over IA Hwy. 60 to IA-MN state line, then over MN Hwy. 60 to Worthington, MN and return over the same route serving the intermediate points of James, Hinton, Merrill, LeMars, Seney, Carnes, Alton, Orange City, Sioux Center, Perkins, Hull, Boyden, Sheldon, Ritter, Ashton and Sibley, IA and Bigelow, MN. The authority sought in (3) will be tacked with (1) and/or (2) at Worthington, MN to provide service between Sioux City, IA and Mankato, MN. (Hearing site: Sioux Falls, SD.) Supporting shippers: 14.

MC 15364 (Sub-4-3TA), filed October 18, 1982. Applicant: WISCONSIN-MICHIGAN COACHES, INC., 725 Smith Street, Green Bay, WI 54302. Representative: H. Barney Firestone, Sullivan & Associates, Ltd., 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601. *Passengers and their baggage and express and newspapers* in the same vehicle with passengers, between Duluth, MN, and Abbotsford, WI, serving all intermediate points. From Duluth , MN over U.S. 2 to Ashland, WI then over Wisconsin Highway 13 to Abbotsford, WI and return over the same route. Applicant intends to tack and interline with National Trailways Bus Systems. There are 5 supporting statements.

MC 15735 (Sub-4-34TA), filed October 18, 1982. Applicant: ALLIED VAN LINES, INC., 2120 S. 25th Avenue, Broadview, IL 60153. Representative: Richard V. Merrill, P.O. Box 4403, Chicago, IL 60680. *Contract* irregular: *Household goods* between points in the U.S. (except AK and HI) under a continuing contract with Banquet Foods Corporation. Supporting shipper: Banquet Foods Corporation of Ballwin, MO.

MC 112223 (Sub-4-11TA), filed October 18, 1982. Applicant: QUICKIE TRANSPORT COMPANY, 1700 New Brighton Blvd., Minneapolis, MN 55413. Representative: Earl Hacking, 1700 New Brighton Blvd., Minneapolis, MN 55413. *Polymeric Isocyanates and Polyurethane Resins in Bulk* between points in WV, MA, MN and TN limited to the account of Foam Enterprise, Inc. Supporting shipper: Foam Enterprise, Inc., 13630 Watertower Circle, Minneapolis, MN 55441.

MC 155021 (Sub-4-3), filed October 18, 1982. Applicant: ECONEXPRESS INCORPORATED, 618 South West Street, Wheaton, IL 60187. Representative: Abraham A. Diamond, 29 South La Salle Street, Chicago, IL 60603. *Contract* irregular: *Products used or useful in the manufacture, sale and distribution of automobiles,* between the facilities of A P Parts Company at or near Toledo, OH; Pinola, IN; and Chicago, IL, and their respective commercial zones, under continuing contract with A P Parts Company. Supporting shipper: A P Parts Company, 315 Matzinger Road, Toledo, OH 43697.

MC 160942 (Sub-4-3TA), filed October 18, 1982. Applicant: DESTINY PARCEL SERVICE, INC., 525 Friendly Road, Pontiac, MI 48053. Representative: Eugene C. Ewald, Esquire, 100 West Long Lake Road—Suite 102, Bloomfield Hills, MI 48013. *Photographic materials and supplies* (1) from Cleveland, OH to Pontiac, MI and (2) between points in the Lower Peninsula of MI. An underlying ETA seeks 30 days plus one 90 day extension. Supporting shipper: Polaroid Corporation, 140 Kendrick Street, Needham Heights, MA 02194.

MC 164255 (Sub-4-1), filed October 18, 1982. Applicant: GERRY'S TRUCKING CO., INC., P.O. Box 1, 1341 Riverside Drive, Suamico, WI 54173. Representative: Michael S. Varda, P.O. Box 2509, Madison, WI 53701. (1) *Plastic and paper products and chemicals* from Green Bay, WI, to points in MN, IA, IL, IN, and MI, and (2) *such commodities as are dealt in by wholesale and retail grocery stores* from points in MN, IA, IL, IN, and MI, to points in Brown County, WI, for 270 days. Supporting shippers: Green Bay Plastics, 1028 North Ashland Avenue, Green Bay, WI 54303; Bay West Paper, 1100 West Mason Street, Green Bay, WI 54303; Super-Valu Stores, Inc., 451 Joannes Avenue, Green Bay, WI 54305.

MC 164257 (Sub-4-1), filed October 18, 1982. Applicant: ROBERT E. ANDERSON, JR., 34 Greenridge Dr., Decatur, IL 62526. Representative: Patrick J. O'Hara, 102 E. Jackson St., P.O. Box 128, Petersburg, IL 62675. *Contract,* irregular: (a) Non-alcoholic beverages, from Decatur, IL to Terre Haute, IN, and (b) *Glass bottles* from Marion, IN to Decatur, IL. Restricted to traffic moving under continuing contract(s) with Decatur Bottling Company. An underlying E/T/A seeks 120 days authority. Supporting Shipper: Decatur Bottling Company, 2112 No. Brush College Rd., Decatur, IL 62525.

The following applications were filed in Region 5. Send protest to: Consumer Assistance Center, Interstate Commerce Commission, 411 West 7th Street, Suite 500, Forth Worth, TX 76102.

MC 114143 (Sub-5-1TA), filed October 19, 1982. Applicant: L & D TRUCKING COMPANY, INC., P.O. Box 1158, Chickasha, OK 73108. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Dry fertilizer, in bulk,* from Houston and Etter, TX; Atlas, MO; Carlsbad, NM; and Chickasha, OK to points in AR, KS, MO, NE, NM, OK and TX. Supporting shippers: There are five (5) supporting shippers.

MC 124411 (Sub-5-6TA), filed October 15, 1982. Applicant: SULLY TRANSPORT, INC., 601 8th Street, Sully, IA 50251. Representative: James M. Hodge, 3730 Ingersoll Avenue, Des Moines, IA 50312. *Kerosene,* from St. Paul MN to all points in IA. Supporting shipper(s): Sully Cooperative Exchange, Sully, IA.

MC 134262 (Sub-5-3TA), filed October 19, 1982. Applicant: FARMERS FEED AND SUPPLY TRANSPORTATION, INC., P.O. Box 385, Boyden, IA 51234. Representative: Bradford E. Kistler, P. O. Box 82028, Lincoln, NE 68501-2028. *Salt,* in bulk, from Hutchinson, KS to Sioux Falls, SD. Supporting shipper: Morton Salt Division, Morton Thiokol, Inc., Chicago, IL 60606.

MC 136246 (Sub-5-4TA), filed October 19, 1982. Applicant: GEORGE BROS.,

INC., P. O. Box 492, Sutton, NE 68979. Representative: Arlyn L. Westergren, Suite 201, 9202 West Dodge Rd., Omaha, NE 68114. *Prefabricated, knocked-down buildings,* from Atlantic, IA to points in the U.S. Supporting shipper: Farm Building Brokers, Inc., Englewood, CO.

MC 142165 (Sub-5-1), filed October 15, 1982. Applicant: C. GULLEY TRUCK SERVICE, INC., 180 Arthur Drive, Shreveport, LA 71105. Representative: Edward A. Winter, 235 Rosewood Drive, Metairie, LA 70005. Contract: Irregular. *General Commodities,* in trailer loads (except classes A and B explosives and commodities in bulk), between railroad ramps at Texarkana, AR-TX, on the one hand, and, on the other, points in AR, LA, and TX. Supporting shipper: Nabors Trailers, Inc., Mansfield, LA.

MC 142167 (Sub-5-3TA), filed October 19, 1982. Applicant: MICHAELSEN TRUCK LINE, INC., 1619 South Garfield, Mason City, IA 50401. Representative: Steven C. Schoenebaum, 1100 Carriers Building, 610 Locust, Des Moines, IA 50309. Contract; irregular; *dry fertilizer (except liquid commodities in bulk or in tank vehicles)* from Prairie du Chien, WI, to points in IA. Supporting shipper: The Pillsbury Company, Prairie du Chien, WI.

MC 145441 (Sub-5-46TA), filed October 19, 1982. Applicant: A.C.B. TRUCKING, INC., P. O. Box 5130, North Little Rock, AR 72119. Representative: Janice L. Murphy, (same as above). *Paper and paper products and materials and supplies used in the manufacture and distribution of paper and paper products,* between point in the U.S. on the one hand and on the other, points in Ouachita County, LA. Supporting shipper: Manville Forest Products Corp., West Monroe, LA 71291.

MC 147842 (Sub-5-1TA), filed, October 15, 1982. Applicant: COLEMAN BROS. TRUCKING, INC., 1045 Rock Cliff Drive, Potosi, Missouri 63664. Representative: Stephen G. Newman, P.O. Box 456, Jefferson City, Missouri 65102. *Chemicals and related products* between points in Bartow County, GA, on the one hand, and, on the other, points in Pottawatomie County, OK. Supporting shipper: Allen-Bradley Co., Magnetics Division, Shawnee, OK.

MC 148437 (Sub-5-9TA), filed, October 19, 1982. Applicant: BORK TRANSPORT, INC., 600 S.E. 18th Street, Des Moines, IA 50317. Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309. *Alcohol, in bulk,* from Cedar Rapids and Clinton, IA and Peoria and Decatur, IL to points in the U.S. (except AK and HI). Supporting shipper: ADM Corn Sweeteners, Cedar Rapids, IA.

MC 149147 (Sub-5-4TA), filed, October 19, 1982. Applicant: DECKERT TRANSPORT, INC., 12223 E. 4th Place, Tulsa, OK 74128. Representative: Jack R. Anderson, 9 E. 4th Place, Suite 305, Tulsa, OK 74103. *Plastic Sheeting* from the plant site of Linear Films, Inc., Tulsa, OK to all points in the U.S. (ex AK and HI). Supporting shipper: Linear Films, Inc., Tulsa, OK.

MC 149573 (Sub-5-5TA), filed, October 19, 1982. Applicant: NTL, INC., P.O. Box 5803, Lincoln, NE 68505. Representative: J. Max Harding, P.O. Box 5803, Lincoln, NE 68505. Contract irregular: *such commodities as are dealt in by discount and retail chain stores (except in bulk, Classes A & B explosives and household goods),* Between points in the U.S. (except AK and HI) on the one hand, and on the other Abilene, Kansas. Supporting shipper: Duckwall-Alco Stores, Inc., Abilene, Kansas 67410.

MC 158461 (Sub-5-1TA), filed, October 19, 1982. Applicant: T & R DELIVERY, INC., 3000 W. Commerce, Dallas, TX 75212. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. Contract: Irregular, *General Commodities (except class A and B explosives, household goods or bulk commodities)* between Texas on the one hand, and, on the other, points in the U.S. Under continuous contract(s) with M & B Warehousing & Distributing, Inc. Supporting shipper: M & B Warehousing & Distributing, Inc., Dallas, TX 75212.

MC 158821 (Sub-5-2TA), filed October 19, 1982. Applicant: McLEAN TRANSPORTATION INC., 6666 1/2 Long Point, Houston, TX 77055. Representative: Damon R. Capps, 305 Wells Fargo Dr, Suite 1, Houston, TX 77090. *Mercer commodities, metal and metal products, plastic and plastic products, rubber and rubber products, paper and paper products, machines and machinery parts, and pipe and related commodities, restricted against commodities in bulk, in tank vehicles,* between the plantsites of Cameron Iron Work, Inc., in Waller, Austin and Harris Counties, TX and all points in TX, in interstate and foreign commerce. Supporting shipper: Cameron Iron Works, Inc., Houston, TX.

MC 158959 (Sub-5-6TA), filed October 19, 1982. Applicant: RINEHART'S MEAT PROCESSING, INC., SR 2, Hollywood Hills, Branson, MO 65616. Representative: Charles J. Fain, 333 Madison Street, Jefferson City, MO 65101. Contract; Irregular. *Food and related products* between the facilities of The R. T. French Company, Springfield, Missouri and all points in OK, KS, AR, TX, LA, GA, AL, FL, TN, KY, MS, NE, IA, IL and CO. Supporting shipper: The R. T. French Company, Springfield, MO 65801.

MC 161235 (Sub-5-2TA), filed October 19, 1982. Applicant: ARTHUR BELL, d.b.a. Bell Truck Rental, Route 1, Martinsburg, MO 65264. Representative: Charles J. Fain, 333 Madison Street, Jefferson City, MO 65101. Common; Irregular. *Roofing, metal and paper products; kiln lining and building materials; fire brick and salt* between all points in IA, IL, MO, KS, OK and IN. Supporting shippers: Mexico Feed and Seed, Inc., Mexico, MO; American Insulation Co., Inc., Wichita, KS Genstar Building Material Company, St. Louis, MO Empire Fire Brick Co. Fort Wayne, IN Dietrich Industries, Hammond, IN; City Blue Print, Inc., Wichita, KS; Shamrock Materials, Wichita, KS.

MC 164072 (Sub-5-1TA) filed October 19, 1982. Applicant: WINGS TRANSPORTATION, INC., 3230 1st Avenue, Council Bluffs, IA 51501. Representative: James M. Hodge, 3730 Ingersol Avenue, Des Moines, IA 50312. *Such commodities as are dealt in or used by retail and wholesale chain grocery stores.* From points in CA, FL, IA, IL, KS, MI, MN, MO, TX and WI to Omaha, NE. Supporting shipper(s): Hinky Dinky, Inc., Omaha, NE.

MC 164111 (Sub-5-1TA), filed October 19, 1982. Applicant: MELVIN TRUCK LINES, INC., 18043 Bambriar, Houston, TX 77090. Representative: C. W. Ferebee, 3910 FM 1960 West, Suite 106, Houston, TX 77068. *Plastic Lining Materials, in rolls,* between the facilities of Gundle Lining Systems, Inc., located in Houston, TX, on the one hand, and points in the U.S. (except AK and HI) on the other hand. Supporting shipper: Gundle Lining Systems, Inc., Houston, TX.

MC 164273 (Sub-5-1TA), filed October 19, 1982. Applicant: CHARLES STEVE SHAWN, d.b.a. SILVER STAR TRUCK LINES, P.O. Box 6906, Moore, OK 73160. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154. *Metal buildings, parts thereof and materials used in the manufacture thereof,* between the facilities of Star Manufacturing Incorporated at Oklahoma City, OK on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: Star Manufacturing Incorporated, Oklahoma City, OK.

MC 164274 (Sub-5-1TA), filed October 19, 1982. Applicant: JOY EXPRESS LINE, INC., 220 Hisel St., Del City, OK 73115. Representative: William P. Parker, P.O. Box 54657, Oklahoma City, OK 73154.

Reclining and office chairs, from Neosho, MO to points in KS, OK and TX. Supporting shipper: La-Z-Boy Chair Company, Neosho, MO 64850.

MC 164276 (Sub-5-1TA), filed October 19, 1982. Applicant: ALLISON AND CREWS MOVING, INC., 2425 Centerline, Maryland Heights, MO 63043. Representative: Collin Crews (same as above). Contract: Irregular. *Telephone equipment and data equipment and accessories* between points in MO, AR, OK, KS and TX. Supporting shipper: Southwestern Bell Telephone Company, St. Louis, MO.

MC 67234 (Sub-5-32TA), filed October 20, 1982. Applicant: UNITED VAN LINES, INC., One United Drive, Fenton, MO 63026. Representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Contract, irregular; *General Commodities (except Classes A and B explosives and commodities in bulk)* between points and places in the U.S. (excluding AK and HI), under continuing contract(s) with Solid State Scientific, Inc. Supporting shipper: Solid State Scientific, Inc., Montgomeryville, PA.

MC 145830 (Sub-5-1TA), filed October 22, 1982. Applicant: ATCO, INCORPORATED, P.O. Box 7111, Pine Bluff, AR 71611. Representative: Thomas B. Staley, 1550 Tower Building, Little Rock, AR 72201. *Coal (in bulk);* from the facilities of Sugarloaf Mining Company in Sebastian County, AR, to points and places in Sebastian and Crawford Counties, AR, and Muskogee and Bokoshe, OK. Supporting shipper: Southern States Coal Company, Fort Smith, AR.

MC 147378 (Sub-5-7TA), filed October 21, 1982. Applicant: BAMA TRANSPORTATION COMPANY, INC., 5247 East Pine, Tulsa, OK 74115. Representative: Jack R. Anderson, 9 East Fourth Street, Suit 305, Tulsa, OK 74103. Contract; Irregular. *Truck and trailer parts and supplies* from all points in the U.S. (except AK and HI) to Tulsa, OK. Supporting Shipper: Oklahoma Truck Supply, Inc., Tulsa, OK.

MC 147552 (Sub-5-7TA), filed October 20, 1982. Applicant: CAJUN CARTAGE AND WAREHOUSING CORPORATION, P.O. Box 96211, Houston, TX 77213-6211. Representative: Doyle G. Ownes, P.O. Box 7735, Beaumont, TX 77706. *General commodities, including bulk liquid and dry bulk shipments only when moving in ocean containers (except Classes A & B Explosives and House-Hold Goods),* between the Commercial Zones of Beaumont, TX, Galveston, TX and Houston, TX, on the one hand, and on the other, points in TX. Supporting Shippers: (10).

MC 150537 (Sub-5-2TA), filed October 21, 1982. Applicant: VERL PRAY SHELLING AND TRUCKING, INC., P.O. Box 446, Dows, IA 50071. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. *Metal buildings and grain bins, complete, knocked down, or in sections, and parts and accessories for metal buildings and grain bins, and materials and supplies used in the manufacture, sale, and distribution of the above commodities,* (1) between Addison and Taylorville, IL, on the one hand, and, on the other, Iowa Falls, IA; and (2) between Galesburg, IL, and Kansas City, MO, on the one hand, and, on the other, Thompson, IA. Supporting Shippers: (1) Stockdales Corporation, Iowa Falls, IA and (2) Agri-Service, Thompson, IA.

MC 151209 (Sub-5-8TA), filed October 21, 1982. Applicant: GULF WESTERN EXPRESS, INCORPORATED, P.O.B. 2653, Natchitoches, LA 71457. Representative: John G. Williams, P.O. Box 2653, Natchitoches, LA. 71457. Contract; Irregular. *Clay, Concrete, Glass or Stone Products, Materials, Equipment and Supplies used in the installation, manufacturing, packing, and sales of these products,* between facilities of Oil Dri Corporation in Ochlocknee, GA.; Ripley, MS; and Christmas Valley, or on one hand and points in the U.S. on the other hand. Supporting Shipper: Oil Dri Corporation, Chicago, FL.

MC 152117 (Sub-5-4TA), filed October 21, 1982. Applicant: LITTLE GINNY TRANSPORT SYSTEMS, INC., 112 29th Avenue, SE., Cedar Rapids IA 52408. Representative: Virginia A. Wilson (same). (1) *Materials, equipment and supplies used in the food producing, distributing and chain stores industry; machinery, parts, equipment and supplies used therewith* between Cedar Rapids, IA and points in the U.S. excluding AK & HI; (2) *Metal products* between Cedar Rapids and Grinnell, IA and Minneapolis, MN, on the one hand, and, on the other, points in the U.S. excluding AK & HI. Supporting Shipper(s): Century Engineering Corp., Cedar Rapids, IA, Harnischfeger Corp., Cedar Rapid, IA, National Oats Co., Inc., Cedar Rapids, IA, Vincent Brass & Aluminum Co., Cedar Rapids, IA.

MC 156488 (Sub-5-3TA), filed October 20, 1982. Applicant: CONTRANS, INC. 6716 Berger, Kansas City, KS 66111. Representative: Donald J. Quinn, Commerce Bank Building, 8901 State Line, Suite 232, Kansas City MO 64114. Contract, Irregular: *Paper products, foodstuffs and glass products* between points in MO and IL under a continuing contract with Mid-Continent Bottlers, North Kansas City, MO.

MC 156581 (Sub-5-5TA), filed October 22, 1982. Applicant: METROPLEX FREIGHT SERVICE, INC., 1804 Vantage St., Carrollton, TX 75006. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 70562. Contract: Irregular, *General Commodities (except class A and B explosives, household goods and commodities in bulk)* from Dallas, TX to Oklahoma City and Tulsa, OK. Rstricted to shipments originating at the facilities of Dal-Ton Shippers Association, Inc. Supporting Shipper: Dal-Ton Shippers Association, Inc., Dallas, TX.

MC 159784 (Sub-5-2TA), filed October 22, 1982. Applicant: ROCHESTER ARMORED CAR CO., INC., 1441 South 11th Street, Omaha, Nebraska 68101. Representative: Robert M. Cimino, 3035 South 72nd Street, Suite 200, Omaha, Nebraska 68124. *Coin, currency, securities and other valuables* (1) between Hennepin and Clay Counties, MN, on the one hand, and on the other, points in ND and SD; and (2) between Hennepin County, MN, on the one hand, and on the other, points in WI; restricted to the transportation of traffic originating at and destined to the above-named origins and destinations. Supporting Shipper: Federal Reserve Bank of Minneapolis, Minneapolis, MN.

MC 164148 (Sub-5-1TA), filed October 22, 1982. Applicant: FREIGHT AND CONTAINER SERVICES, INC., 5138 S. 100 East Ave., Tulsa, OK. Representative: David F. James, P.O. Box 2967, Tulsa, OK. *General Commodities in ocean going containers with prior or subsequent movement by water,* between points in TX, LA, AR, MO, KS, and OK. Supporting Shipper(s): Strachan Shipping Co. of Texas, Houston, TX International Import/Export Services, Inc. St. Louis, MO.

MC 164329 (Sub-5-1TA), filed October 21, 1982. Applicant: WILLARD FRYE, Route 1, Box 214, Wichita Falls, TX 76301. Representative: Willard Frye (same address as above). *Clay, concrete, glass or stone products,* between Wichita, Archer, Wilbarger and Clay Counties, TX, on the one hand, and Comanche, Cotton, Caddo and Jefferson Counties, OK, on the other. Supporting Shipper: Gilmore, Inc., Iowa Park, TX.

MC 164344 (Sub-5-1TA), filed October 22, 1982. Applicant: WIL-PAU, R.R. No. 2, Wahoo, NE 68066. Representative: James K. Goodding, Box 408, Ceresco, NE 68017. *Passengers by bus in a special group and charter operation*

between points in Saunders County, NE on the one hand, and, on the other hand, points in IA, MO, KS, and CO particularly the metropolitan areas of Sioux City, Council Bluffs and Ames, IA; Kansas City and Lawrence, KS; Denver, CO; and Kansas City, MO. Supporting shippers: Eagles Lodge, Wahoo, NE and Saunders County Senior Citizens and Handi-Van, Wahoo, NE.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 153263 (Sub-6-4TA), filed October 14, 1982. Applicant: ANGELYNES, INC., P.O.B. 563, Loveland, CO 80539. Representative: Robert D. Brown, 401 E. 50th St., Loveland, CO 80537. *Contract* carrier: *irregular* routes: *Farm implements, parts and supplies:* Between Stockton, CA; Delhi, IA; Canton, East Moline, Kewanee, Rock Island, IL; Heston, KS; Hopkins, MN; Gulfport, MS; Fargo, ND; Brillion, WI; and Ft. Collins, Ft. Lupton; Greeley, Longmont, CO; and between Ft. Collins, Ft. Lupton, Greeley, Longmont, CO; and farms and construction sites in the states of AZ, KS, NE, WY, for 270 days. Supporting shippers: Northern Colorado Truck and Tractor, 1828 E. Mulberry, Ft. Collins, CO; Ellis & Capp Equipment Co., 301 E. 8th, Greeley, CO 80631; Whitneys, Inc., POB 127, Ft. Lupton, CO 80621; and Mountain Truck and Equipment, 717 So. Main, Longmont, CO 80501.

MC 163462 (Sub-6-2TA), filed October 15, 1982. Applicant: KWIKOOL ICE AND COLD STORAGE, INC., 955 N. Columbia Blvd., Bldg. C, Portland, OR 97217. Representative: Kerry D. Montgomery, 400 Pacific Building, Portland, OR 97204. *Contract Carrier:* Irregular routes: *Food and related products* between applicant's Portland, OR warehouse, and the facilities of Swift and Company on the one hand and points in OR and WA on the other, for 270 days. Supporting shipper: Swift & Company, 115 W. Jackson Blvd., Chicago, IL 60604.

MC 152393 (Sub-6-5TA), filed October 18, 1982. Applicant: SCOTT B. WARN, d.b.a. OVERNITE EXPRESS, 555 143rd Ave., San Leandro, CA 94575. Representative: Armand Karp, 743 San Simeon Dr., Concord, CA 94518. *Contract Carrier,* irregular routes; *Food and related products,* between San Francisco, CA on the one hand, and points in IL, MI, MN, NJ and OH on the other, for the account of Hills Bros. Coffee, Inc., 2 Harrison St., San Francisco, CA 94119.

MC 164104 (Sub-6-2TA), filed October 18, 1982. Applicant: SITTER'S TRANSPORT LIMITED, 406 1st Ave., Kindersley, Saskatchewan SOL 1SO. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956. *Potash* from points in Saskatchewan Province, CD to the International Boundary line on MN and ND to points in IA, MN, NE, ND, SD, and WI for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: There are (6) shipppers, their statements may be examined at the Regional'Office listed.

MC 146798 (Sub-6-4TA), filed October 14, 1982. Applicant: SULLIVAN TRUCKING, INC., 1340 Umatilla St., Denver, CO 80204. Applicant's representative: Dale E. Isley, Esq., 50 S. Steele St., #330, Denver, CO 80209. *Food and related products; pharmaceutical materials, chemicals, and related products; dairy products; empty malt beverage containers for recycling; and materials, equipment and supplies used by breweries,* between points in KS, CO, and OK, and, between said points, on the one hand, and, on the other, points in NE, TX, NM, WY, MT, ID, UT, AZ, NV, WA, OR, and CA, 270 days. Supporting shipper: INLAND CENTER, a Division of Beatric Foods, 6500 Inland Dr., Kansas City, KS 66110.

MC 148791 (Sub-6-16TA), filed October 15, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Applicant's representative: Rick J. Hall, P.O. B 2465, Salt Lake City, UT 84116. *Contract Carrier,* Irregular routes: *Such commodities as are dealt in or used by department, discount or variety stores,* from Palestine, TX and Bentonville, AR to points in MO, OK, and KS, for the account of Wal-Mart Stores, Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Wal-Mart Stores, Inc., 720 S.W. 8th St., Bentonville, AR 72712.

MC 96931 (Sub-6-1TA), filed October 18, 1982. Applicant: VALDEZ TRANSFER, INC., P.O. Box 6985, Phoenix, AZ 85009. Applicant's representative: Marshall Kragen, 1919 Pennsylvania Ave. N.W. Suite 300, Washington, D.C. 20006. *Common Carrier,* irregular routes: *household goods,* between points in the U.S. (except AK, HI, and VT), restricted to transportation of United States government traffic only, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Military Traffic Management Command, Washington, DC 20315.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-29888 Filed 10-29-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The

unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to Team 2, (202) 275-7030.

Volume No. OP2-268

Decided: October 25, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 16513 (Sub-43), filed October 14, 1982. Applicant: REISCH TRUCKING AND TRANSPORTATION CO., INC., 1301 Union Ave., Pennsauken, NJ 08110. Representative: Russell R. Sage, P.O. Box 11278, Alexandria, VA 22312, 703-750-1112. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with The Pillsbury Company, of Minneapolis, MN, and its following wholly-owned subsidiaries, (a) Burger King Corporation, of Miami, FL, (b) Green Giant Company, of Minneapolis, MN, (c) Poppin Fresh Pies, Inc., of Minneapolis, MN, and (d) Steak and Ale Restaurants of America, Inc., of Dallas, TX.

MC 125543 (Sub-16), filed October 19, 1982. Applicant: PERISHABLE SERVICES, INC., 770 North Springdale Rd., Waukesha, WI 53186. Representative: Richard A. Westley, 4506 Regent St., Suite 100, P.O. Box 5086, Madison, WI 53705-0086, 608-238-3119. Transporting *food and related products*, (1) between points in IL, IA, MN, WI, and the Upper Peninsula of MI, and (2) between points in IL, IA, MN, WI, and the Upper Peninsula of MI, on the one hand, and, on the other, points in AR, IN, KS, KY, MO,NE, OH, TN, and the Lower Peninsula of MI.

MC 126873 (Sub-3), filed October 18, 1982. Applicant: PORT MOTOR LINES, INC., 121 Entreprise Ave. So., Secaucus, NJ 07094. Representative: Edward L. Nehez, P.O. Box Y—7 Becker Farm Rd., Roseland, NJ 07068, (201) 992-2200. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, DE, MD, MA, NJ, NY, PA, RI, and DC.

MC 149582 (Sub-3), filed October 20, 1982. Applicant: SAWYER-EASTERN, INC., 7925 Nevada Ave., Hammond, IN 46323. Representative: Edward G. Bazelon, 135 South La Salle St., Chicago, IL 60603, 1-312-236-9375. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with National Steel Corporation, of Pittsburgh, PA, and its following subsidiaries: (1) National Aluminum Republic Foil, of Danbury, CT, (2) Natioinal Aluminum Products Divsion, of Hastings, MI, (3) National Aluminum Corporation, of Indianapolis, IN, (4) Hanna Furnace Corporation, of Buffalo, NY, (5) Granite City Steel, of Granite City, IL, (6) National Extrusion Division, of Murryville, PA, (7) National Republic Foil, of Somerville, MA, (8) Great Lakes Steel, of Ecorse, MI, (9) Midwest Steel, of Portage, Inc, (10) Weirton Steel Division, of Weirton, WV, (11) National Steel Service Center, of Boonton, NJ, (12) National Steel Service Center, of Joliet, IL, (13) National Steel Service Center, of Cincinnati, OH, (14) National Steel Service Center, of Delanco, NJ, (15) National Steel Service Center, of Randolph, MA (16) National Steel Service Center, of Steubenville, OH, (17) National Steel Service Center, of Evanston, IL, (18) National Steel Service Center, of Milwaukee, WI, (19) National Steel Service Center, of New Castle, PA, (20) National Steel Service Center, of Toledo, OH, (21) National Steel Service Center, of Twinsburg, OH, (22) National Mines Corporation, of Brownsville, PA, (23) National Pocahontas Mines Corporation, of Pinesville, WV, (24) National Steel Service Center, of Grand Rapids, MI, (25) National Steel Products Co., of Terre Haute, IN, (26) National Steel, of Portage, Inc. (27) American Steel Corporation, of Detroit, MI, (28) National Steel Service Center, of Blue Springs, MO, (29) National Steel Corp, Litho Service, of Hammond, IN, (30) Weirton Steel, of Steubenville, OH, (31) National Steel Service Center, of Joplin, MO, (32) National Steel Service Center, of Kansas City, MO, (33) Bull Moose Tube Co., of Gerald, MO, (34) National Steel Service Center, of Grand Prairie, TX, (35) National Steel Service Center, of Greensboro, NC, (36) National Steel Service Center, of Houston, TX, (37) National Steel Products Co., of Houston, TX, (38) National Pipe & Tube, of Houston, TX, (39) National Steel Products Co., of LaGrange, GA, (40) National Steel Service Center, of Minneapolis, MN, (41) National Steel Service Center, of Council Bluffs, IA, (42) National Steel Service Center, of Davenport, IA, (43) National Steel Service Center, of Des Moines, IA, (44) National Steel Service Center, of Liberty, TX, (45) National Steel Service Center, of Tulsa, OK, (46) National Steel Service Center, of Oklahoma City, OK, (47) National Steel Service Center, of Wichita, KS, (48) National Steel Service Center, of Norcross, GA, (49) National Steel Service Center, of Richburg, SC, (50) National Steel Products, Co., of Shreveport, LA, (51) National Steel Products Co., of Taylorville, IL, (52) National Aluminum Division, of Salisbury, NC, and (53) National Aluminum Division, of Hawesville, KY.

MC 162193 (Sub-1), filed October 14, 1982. Applicant: DICK'S TRANSPORT, 2012 S. 146th, Seattle, WA 98168. Representative: Kenneth R. Mitchell, 2320A Milwaukee Wy., Tacoma, WA 98421, (206) 383-3998. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Mauren-Laurens Oil Co., of Compton, CA.

MC 164133, filed October 7, 1982. Applicant: GOODE TRANSFER, INC., 5126 Bulwer St., St. Louis, MO 63127. Representative: Robert L. Cope, 1730 M St. NW., Ste. 501, Washington, D.C. 20036, (202) 296-2900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL and MO.

MC 164283, filed October 19, 1982. Applicant: BAYSHORE BUS COMPANY, INC., 40 West 38th St., Bayonne, NJ 07002. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201-572-5551. Transporting *passengers and their baggage* in the same vehicle with passengers, in charter operations, beginning and ending at New York, NY, and points in Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union Counties, NJ, and extending to points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 3, (202) 275-5223.

Volume No. OP3-07

Decided: October 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 15735 (Sub-58), filed October 8, 1982. Applicant: ALLIED VAN LINES, INC., P.O. Box 4403, Chicago, IL 60680. Representative: Richard V. Merrill (same address as applicant), (312) 681-8378. Transporting *household goods,* between points in the U.S., under continuing contract(s) with Quaker Oats of Chiago, IL, Quality Operations and Herrschners both of Schaumburg, IL, Fisher Price Toys of E. Aurora, NY, Adcom, Inc. of Chicago, IL, Brookstone of Petersborough, NH, Jos. A. Bank Clothiers of Baltimore, MD, Montron Corp. of San Francisco, CA, Wolf Brand Products of Corsicana, TX and Ardmore Farms of Deland, FL.

MC 25255 (Sub-6), filed October 13, 1982. Applicant: LEE ROY HEERMAN, d.b.a., COIN TRANSFER, P.O. Box 296, Coin, IA 51636. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501-2028, (402) 475-6761. Over *regular routes,* transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between Kansas City, MO, and Red Oak, IA; from Kansas City over U.S. Hwy 71 to junction U.S. Hwy. 34, and then over U.S. Hwy. 34 to Red Oak, and return over the same route, serving all intermediate points.

MC 85205 (Sub-11), filed October 18, 1982. Applicant: SMITH TRANSPORTATION CO., 731 S. Lincoln, Santa Maria, CA 93454. Representative: Earl N. Miles, 3704 Candlewood Dr., Bakersfield, CA 93306, (805) 872-1106. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA.

MC 136155 (Sub-12), filed October 15, 1982. Applicant: GAY TRUCKING CO., a Corporation, P.O. Box 7179, Savannah, GA 31408. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006, (202) 331-3700. Transporting *pulp, paper and related products,* between points in AL, FL, GA, MS, NC, SC, and TN.

MC 138415 (Sub-28), filed October 15, 1982. Applicant: TRAILER EXPRESS, INC., P.O. Box 327, Topeka, IN 46571. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516, (219) 293-3597. Transporting *Transportation equipment,* between points in the U.S. (except AK and HI), under continuing contract(s) with Grumman Boats, a division of Grumman Allied Industries, Inc., of Melville, NY.

MC 145925 (Sub-5), filed September 27, 1982. Applicant: TRANS CONTINENTAL LEASING, LTD., 8920 Pershall Rd., Hazlewood, MO 63042. Representative: B. W. LaTourette, Jr., 11 So. Meramec, Suite 1400, St. Louis, MO 63105, (314) 727-0777. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Nike, Inc. of Beaverton, OR and Blue Bird Baking Co. of Dayton, OH.

MC 160234 (Sub-1), filed October 13, 1982. Applicant: THE HOUSE OF MIDULLA, INC., P.O. Box 15397, Tampa, FL 33684. Representative: Ansley Watson, Jr., P.O. Box 1531, Tampa, FL 33601, (813) 223-2411. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with F.T.S., Inc., of Ft. Lauderdale, FL.

MC 163444, filed October 8, 1982. Applicant: HUDSON BAY TRANSPORT CO., LTD., Box 97, Hudson Bay, Saskatchewan, CA SOE 0Y0. Representative: Charles E. Johnson, P.O. Box 2056, Bismarck, ND 58502, (701) 223-5300. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods,) between points in the U.S. (except AK and HI), under continuing contract(s) with McMillian Bloedel, LTD, of Hudson Bay, Saskatchewan, Canada.

NOTE: This decision has been made in accordance with the statutory provisions of the Bus Regulatory Reform Act of 1982 with great weight being given to the mandates set forth in the National Transportation Policy.

MC 164184, filed October 12, 1982. Applicant: FRANK W. WEBER, d.b.a., FRANK WEBER TRUCKING, 1980 W. 125th St., Shakopee, MN 55379. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, (612) 542-1121. Transporting *machinery,* between points in the U.S. (except AK and HI), under continuing contract(s) with David Manufacturing Co. of Mason City, IA.

MC 150255 (Sub-11), filed October 14, 1982. Applicant: LEPRINO TRANSPORTATION CO., 3740 Shoshone St., Denver, CO 80211. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202, (303) 892-6700. Transporting *food and related products,* between points in Valley County, MT, Sheridan County, NE, Scottsbluff County, NE, and Denver, CO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 164245, filed October 18, 1982. Applicant: JOHN ENSIGN and CLIFF HODGE, d.b.a. CONEJO COACH, 32133 Sailview Lane, Westlake Village, CA 91361. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667-8107. Transporting *passengers and their baggage,* in the same vehicle with passengers, in charter operations, beginning and ending at points in Ventura and Los Angeles County, CA, and extending to points in AZ, NV, UT, NM, OR, WA, ID, and WY.

MC 164255, filed October 13, 1982. Applicant: GERRY'S TRUCKING CO., INC., P.O. Box 1, 1341 Riverside Dr., Suamico, WI 54173. Representative: Michael S. Varda, 121 South Pinckney St., P.O. Box 2509, Madison, WI 53701, (608) 255-8891. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Brown County, WI, on the one hand, and, on the other, points in MN, IA, IL, IN, and MI.

For the following, please direct status inquiries to Team 4 (202) 275-7669.

Volume No. OP4-10

Decided: October 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 146 (Sub-3), filed October 13, 1982. Applicant: CHAMBERS-THOMPSON MOVING & STORAGE, INC., 492 Hayden Station Rd., Windsor, CT 06095. Representative: Emma B. Thompson (same address as applicant) (203) 688-5552. Transporting *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, ME, VT, NH, RI, MA, NY, NJ, PA, DE, MD, VA, NC, OH, IL, IN, MI, and DC.

MC 35807 (Sub-119), filed October 14, 1982. Applicant: WELLS FARGO ARMORED SERVICE CORP., P.O. Box 4313, Atlanta, GA 30302. Representative: David E. Wells (same address as applicant) (404) 256-0540. Transporting *currency, coin, securities, food stamps* and articles of unusual value, between points in IL, IA, IN and WI.

MC 73366 (Sub-3), filed October 5, 1982. Applicant: FIRPO & SONS, INC., d.b.a., FIRPO'S MOVING AND STORAGE, 900-B Tryens Rd., Aston, PA 19014. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113, (215) 365-5141. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S. under continuing contract(s) with Westinghouse Electric Corp., of Philadelphia, PA.

MC 73866 (Sub-10), filed October 8, 1982. Applicant: LOUIS J. GARDELLA, INC., 111 Harbor Ave., Norwalk, CT 06850. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728–0700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, NY, and NJ, on the one hand, and, on the other, those points in the U.S. in and east of WI, IL, KY, TN, and MS.

MC 93147 (Sub-36), filed October 12, 1982. Applicant: DELTA TRANSPORT CORP., 595 Cottage St., Springfield, MA 01104. Representative: James M. Burns, 1365 Main St., Suite 403, Springfield, MA 01103, (413) 781–8205. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, MA, ME, NH, NJ, NY, OH, PA, RI, VT and WV.

MC 121457 (Sub-7), filed October 14, 1982. Applicant: MERCURY TRANSPORTATION, INC., 8502 Miller Rd. #3, Houston, TX 77049. Representative: Harold H. Mitchell, Jr., P.O. Box 1295, Greenville, MS 38701, (601) 335–3576. Transporting *building materials; lumber and wood products; forest products; clay, concrete, glass or stone products; chemicals and related products; machinery;* and *paper and paper products,* between those points in the U.S. in and east of ID, UT, and AZ.

MC 128927 (Sub-13), filed October 13, 1982. Applicant: MARTIN TRUCKING CO., INC., P.O. Box 406, Tomah, WI 54660. Representative: James A. Spiegel, 6333 Odana Rd., Madison, WI 53719, (608) 273–1003. Transporting *food and related products,* between points in MN and WI, on the one hand, and, on the other, points in IA, IL, IN, KY, MN, MO, and TN.

MC 140086 (Sub-14), filed October 13, 1982. Applicant: DELARIA TRANSPORT, INC., 327 8th Ave., NW., New Brighton, MN 55112. Representative: James M. Christenson, 4444 IDS Center, 80 South 8th St., Minneapolis, MN 55402, (612) 339–4546. Transporting *chemicals,* and *fiberglass,* between points in MN, on the one hand, and, on the other, points in CT, IA, IL, IN, MA, MI, MN, ND, NH, NJ, NY, OH, PA, CO, RI, SD, TX, and WI.

MC 140586 (Sub-4), filed October 4, 1982. Applicant: GOLDEN NORTH VAN LINES, INC., 7120 Hart St., Anchorage, AK 99502. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101, (703) 893–3050. Transporting *household goods,* between points in the U.S.

MC 142167 (Sub-8), filed October 8, 1982. Applicant: MICHAELSEN TRUCK LINE, INC., 1619 S. Garfield, Mason City, IA 50401. Representative: Steven C. Schoenebaum, 1100 Carriers Bldg., 601 Locust, Des Moines, IA 50309, (515) 283–2076. Transporting *dry fertilizer,* between points in Crawford County, WI, on the one hand, and, on the other, points in IA, under continuing contract(s) with The Pillsbury Company, of Prairie du Chien, WI.

MC 146787 (Sub-10), filed September 8, 1982, previously noticed in the **Federal Register** of October 5, 1982. Applicant: ALBAUGH FARMS TRUCKING CORPORATION, 1306 Wayne St., Des Moines, IA 50316. Representative: Thomas E. Leahy, Jr., 1980 Financial Ctr., Des Moines, IA 50309, (515) 245–4300. Transporting *general commodities* (except classes A and B exposives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Dico Company, Inc., of Des Moines, IA, and Albaugh Chemical Corporation, of Ankeny, IA.

Note.—The purpose of this republication is to delete the commodities in bulk exclusion reflected in the previous notice.

MC 148537 (Sub-1), filed October 15, 1982. Applicant: O'HARE VAN LINES, INC., 80 Old Higgins Rd., Des Plaines, IL 60018. Representative: Dixie C. Newhouse, P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting *household goods and those commodities which because of their size and weight require the use of special handling or equipment,* between points in IL, IN, MI, OH, KY, MO, IA, MN, WI, PA, NY, NJ, MD and MA.

MC 149157 (Sub-10), filed October 13, 1982. Applicant: STYLE CRAFT TRANSPORT, INC., Highway 71 South, Milford, IA 51351. Representative: Foster L. Kent, P.O. Box 285, Council Bluffs, IA 51502, (712) 323–9124. Transporting *such commodities* as are dealt in or used by home furnishing outlets, between points in the U.S., under continuing contract(s) with Levitz Furniture Corporation of Miami, FL.

MC 154426 (Sub-3), filed October 13, 1982. Applicant: DITZFELD TRANSFER, INC., 104 West Pacific, Sedalia, MO 65301. Representative: Jeremiah D. Finnegan, 4225 Baltimore, Kansas City, MO 64111, (816) 753–1122. Transporting *chemicals and related products,* between points in the U.S., under continuing contract(s) with Adco, Inc., of Sedalia, MO.

MC 156436 (Sub-3), filed October 5, 1982. Applicant: I.W. TRANSPORT, INC., 325 N. Baldwin Park Blvd., City of Industry, CA 91746. Representative: Jerome Paul (same address as applicant), (213) 960–8661. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AR, AZ, CA, CO, ID, LA, MS, MT, NV, NM, OK, OR, TX, UT, WA and WY.

MC 161026, filed October12,1982 Applicant: LCO ENTERPRISES, 23475 Eichler Rd., Hayward, CA 94545. Representative: Jules J. Aron (same address as applicant) (415) 887–5700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Longs Drug Stores, Inc., of Walnut Creek, CA.

MC 161377 (Sub-3), filed October 14, 1982. Applicant: JAG TRUCKING, INC., 6250 N.W. 74th Ave., Miami, FL 33166. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., NE, Suite 520, Atlanta, GA 30326 (404) 262–7855. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in NY and NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162026, filed October 13, 1982. Applicant ;KENNETH E. BODNAR, INC, P.O. Box 24, Hackett, AR 72937. Representative: Kenneth E. Bodnar (same address as applicant) (501) 968–5085. Transporting *cross ties* and *kiln dried lumber products,* between points in the U.S., under continuing contract(s) with Thompson Industries, Inc., of Russellville, AR.

MC 162196, filed October 13, 1982. Applicant: SUPERIOR INSTALLATION SERVICES, INC., 2034 S. Clayton, Denver, CO 80210. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102 (314) 421–0845. Transporting *such commodities* as are dealt in by department stores, between points in the U.S. (except AK and HI), under continuing contract(s) with H. S. Pogue Company, of Cincinnati, OH.

MC 162567, (Sub-1), filed October 8, 1982. Applicant: ADAMS TRUCKING, INC., 1470 E. Kentucky Ave., Woodland, CA 95695. Representative: Ronald C. Chauvel, 100 Pine St., No. 2550, San Francisco, CA 94111 (415) 986–1414. Transporting (1)*building* and *construction materials, supplies* and *equipment,* and (2) *lumber, forest* and *wood products,* between points in AZ, CA, NV, OR, and WA.

MC 164147, filed October 5, 1982. Applicant: DANIEL MILLIGAN, d.b.a. MILLIGAN TRUCKING COMPANY, 200 Walsh Dr., Parsippany, NJ 07054. Representative: Daniel Milligan (same address as applicant), (201) 334–9660.

Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, ME, MD, NJ, NY, RI, PA, DE, and MA.

MC 164226, filed October 14, 1982. Applicant: GARY L. BRYANT, 10848 Wright Rd., Wolcott, NY 14590. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202, (315) 472-8845. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Cahoon Farms, Inc., of Wolcott, NY.

MC 164227, filed October 14, 1982. Applicant: JONES TRUCKING, Rte. 38, Box 162, Kitzmiller, MD 21538. Representative: Henry E. Seaton, 1024 Pennsylvania Bldg., 425 13th St., NW, Washington, DC 20004, (202) 347-8862 Transporting *coal and coal products,* between points in PA, MD, WV and VA.

Volume No. OP4-012

Decided: October 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 30446 Sub 24, filed October 1, 1982. Applicant: BRUCE JOHNSON TRUCKING COMPANY, INC., 3408 N. Graham St., Charlotte, NC 28225. Representative: S. H. Rich (same address as applicant), (704) 376-9101. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in TN and VA.

NOTE.—Applicant intends to tack with existing authority in Nos. MC-30446 (Sub-No. 16F) and MC-30446 (Sub-No. 17F), and to interline at Richmond, VA and Knoxville, Nashville, and Memphis, TN.

MC 59247 Sub 25, filed October 6, 1982. Applicant: LINDEN MOTOR FREIGHT COMPANY, INC., 1300 Lower Rd., Linden, NJ 07036. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 234-0301. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Union Carbide Corporation, of Danbury, CT.

MC 143707 (Sub-1), filed October 5, 1982. Applicant: KENNEDY ENTERPRISES, INC., 1801 S.W., 1st Ave., Ft. Lauderdale, FL 33315. Representative: Gerard J. Donovan, 4791 S.W., 82nd Ave., Davie, FL 33328, 1 (305) 434-7621. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in FL.

MC 151277 (Sub-2), filed October 4, 1982. Applicant: COCHRAN TRANSPORTATION SERVICE, INC., P.O. Box 578, Athens, OH 45701. Representative: John L. Alden, 1396 West 5th Ave., Columbus, OH 43212, (614) 481-8821. Transporting *general commodities* (except classes A and B explosives and household goods), between points in Athens, Hocking, Meigs, and Vinton Counties, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 152347 (Sub-2), filed October 4, 1982. Applicant: TRANS-POWER TRUCK LINES, INC., 5321 Southwyck Blvd., Toledo, OH 43614. Representative: David C. Mathias (same address as applicant), (419) 865-7292. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 159377, filed October 5, 1982. Applicant: JAMES HARRISON, d.b.a. FAIRFIELD DISTRIBUTION CO., R.R. 1, New Lowell, Ontario, Canada. Representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202, (716) 854-5870. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Creemore China Glass Limited of Creemore, Ontario, Canada, Champion Litho Products Ltd., Fox-Richardson, Ltd., and Nameco of Canada, Ltd., all of Mississauga, Ontario, Canada, Lux & Swinginberger Ltd., Hammond International Canada, Ltd., Irwin Seating of Canada, Ltd., and McGraw-Edison of Canada, Ltd., all of Toronto, Ontario, Canada, and Silver Recovery Systems of Canada, Edmonton, Alberta, Canada.

Note.—This decision has been made in accordance with the statutory provisions of the Bus Regulatory Reform Act of 1982 with great weight being given to the mandates set forth in the National Transportation Policy.

MC 162836 (Sub-2), filed October 5, 1982. Applicant: J. KENNETH KATZMAN JR., INC., 31029 Bushnell Rd., Burlington, WI 53105. Representative: Fred H. Figge, 513 Lewis St., Burlington, WI 53105, (414) 763-6296. Transporting *general commodities* (except classes A and B explosives and household goods), between points in IL, IN, IA, MI, MN, and WI, under continuing contract(s) with Land O'Lakes, Inc., of Fort Dodge, IA.

Volume No. OP4-13

Decided: October 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 161167 (Sub-1), filed October 8, 1982. Applicant: OCEANIC SHIPPING COMPANY OF GEORGIA, 8700 W. Flagler St., Miami, FL 33174. Representative: Gerard J. Donovan, 4791 S.W. 82nd Ave., Davie, FL 33328, 1 (305) 434-7621. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in FL.

MC 162037 (Sub-1), filed September 22, 1982, previously noticed in the **Federal Register** issue of October 13, 1982, and republished this issue. Applicant: DAKOTA BAKE-N-SERV, INC., Airport Rd., Box 688, Jamestown, ND 58401. Representative: Norman A. Cooper, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722-2848. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI). Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of Certificate MC-162037.

Note.—The purpose of this republication is to vacate the prior condition imposed on the applicant which revoked all of its existing authority.

MC 162956, filed October 15, 1982. Applicant: RANDALL A. PHILLIPPE, d.b.a. RAP-ED TRANSPORTATION, P.O. Box 1106, Tahoe City, CA 95730. Representative: Armand Karp, 743 San Simeon Dr., Concord, CA 94518, (415) 825-1774. Transporting *food and related products,* between points in the U.S. (except AK and HI), under continuing contract(s) with Coastal Marketing Associates, Inc. of Campbell, CA.

MC 164236, filed October 15, 1982. Applicant: BELLEVILLE-NUTLEY MOVING & STORAGE CO., 35 Ewing Ave., N. Arlington, NJ 07032. Representative: Bruce Mitchell, 620 Fourth St., Lyndhurst, NJ 07071, (201) 667-1300. Transporting *household goods,* between points in NJ, on the one hand, and, on the other, points in AL, CT, DE, DC, FL, GA, IL, IN, LA, MD, MA, MS, NC, NJ, NY, OH, PA, RI, SC and TX.

For the following, please direct status inquiries to Team 5 (202) 275-7289.

Volume No. OP5-231

Decided: October 22, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 60709 (Sub-11), filed October 1, 1982. (Previously published in **Federal Register** (Republication) on October 21, 1982). Applicant: G&P TRUCKING COMPANY, INC., 3330 Charleston

Highway, West Columbia, SC 29169. Representative: John H. Caldwell, 888 Sixteenth St., NW, Suite 700, Washington, DC 20006, (202) 835-8000. Transporting *general commodities* (except household goods and classes A and B explosives), between points in VA, NC, SC, GA, FL, AL, and TN.

Note.—Purpose of republication is to include SC in territorial description.

MC 149308 (Sub-27), filed October 18, 1982. Applicant: VICTORY FREIGHTWAY SYSTEMS, INC., P.O. Box P, Sellersburg, IN 47172. Representative: John M. Nader, 1600 Citizens Plaza, Louisville, KY 40202, (502) 589-5400. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 155828 (Sub-2), filed October 15, 1982. Applicant: PAC-TRANS, INC., 1900 Powell St., Suite 255, Emeryville, CA 94608. Representative: Donald E. Cross, 918 16th St., NW, Suite 700, Washington, DC 20006, (202) 785-3700. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159458, filed October 15, 1982. Applicant: COAST FREIGHT SYSTEM, INC., 3200 Occidental Ave., So., Seattle, WA 98134. Representative: Robert G. Gleason, 1127 10th East, Seattle, WA 98102, (206) 325-8875. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WA, OR, and ID.

MC 163288, filed October 14, 1982. Applicant: HARMONY TRANSPORT, INC., P.O. Box 9487, Yakima, WA 98909. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274-4985. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 163528, filed October 4, 1982. Applicant: QUARRY TRANSPORT CO., INC., 11 S. 221 Madison St., Hinsdale, IL 60521. Representative: Albert A. Andrin, 180 No. LaSalle St., Chicago, IL 60601, (312) 332-5106. Transporting (1) *commodities in bulk* and (2) *metal products*, between points in IL, IN, MI, MO, IA, and WI.

MC 164128, filed October 6, 1982. Applicant: LUCAS TRANSPORTATION, INC., 2080 Vista Ave., SE, Salem, OR 97302. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226-3755. Transporting (1) *lumber and wood products*, (2) *building materials*, (3) *metal products*, (4) *machinery*, (5) *rubber and plastic products*, and (6) *chemicals and related products*, between points in OR, WA and CA, on the one hand, and, on the other, those points in the U.S. in and west of OH, KY, TN, and AL (except AK and HI).

MC 164178, filed October 12, 1982. Applicant: HARRISON TRUCKING, INC., 3301 Park Avenue, P.O. Box 7606, Paducah, KY 42001. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603, (312) 263-2306. Transporting *food and related products*, (a) between points in McCracken County, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (b) between points in San Mateo County, CA, Hartford County, CT, McCracken County, KY, and Wayne County, MI.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-29889 Filed 10-29-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtainded from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

For the following, please direct status inquiries to Team 2 (202) 275-7030.

Volume No. OP2-269

Decided: October 25, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 153263 (Sub-1), filed October 15, 1982. Applicant: ANGELYNES, INC., P.O. Box 563, Loveland, CO 80539. Representative: Robert D. Brown, 401 E. 40th St., Loveland, CO 80537, 303-669-1360. Transporting, for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S.

For the following, please direct status inquiries to Team 3 (202) 275-5223.

Volume No. OP3-06

Decided: October 25, 1982.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 150255 (Sub-12), filed October 14, 1982. Applicant: LEPRINO TRANSPORTATION COMPANY, 3740 Shoshone St., Denver, CO 80211. Representative: John T. Wirth, 2600 Petro-Lewis Tower, 717 17th St., Denver, CO 80202, (303) 892-6700. Transporting, for or on behalf of the U.S. Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

For the following, please direct status inquiries to Team 5 (202) 275-7289.

Volume No. OP5-232

Decided: October 22, 1982.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 164248, filed October 14, 1982. Applicant: PAUL SALZANO, d.b.a., P & S TRUCKING CO., 4927 N. Green Acres Circle, Cedar City, UT 84720. Representative: Robert G. Harrison, 4299 James Dr., Carson City, NV 89701, 702-882-5649. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners,* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-29890 Filed10-29-82; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Inter-Arts Advisory Panel (Interdisciplinary); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. Law 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Interdisciplinary) to the National Council on the Arts will be held on November 16, 1982, from 1:00 p.m. to 5:30 p.m. and November 17-19, 1982, from 9:00 a.m.-5:30 p.m. in Room 1426 of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C., 20506.

A portion of this meeting will be open to the public on November 19, 1982, from 12:00 noon-2:00 p.m. to discuss guidelines.

The remaining sessions of this meeting on November 16, from 1:00 p.m. to 5:30 p.m. and November 17 and 18, from 9:00 a.m.-5:30 p.m. and November 19, from 9:00 a.m.-12:00 noon and 2:00 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sections will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

October 21, 1982.

[FR Doc. 82-30002 Filed 10-29-82; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Centers and Services); Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Centers & Services) to the National Council on the Arts will be held on November 22-23, 1982, from 9:00 a.m.-5:30 p.m. in Room 1426 of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

October 21, 1982.

[FR Doc. 82-30009 Filed 10-29-82; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Professional Training); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Professional Training) to the National Council on the Arts will be held on November 15-16, 1982, from 9:00 a.m.-5:30 p.m. in Room 1422 of the Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, DC, 20506.

A portion of this meeting will be open to the public on November 16, 1982, from 2:30-4:00 p.m. to discuss policy and guidelines.

The remaining sessions of this meeting on November 15, from 9:00 a.m.-5:30 p.m. and November 16, from 9:00 a.m.-2:30 p.m. and 4:00 p.m.-5:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

October 21, 1982.

[FR Doc. 82-30003 Filed 10-29-82; 8:45 am]

BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Organizations) to the National Council on the Arts will be

held November 15, 1982, from 9:00 a.m. to 5:00 p.m. and November 16 to 20, 1982 from 9:00 a.m. to 5:30 p.m., in the 11th floor reception area of the Columbia Plaza Office Complex, 2401 E Street, NW., Washington, D.C., 20506.

This meeting is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

October 21, 1982.

[FR Doc. 82-30001 Filed 10-29-82; 8:45 am]

BILLING CODE 7537-01-M

OFFICE OF MANAGEMENT AND BUDGET

Issuance of Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards"

AGENCY: Office of Management and Budget.

ACTION: Final Issuance of OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards."

SUMMARY: This OMB Circular provides policy and administrative guidance to Federal agencies on using voluntary standards for procurement and regulatory purposes, on participating with private sector organizations to develop such standards, and coordinating Executive Branch participation in the development of voluntary standards. Implementation of this Circular is expected to result in reduced costs to the Government in developing and maintaining standards for products, systems and services.

EFFECTIVE DATE: This Circular, which supersedes OMB Circular No. A-119, dated January 17, 1980, is effective upon publication.

FOR FURTHER INFORMATION CONTACT: David F. Baker, Office of Federal Procurement Policy, Office of Management and Budget, Washington, DC 20503 (202) 395-7207.

SUPPLEMENTARY INFORMATION: On April 21, 1982, the Office of Management and Budget published a draft Circular, subject as above, for a 60-day period of public and agency comment. Comments were received from more than 120 individuals and organizations, including Federal agencies, business firms, industry associations, professional groups and private citizens.

There follows a summary of the major comments grouped by subject and a response to each—including a brief description of changes made as a result of the comments. Many other changes of a less significant character were made to increase clarity, simplicity, precision and readibility, and to reduce the burdens of compliance as much as possible.

A. Procedural Criteria Imposed on Standards Developers

Comment: Several commenters objected to OMB's deletion of specific procedural criteria which the previous version of the Circular imposed on voluntary standards bodies as a precondition to Federal participation. They argued that such criteria—intended to increase public participation and openness—would help to minimize the potential for anti-trust activities. Other commenters suggested that while such procedures should not be mandatorily imposed, OMB should instruct agencies to encourage private standards developers to follow such procedures.

Response: With regard to the inclusion of procedural criteria and their mandatory imposition on standard developers, we have concluded that imposition of the mandatory procedures contained in the previous edition of the Circular is inappropriate, burdensome and costly and that the question of imposing such criteria is peripheral to the fundamental aims of the Circular. We do agree that, as with any human endeavor, the voluntary standards development process is vulnerable to abuse. Consequently, we have cautioned Federal agencies to beware of such potential (Para. 7). We have also provided guidance to agencies in the form of a letter from the Department of Justice, dated June 22, 1982, which discusses suggested agency approaches to the question of public participation in private sector standards development.

B. Regulatory Applications

Comment: Some commenters suggested that the Circular should be limited to procurement applications, and that Federal agencies should not be required to use voluntary standards for regulatory purposes. Some commenters suggested, in addition, that the Circular should not apply to "independent regulatory agencies".

Response: We believe the benefits to be derived from the procurement use of standards are equally valid for regulatory applications—particularly the benefits of assuring private sector input into Federal regulatory activities while reducing the potential for duplicating existing, adequate voluntary standards with Government standards. With regard to the second concern, the Circular does not "require" Federal agencies to use voluntary standards for regulatory purposes. It establishes a policy preference in that regard but leaves to the agencies, themselves, the decision as to whether to adopt a given voluntary standard for a specific Federal regulatory purpose. (The legal requirements associated with such adoption, such as those of the Administrative Procedures Act, will, of course, continue to apply.) We believe such an approach is entirely appropriate with respect to independent regulatory agencies as with the rest of the Executive Branch.

C. Role of the Department of Commerce

Comment: Several commenters objected to the requirements that the Department of Commerce maintain listings of (1) voluntary and Government standards, (2) voluntary standards bodies, and (3) those standards organizations with which Federal agencies interact—on the grounds that this would result in extensive and costly reporting requirements. Other commenters suggested that the agency reporting requirements contained in the Circular were, themselves, overly burdensome.

Response: We agree. The requirements to maintain various listings have been eliminated. The provisions dealing with reports on agency implementation of the Circular have been revised to require that reports be summary, as opposed to detailed, in nature.

D. Voluntary Dispute Resolution Service

Comment: Some commenters objected to our deletion of the requirement that the Department of Commerce establish a program to make available a "voluntary dispute resolution service" to handle precedural complaints brought by

interested parties against voluntary standards bodies. Those commenters suggested that such a mechanism would provide an impartial means of resolving standards disputes without costly and lengthy litigation.

Response: While we take no position on the substantive merits of such a mechanism, we are satisfied that the requirement to establish such a service is not an appropriate element for inclusion in this Circular. Agencies with mission concerns in this area (e.g. Commerce, Justice, etc.) may, of course, consider establishing such a service as it is within their province to do so. The creation of the mechanism is clearly peripheral to the policy issues dealt with in the Circular, however, which are limited to Federal participation in the development and use of voluntary standards.

E. Single Federal Position

Comment: Many commenters suggested that the provisions of the Circular that required agencies to coordinate their views and express a single Federal position in private sector standards development activities were unnecessary and unworkable—and that establishment of a mechanism to achieve these purposes would be costly and lead to lengthy delays in the standards development process.

Response: We continue to believe that agencies should endeavor to coordinate their views and present single Federal positions in matters of paramount importance. We agree, however, that the requirement to do so in all such instances is unreasonable and could lead to bureaucratic delays. Consequently, we have eliminated the requirement that Federal positions must be developed in all instances, as well as those provisions which would have required the Secretary of Commerce to appoint a "lead" agency when disagreements as to the nature of the Government's position occurred on a given issue. We continue to expect agency representatives to make a reasonable effort to present a single Federal position reflective of the public interest on matters on paramount interest in those standards activities wherein two or more agencies participate.

Candice C. Bryant,

Acting Deputy Assistant, Director for Administration.

Executive Office of the President

Office of Management and Budget

October 26, 1982.

Memorandum to Heads of Executive Departments and Agencies

From: David A. Stockman

Subject: OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards"

Attached, for your implementation, is a revision to OMB Circular No. A-119 which provides guidance to agencies in working with, and using the products of, private sector standards organizations. The effect of this revision is to eliminate the costly, unnecessary, and burdensome aspects of the Circular, while continuing to encourage agency participation in the development of private sector standards.

Also attached for your information and use is a letter, dated June 22, 1982, from the Department of Justice, which provides guidance in the implementation of the Circular—particularly as it relates to working with private sector groups to develop needed standards.

Executive Office of the President

Office of Management and Budget

October 26, 1982.

Circular No. A-119—Revised

To the Heads of Executive Departments and Establishments

Subject: Federal Participation in the Development and Use of Voluntary Standards

1. *Purpose.* This Circular establishes policy to be followed by executive agencies in working with voluntary standards bodies. It also establishes policy to be followed by executive branch agencies in adopting and using voluntary standards.

2. *Rescissions.* This Circular supersedes OMB Circular No. A-119, dated January 17, 1980, which is rescinded.

3. *Background.* Many Governmental functions involve products or services that must meet reliable standards. Many such standards, appropriate or adaptable for the Government's purposes, are available from private voluntary standards bodies. Government participation in the standards-related activities of these voluntary bodies provides incentives and opportunities to establish standards that serve national needs, and the adoption of voluntary standards, whenever practicable and appropriate, eliminates the cost to the Government of developing its own standards. Adoption of such standards also furthers the policy of reliance upon the private sector to supply Government needs for goods and services, as enunciated in OMB Circular No. A-76.

4. *Applicability.* This Circular applies to all executive agency participation in voluntary standards activities, domestic and international, but not to activities carried out pursuant to treaties and international standardization agreements.

5. *Definitions.* As used in this Circular:

a. *Executive agency* (hereinafter referred to as "agency") means any executive department, independent commission, board, bureau, office, agency, Government-owned or—controlled corporation or other establishment of the Federal Government, including regulatory commission or board. It does not include the legislative or judicial branches of the Federal Government.

b. *Standard* means a prescribed set of rules, conditions, or requirements concerned with the definition of terms; classification of components; delineation of procedures; specification of dimensions, materials, performance, design, or operations; measurement of quality and quantity in describing materials, products, systems, services, or practices; or descriptions of fit and measurement of size.

c. *Voluntary standards* are established generally by private sector bodies and are available for use by any person or organization, private or governmental. the term includes what are commonly referred to as "industry standards" as well as "consensus standards", but does not include professional standards of personal conduct, institutional codes of ethics, private standards of individual firms, or standards mandated by law, such as those contained in the United States Pharmacopeia and the National Formulary, as referenced in 21 U.S.C. 351.

d. *Government standards* include individual agency standards and specifications as well as Federal and Military standards and specifications.

e. *Voluntary standards bodies* are private sector domestic or multinational organizations—such as nonprofit organizations, industry associations, professional and technical societies, institutes, or groups, and recognized test laboratories—that plan, develop, establish, or coordinate voluntary standards.

f. *Standards-developing groups* are committees, boards, or any other principal subdivisions of voluntary standards bodies, established by such bodies for the purpose of developing, revising, or reviewing standards, and which are bound by the procedures of those bodies.

g. *Adoption* means the use of the latest edition of a voluntary standard in whole, in part, or by reference for procurement purposes and the inclusion of the latest edition of a voluntary standard in whole, in part, or by reference in regulation(s).

h. *Secretary* means the Secretary of Commerce or that Secretary's designee.

6. *Policy.* It is the policy of the Federal Government in its procurement and regulatory activities to:

a. Rely on voluntary standards, both domestic and international, whenever feasible and consistent with law and regulation pursuant to law;

b. Participate in voluntary standards bodies when such participation is in the public interest and is compatible with agencies' missions, authorities, priorities, and budget resources; and

c. Coordinate agency participation in voluntary standards bodies so that (1) the most effective use is made of agency resources and representatives; and (2) the views expressed by such representatives are in the public interest and, as a minimum, do not conflict with the interests and established views of the agencies.

7. *Policy Guidelines.* In implementing the policy established by this Circular, agencies should recognize the positive contribution of standards development and related activities.

When properly conducted, standards development can increase productivity and efficiency in industry, expand opportunities for international trade, conserve resources, and improve health and safety. It also must be recognized, however, that these activities, if improperly conducted, can suppress free and fair competition, impede innovation and technical progress, exclude safer and less expensive products, or otherwise adversely affect trade, commerce, health, or safety. Full account shall be taken of the impact on the economy, applicable Federal laws, policies, and national objectives, including, for example, laws and regulations relating to antitrust, national security, small business, product safety, environment, technological development, and conflicts of interest. It should also be noted, however, that the provisions of this Circular are intended for internal management purposes only and are not intended to (1) create delay in the administrative process, (2) provide new grounds for judicial review, or (3) create legal rights enforceable against agencies or their officers. The following policy guidelines are provided to assist and govern implementation of the policy enunciated in paragraph 6.

a. *Reliance on Voluntary Standards.* (1) Voluntary standards that will serve agencies' purposes and are consistent with applicable laws and regulations should be adopted and used by Federal agencies in the interests of greater economy and efficiency, unless they are specifically prohibited by law from doing so.

(2) Voluntary standards should be given preference over non-mandatory Government standards unless use of such voluntary standards would adversely affect performance or cost, reduce competition, or have other significant disadvantages. Agencies responsible for developing Government standards should review their existing standards at least every five years and cancel those for which an adequate and appropriate voluntary standard can be substituted.

(3) In adopting and using voluntary standards, preference should be given to those based on performance criteria when such criteria may reasonably be used in lieu of design, material, or construction criteria.

(4) Voluntary standards adopted by Federal agencies should be referenced, along with their dates of issuance and sources of availability, in appropriate publications, regulatory orders, and related in-house documents. Such adoption should take into account the requirements of copyright and other similar restrictions.

(5) Agencies should not be inhibited, if within their statutory authorities, from developing and using Government standards in the event that voluntary standards bodies cannot or do not develop a needed, acceptable standard in a timely fashion. Nor should the policy contained in this Circular be construed to commit any agency to the use of a voluntary standard which, after due consideration, is, in its opinion, inadequate, does not meet statutory criteria, or is otherwise inappropriate.

b. *Participation in Voluntary Standards Bodies.* (1) Participation by knowledgeable agency employees in the standards activities of voluntary standards bodies and standards-developing groups should be actively encouraged and promoted by agency officials when consistent with the provisions of paragraph 6b.

(2) Agency employees who, at Government expense, participate in standards activities of voluntary standards bodies and standards-developing groups should do so as specifically authorized agency representatives.

(3) Agency participation in voluntary standards bodies and standards-developing groups does not, of itself, connote agency agreement with, or endorsement of, decisions reached by such bodies and groups or of standards approved and published by voluntary standards bodies.

(4) Participation by agency representatives should be aimed at contributing to the development of voluntary standards that will eliminate the necessity for development or maintenance of separate Government standards.

(5) Agency representatives serving as members of standards-developing groups should participate actively and on a basis of equality with private sector representatives. In doing so, agency representatives should not seek to dominate such groups. Active participation is intended to include full involvement in discussions and technical debates, registering of opinions and, if selected, serving as chairpersons or in other official capacities. Agency representatives may vote, in accordance with the procedures of the voluntary standards body, at each stage of standards development, unless specifically prohibited from doing so by law or their agencies.

(6) The number of individual agency participants in a given voluntary standards activity should be kept to the minimum required for effective presentation of the various program, technical, or other concerns of Federal agencies.

(7) The providing of Agency support to a voluntary standards activity should be limited to that which is clearly in furtherance of an agency's mission and responsibility. Normally, the total amount of Federal support should be no greater than that of all private sector participants in that activity except when it is in the direct and predominant interest of the Government to develop a standard or revision thereto and its development appears unlikely in the absence of such support. The form of agency support, subject to legal and budgetary authority, may include:

(a) Direct financial support; e.g., grants, sustaining memberships, and contracts;

(b) Administrative support; e.g., travel costs, hosting of meetings, and secretarial functions;

(c) Technical support; e.g., cooperative testing for standards evaluation and participation of agency personnel in the activities of standards-developing groups; and

(d) Joint planning with voluntary standards bodies to facilitate a coordinated effort in identifying and developing needed standards.

(8) Participation by agency representatives in the policymaking process of voluntary standards bodies, in accordance with the procedures of those bodies, is encouraged—particularly in matters such as establishing priorities, developing procedures for preparing, reviewing, and approving standards, and creating standards-developing groups. In order to maintain the private, nongovernmental nature of such bodies, however, agency representatives should refrain from decisionmaking involvement in the internal day-to-day management of such bodies (e.g., selection of salaried officers and employees, establishment of staff salaries and administrative policies).

(9) This Circular does not provide guidance concerning the internal operating procedures that may be applicable to voluntary standards bodies because of their relationships to agencies under this Circular. Agencies should, however, carefully consider what laws or rules may apply in particular instance because of these relationships. For example, these relationships may involve the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), or a provision of an authorizing statute for a particular agency. Agencies are best able to determine what laws and policies should govern particular relationships and to assess the extent to which competition may be enhanced and cost-effectiveness increased. Questions relating to anti-trust implications of such relationships should be addressed to the Attorney General.

8. *Responsibilities.* a. The Secretary will:

(1) Coordinate and foster executive branch implementation of the policy in paragraph 6 of this Circular, and may provide administrative guidance to assist agencies in implementing paragraph 8.b. (5) of this Circular;

(2) Establish an interagency consultative mechanism to advise the Secretary and agency heads in implementing the policy contained herein. That mechanism shall provide for participation by all affected agencies and ensure that their views are considered; and

(3) Report to the Office of Management and Budget concerning implementation of this Circular.

b. The heads of agencies concerned with standards will:

(1) Implement the policy in paragraph 6 of this Circular in accordance with the policy guidelines in paragraph 7 within 120 days of issuance;

(2) Establish procedures to ensure that agency representatives participating in voluntary standards bodies and standards-developing groups will, to the extent possible, ascertain the views of the agency on matters of paramount interest and will, as a minimum, express views that are not inconsistent or in conflict with established agency views;

(3) Endeavor, when two or more agencies participate in a given voluntary standards body or standards-developing group, to coordinate their views on matters of paramount importance so as to present, whenever feasible, a single unified position.

(4) Cooperate with the Secretary in carrying out his responsibilities under this Circular; and

(5) Consult with the Secretary, as necessary, in the development and issuance of, internal agency procedures and guidance implementing this Circular, and submit, in response to the request of the Secretary, summary reports on the status of agency interaction with voluntary standards bodies.

9. *Reporting Requirements.* Three years from the date of issuance of this Circular, and each third year thereafter, the Secretary will submit to the Office of Management and Budget a brief summary report on the status of agency interaction with voluntary standards bodies. As a minimum, the report will include the following information.

a. The nature and extent of agency participation in the development and utilization of voluntary standards; and

b. An evaluation of the effectiveness of the policy promulgated in this Circular and recommendations of change.

10. *Policy Review.* The policy contained in this Circular shall be reviewed for effectiveness by the Office of Management and Budget three years from the date of issuance.

11. *Inquiries.* For information concerning this Circular, contact the Office of Management and Budget, Office of Federal Procurement Policy, telephone 202/395-7207.

David A. Stockman,

Director.

Department of Justice

Antitrust Division

Office of the Assistant Attorney General

June 22, 1982.

Mr. Donald E. Sowle,
Administrator for Federal Procurement Policy
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Sowle: I am writing to express the views of the Department of Justice on competition policy issues raised by the Revised OMB Circular No. A-119, "Federal Participation in the Development and Use of Voluntary Standards" published for comment in the **Federal Register** on April 29, 1982 (47 Fed. Reg. 16, 919).

In our comments on previous drafts of the Circular, dated December 26, 1976 and June 13, 1978, we have supported a policy of federal adoption of privately developed standards when appropriate. Through participation in, and support for, private standards making activities, agencies may benefit greatly from private expertise and will avoid the wasteful duplication of cost and effort involved in developing their own in-house standards. The Department of Justice is not opposed to the policy announced in Revised OMB Circular A-119, which would eliminate the rigid "due process" precondition to federal participation in private standards activities. Such a precondition is overly restrictive, since as a practical matter federal agencies will often be required to adopt the standards developed regardless of federal participation in their development. Thus, in our view, the better solution is to participate in standards setting bodies and work within them to assure that appropriate procedures are adopted.

The Department believes that federal participants should encourage the adoption of procedures to foster access to standard setting activities and transparency in such activities. Such procedures facilitate the development of standards acceptable to the entire affected industry as well as to consumers. In particular, notice and opportunity for comment help assure that standards will be based on adequate information as to their utility and consequences. Moreover, it is especially important that performance criteria be given a prominent, perhaps predominant, place in any standards activity. Federal agency representatives, therefore, should advocate, as strongly as possible, procedures designed to assure that a broad range of information is solicited, and that performance criteria are central elements of the resulting standards.

In addition to the practical advantages of open standards proceedings, such safeguards would mitigate the substantial anticompetitive potential inherent in private standards groups. The importance of assuring adequate consideration of competition in the work of private standards bodies was noted recently by the Supreme Court in *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.* The case involved a product standard which had been adopted in 46 states and all but one of the Canadian provinces. The Court observed that organizations creating such standards could be "rife with opportunities for anticompetitive activity." Federal agencies ought to strongly encourage these private groups to ensure consideration of all relevant viewpoints and interests including those of consumers, and potential or existing industry participants.

This country's international obligations and policy, as expressed in the Standards Code negotiated during the Tokyo Round of the Multilateral Trade Negotiations, *see* the Agreement on Technical Barriers to Trade, codified at 19 U.S.C.A. 2531 *et seq.* (1980), provide another important reason for federal agency participants to encourage the adoption of open procedures for private standards groups. This Code, approved by Congress as well as by our leading trading partners, seeks to prevent the creation of product standards which discriminate against import competition. It requires central governmental bodies to provide notice and opportunity to comment in their own standards making activities, and encourages governments to take reasonable measures to ensure that non-governmental bodies provide similar protection. Where the federal government is in fact involved in the private group, the obligations of the Standards Code would appear even stronger. Open procedures, specifically adequate notice and opportunity to comment, would further the objectives of the Standards Code, and would substantially reduce the possibility that discriminatory, anticompetitive standards will be developed.

The Circular would encourage use of voluntary standards for regulatory and other purposes. Although we applaud this expansion of the scope of the Circular, we believe that broadened federal use of privately developed standards should be accompanied with broad federal awareness of the practical and competitive advantages of industry-wide access to private standards bodies. Such access is an asset to federal participation in private standards activities, but it is also of great importance when federal agencies, without participation in the process, merely adopt standards for procurement or regulatory use.

As we indicated in our previous comments, private activity is not, by virtue of governmental participation or approval, shielded from the antitrust laws. Federal agency participation in a standards body, however, may imply federal approval of the process and of the resulting standard, and perhaps lead private participants to become lax in their own antitrust scrutiny. To dispel any false impressions, federal agency representatives should inform private participants that federal participation does not remove antitrust concerns, as well as advocate that appropriate procedures be employed in the standards proceedings.

Sincerely yours,

Ronald G. Carr,

Acting Assistant Attorney General, Antitrust Division.

[FR Doc. 82-30017 Filed 10-29-82; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 12750; 812-5266]

Daily Tax Free Income Fund, Inc.; Filing of an Application

October 19, 1982.

Notice is hereby given that Daily Tax Free Income Fund, Inc., 100 Park Avenue, New York, N.Y. 10017 (the "Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on August 6, 1982, and an amendment thereto on October 18, 1982, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant and any additional separate portfolios that may be established by Applicant in the future, from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to value its assets using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it was organized as a corporation under the laws of Maryland on July 22, 1982, and that it registered under the Act on July 22, 1982. Although it will have initially only one investment portfolio the Board of

Directors ("Directors") may in the future establish additional portfolios, each of which will be consistent with the investment objectives of the Applicant. Applicant employs Reich & Tang, Inc., as its investment adviser.

Applicant represents that its investment objectives are to provide its investors with high levels of interest income exempt from federal income taxes, preservation of capital and liquidity by investing primarily, but not exclusively, in fixed rate and variable rate municipal obligations, including participation interest therein having a maturity of one year or less at the date of purchase and of "high quality" as determined by a major rating service or, if not rated, of comparable quality as determind by Applicants Directors. The application states that the Applicant and any additional separate investment portfolios that may be established by the Applicant in the future will comply with proposed Rule 2a-7 under the Act and, when adopted, the formal rule, in all respects with regard to the variable rate demand instruments that are purchased for and held in the respective investment portfolios.

Applicant states that it also may purchase securities together with the right to resell them to the seller at an agreed-upon price or yield within a specified period prior to the maturity date of such securities ("stand-by commitments"). Applicant intends to enter into stand-by commitments solely with banks (unless Applicant shall obtain an exemptive order from the Commission to permit it to acquire stand-by commitments from brokers or dealers) and for the purpose of maintaining liquidity to meet unanticipated redemptions. Applicant represents that its acquisition of stand-by commitments will not affect the valuation or assumed maturity of the underlying municipal obligations which would continue to be valued at amortized cost.

As here pertinent, Section 2(a)(41) of th Act defines "value" to mean: (i) with respect to securities for which market quotations are readily available, the market value of such securities, and (ii) with respect to other securities and assets, fair value as determined in good faith by Applicant's Directors. Rule 22c-1 provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order of purchase or sell such security.

Rule 2a-4 provides, as here relevant, that the current net asset value of a redeemable security issued by a registered investment company used in computing its price for the purpose of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a-4 further states that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and that other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of the application, the Commission expressed its view that, among other things, Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and it would be inconsistent generally with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Applicant requests an exemption from the provisions of Section 2(a)(41) of the Act, and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit it to value its portfolio securities using there amortized cost method of valuation. In support of its request, Applicant represents that its Directors have determined that, absent unusual or extraordinary circumstances, amortized cost represents fair value of its portfolio securities and that the amortized cost method of valuation of its assets enables the maintenance of a stable price per share while at the same time allowing a steady flow of investment income demanded by investors. In addition, Applicant states that given the nature of its policies and expected operations, there will normally be a relatively negligible discrepancy between the market value and the amortized cost value of securities held in the Applicant's portfolio.

Section 6(c) of the Act provides, in part, that upon application the Commission may conditionally or unconditionally exempt any person security or transaction or any class or classes of persons, securities or transaction from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant asserts that its application meets the standards of Section 6(c) of the Act and consents to the imposition of the following conditions to any order granting the requested relief:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, the Directors of Applicant undertake—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at $1.00 per share.

2. Included within the procedures to be adopted by the Directors of Applicant shall be the following:

(a) Review by the Directors as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review.[1]

(b) In the event such diviation from the $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Directors will promptly consider what action, if any, should be initiated by them.

(c) Where the Directors believe the extent of any diviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the average portfolio maturity of Applicant; withholding dividends; or utilizing a net

[1] To fulfill this condition, Applicant intends to use acutal quotations or estimates of market value reflecting current market conditions chosen by the Directors in the exercise of their discretion to be appropriate indicators of value which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year or (b) maintain a dollar-weighted average portfolio maturity that exceeds 120 days.[2]

4. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar denominated instruments that the Directors determine present minimal credit risks, and that are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Directors.

5. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1 above, and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Directors' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of meetings of the Directors. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

6. Applicant will include in each of its quarterly reports, as an attachment to Form N-1Q, a statement indicating whether any action pursuant to paragraph 2(c) above was taken during the preceeding fiscal quarter and, if any such action was taken, will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than November 12, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, 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, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the 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, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29894 Filed 10-29-82; 8:45 am]

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[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

[803-24; Rel. No. 829]

Maier & Sieble, Inc.; Filing of an Application

October 20, 1982.

Notice is hereby given that Maier & Siebel, Inc. ("Applicant"), a California corporation which is registered as an investment adviser under the Investment Advisers Act of 1940 ("Act"), filed an application on July 2, 1982, and an amendment thereto on August 10, 1982, requesting an order of the Commission pursuant to Section 206A of the Act exempting Applicant's incentive fee arrangement with a real estate limited partnership (the "Partnership") of which it is the general partner from the provisions of Section 205(1) of the Act to the extent necessary to allow Applicant to receive such compensation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is the sole general partner of the Partnership and may form and act as general partner for additional partnerships, and, in this regard, considers itself to be acting in a traditional real estate syndicator capacity. Applicant also states that it intends to manage the assets of clients with a view to investing them directly into real estate, although until suitable investments are found assets may temporarily be invested in various money market securities. As part of its activities, Applicant contemplated that certain of its officers and directors, who are also officers and directors, or general partners, of Siebel Capital Management, Incorporated, and of Siebel Capital Management, both of which are registered investment advisers under the Act, would be involved in making joint presentations to clients who wished advice as to the purchase of securities, which is provided by the two other entities, and as to the purchase of real estate, which is provided by Applicant. Because of its affiliations and because a presentation by Applicant as to the purchase of real estate, or of an interest as a limited partner in the Partnership, could result in the client not investing in securities under management of the two other entities, Applicant states that it concluded that it should register as an investment adviser under the Act.

As stated in the application, Applicant offered interests in the Partnership to a limited group of wealthy and sophisticated investors in accordance with the requirements of Section 4(2) of the Securities Act of 1933. According to Applicant, each prospective investor represented to the Partnership that he had a net worth in excess of $500,000 exclusive of home, furnishings and automobiles. In addition, Applicant represents that the twelve limited partners were required to make a minimum investment of $150,000. They have no right to withdraw from the Partnership until the termination thereof, and they are subject to substantial restrictions on the ability to transfer interests in the Partnership. Applicant will contribute 1% of the Partnership's total capital and receive a 1% interest in the Partnership's profits and losses. The purpose of the Partnership is to acquire real estate interests with a view to long-term appreciation. Properties acquired will generally be held for at least seven to ten years before sale or disposition. Applicant states that as sole general partner it is entirely responsible for the management of the Partnership, including the decisions as to the investment of the Partnership's capital and the decisions as to the sale, financing, refinancing, or other disposition of the Partnership's investments.

Applicant intends to receive an annual partnership management fee, payable quarterly, based upon the valuation of the Partnership's assets as

determined annually on December 31 and proposes to receive an incentive fee equal to 20% of the distributions to the partners of the net proceeds from any sale, financing, refinancing or other disposition of any of the Partnership's properties or investments. Applicant explains that, for the purpose of determining the amount of the incentive fee, the applicant will allocate the Partnership's capital to investments in the order in which the investments are made. Upon the sale, financing or refinancing of an investment, the net proceeds therefrom will first be distributed to the partners up to the amount of Partnership capital allocated to that property plus the amount of any allocated capital loss previously incurred upon the sale or other disposition of any other Partnership investment, if any, and then 20% to the Applicant and 80% to the partners. After the offering is completed the Partnership will accumulate and may invest all cash available for distribution (other than cash resulting from the sale, financing, refinancing or other disposition of Partnership investments). Therefore, according to Applicant, there may be investments as to which there will not be any Partnership capital allocated and as to which the entire net proceeds after sale, financing or refinancing, after distribution to the partners of up to the amount of any allocated capital loss previously incurred upon the sale or disposition of other investments, will be subject to the 20% incentive fee.

Section 205(1) of the Act, in pertinent part, provides that no investment adviser, unless exempt from registration pursuant to Section 203(b) of the Act, shall enter into or perform any investment advisory contract which provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.

Applicant believes that the prohibition contained in Section 205(1) does not apply to compensation from limited partnerships which invest only and directly in real estate. Applicant also believes that its activities as general partner in directing the investment of the funds of the Partnership into real estate do not constitute "engaging in the business of advising others . . . as to the advisability of investing in, purchasing or selling securities" within the meaning of Section 202(a)(11) of the Act since direct investments in real estate would not involve the purchase or sale of a security. The Partnership has, however, made one investment which, according to Applicant, may be a security. The Partnership has acquired a 20% limited partnership interest in a partnership owning an office building in San Francisco. It is represented that this interest will be the only investment of Partnership funds which will resemble a security. According to Applicant, the Partnership had intended to purchase a direct interest in the property when the present owner entered into a written agreement to purchase it, and, as a result, it is claimed that the only way for the Partnership to participate in the property was to purchase a 20% interest on a limited partnership basis. Applicant also represents that it has assumed an active participation in management of the building, performing a regular consulting function with respect to lease renewal and tenant relationships, assisting in a clean-up necessitated by a flood, actively monitoring the building managers and their accountants and frequently consulting with the general partner concerning long-term objectives for the building.

Applicant states that it recognizes that it is typical for the courts and the Commission to view an interest in a limited partnership as a security and further states that it is making this application because, if the above-described limited partnership interest were construed to be a security, the prohibition in Section 205(1) against provision in advisory contracts for performance-based compensation might be triggered. Applicant states, therefore, that it is assuming, for purposes of the application only, and without conceding the issue, that the limited partnership interest would be a security and its 20% interest in Partnership profits would be regarded as a compensation arrangement within the scope of Section 205(1). Accordingly, Applicant requests an order of the Commission pursuant to Section 206A of the Act granting an exemption from the prohibition in Section 205(1) to permit Applicant to receive its proposed share of Partnership profits.

Applicant asserts that the purpose for the Act's prohibition on performance fee arrangements is to prevent an adviser from being encouraged to take undue risks with the funds of clients. It is Applicant's position that the design of its incentive fee does not violate this policy. Applicant believes that its proposed compensation arrangement is comparable to, and in most cases, less than fees being received by other public and private syndicators of real estate limited partnerships. According to Applicant, the normal fee structure for a real estate limited partnership involves substantial front-end payments, some form of annual management fee to the general partner and, most importantly, some form of incentive fee measured as a percentage of the gains realized by the partnership on its real estate investments. Applicant states that this type of compensation structure reflects the fact that the purpose of the limited partnership is to invest in real estate interests with the prospect of long-term gains as the real estate increases in value over a period of time and the fact that real estate investments require substantial continuing attention.

Applicant asserts that the proposed incentive fee also reflects the fact that a general partner is subject to unlimited liability for the debts, liabilities and obligations of a limited partnership. It is further asserted that a corporate general partner must subject substantial assets to the risks of the partnership in order to satisfy the requirements for treatment of the partnership as a partnership and not a corporation under the Internal Revenue Code of 1954, as amended. Thus, Applicant states that its shareholders have invested approximately $300,000 of their personal assets in Applicant so that it may act as general partner to the Partnership. Finally, Applicant notes that because the incentive fee is determined on an investment by investment basis, it will not receive any portion of its fee until the limited partners have been made whole with respect to their initial capital contributions as allocated to each property.

Applicant contends that the investors involved here do not need the protection of the Act because the limited partnership interests in the Partnership were offered only to a small group of selected investors and because concerns as to speculation and over-trading are simply not applicable to a situation where Applicant is acting as a general partner of a partnership investing in real estate. In contrast to investments in marketable securities, it is claimed, investments in real estate will be long-term and will require substantial involvement by the Applicant, as general partner, in overseeing the management and operation of the properties and investments by the Partnership.

Applicant also claims that the grant of an exemption is in the public interest. Because the Applicant is newly formed, it is asserted that it is not economically feasible for the Applicant to set up a separate susidiary with a separate staff that will handle only its real estate syndication activities. The officers,

directors and shareholders of the Applicant are alleged to have other business activities as well as real estate syndication activities. For the Commission to conclude that the only way the Applicant could conduct its business is through separate entities and separate staffs would, in the Applicant's opinion, restrict the ability of persons such as the Applicant's founders, to establish new businesses in order to compete with much larger and already established businesses which can afford completely separate operations. Furthermore, it is asserted that failure to grant an exemption would run counter to the Commission's recent efforts to eliminate unnecessary regulatory constraints and to promote capital formation among small businesses. These efforts have included, Applicant argues, granting exemptive orders from the prohibition on performance-based compensation provisions in Section 205(1). The Applicant believes that its application for exemption should be granted for essentially the same reasons that those prior applications were granted.

The Commission is empowered under Section 206A of the Act to exempt any person or transaction from the provisions of the Act and the rules and regulations thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 12, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, 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, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certficate) 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 herein 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, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29896 Filed 10-29-82; 8:45 am]

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[Rel. No. 19174; File No. SR-OCC-82-22]

Filing and Immediate Effectiveness of Proposed Rule Change by Options Clearing Corp.

October 25, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1982, the Options Clearing Corporation ("OCC") filed with the Securities Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

OCC proposes to increase its fee to participants for providing microfiche copies of certain reports. OCC states in its filing that the increase from $.01 per frame to $.015 per frame is necessitated by increased costs incurred by OCC in preparing the microfiche. OCC is not changing its $.10 fee for each sheet of microfiche. OCC states that the proposed rule change is consistent with the Act because OCC believes that the proposal allocates fees in an equitable manner by passing on to users of that service the increased costs.

The foregoing change has become effective, pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-OCC-82-22.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be avilable for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29893 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[SR-Phlx-82-3; Rel. No. 19164]

Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change

October 21, 1982.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1982, the Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, Pa. 19103 filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

The Phlx proposes to adopt temporary Rule 941, which requires Phlx member organizations and members who are parties to a-b-c agreements to execute a sale and subordination agreement that allows the Exchange to sell the membership upon termination of the member's interest in it and to apply the proceeds of that sale to the satisfaction

[1] On October 15, 1982, the Phlx submitted Amendment No. 1 to this filing. Because this amendment was submitted prior to this initial notice of the proposed rule change, it is being noticed now together with the notice of the original filing. The description of the proposal above incorporates the changes made by Amendment No. 1.

of the priority claims specified in current Phlx By-law XV. Temporary Rule 941 would cease to be effective on December 14, 1982.[2] According to the Phlx, the proposed rule is designed to enable the Exchange to sell a membership in order to generate proceeds to satisfy specified creditors in situations where there would not otherwise be a sale that would generate such proceeds.[3] The Exchange states that the statutory basis for the proposed rule change is Section 6 of the Act, and Sections 6(b)(1) and 6(b)(5) in particular, in that the proposed rule change will enable the Exchange to assure the financial responsibility of its members.

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change within 21 days after the date of publication in the **Federal Register.** Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549. Reference should be made to File No. SR-Phlx-82-3.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the proposed rule change would put in place on a temporary basis an immediate means to assure the financial responsibility of existing members who hold seats subject to a-b-c agreements and to enforce a Phlx by-law relating to contractual obligations to which such members have agreed. Accelerated approval also would avoid any delay in implementing this safeguard with respect to new members who acquire seats through the use of a-b-c agreements.[4]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc 82-29895 filed 10-29-82; 8:45 am]

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[2] On August 27, 1982, the Phlx filed with the Commission a proposed rule change (SR-Phlx-82-4) to provide for the adoption of Rule 941 on a permanent basis as part of the comprehensive membership transfer and creditor rights program proposed in that filing.

[3] The Exchange in its filing describes as an example this situation: When a member organization designates a successor legal title holder to a seat held under an a-b-c agreement, there is no sale that generates proceeds and thus no way without the proposal for creditors to reach the seat to satisfy their claims against the predecessor legal title holder.

[4] The Phlx already has in place temporary Rule 933 that also terminates on December 14, 1982 and that parallels proposed temporary rule 941 with respect to leased memberships. The Commission approved temporary Rule 933 on an accelerated basis on December 21, 1981 (Securities Exchange Act Release No. 18356, December 21, 1981; 46 FR 63434, December 31, 1981).

[File No. 22-11995]

St. Regis Paper Co.; Notice of Application and Opportunity for Hearing

October 25, 1982.

Notice is hereby given that St. Regis Paper Company (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeships of Bankers Trust Company (the "Bank") under an indenture dated as of June 15, 1980 between the Company and the Bank (the "Qualified Note Indenture") relating to $150,000,000 of the Company's 10% Notes due June 15, 1990 (the "Notes"), and under an indenture dated as of June 15, 1980 between the company and the Bank (the "Qualified Debenture Indenture", and, together with the Qualified Note Indenture, herein called the "Qualified Indentures") relating to $100,000,000 of the Company's 10⅝% Sinking Fund Debentures due June 15, 2010 (the "Debentures"), both of which qualified Indentures were heretofore qualified under the Act, and the trusteeships by the Bank under five existing indentures, two of which are between The County of Escambia, Florida (the "Florida Issuer") and the Bank, as Trustee (the "First Indenture" and the "Second Indenture", respectively), two of which are between The City of Sartell, Minnesota (the "Minnesota Issuer") and the Bank, as Trustee (the "Third Indenture" and the "Fourth Indenture", respectively) and one of which is between The Industrial Development Authority of the City of Kansas City, Missouri (the "Missouri Issuer"), and the Bank, as Trustee (the "Fifth Indenture"), which indentures are not qualified under the Act, are not so likely to involve a material confict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from continuing to act as Trustee under the Qualified Indentures were it to continue to act as trustee under the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture.

Section 310(b) of the Act, which is included in Section 6.8 of each of the Qualified Indentures, provides in part that if a trustee under an indenture qualifed under the Act has or shall acquire any conflicting interest (as defined in such Section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities, or certificates of interest or participation in any other securities, of the Company are outstanding.

The present application, filed pursuant to clause (ii) of Section 310(b)(1) of the Act (as set forth in Section 6.8 of each of the Qualified Indentures), seeks to exclude the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture from the Operation of Section 310(b)(1) of the Act.

The effect of the provisions of clause (ii) of Section 310(b)(1) of the Act on the matter of the present application is such that the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture may be excluded from the operation of Section 310(b)(1) of the Act (as set forth in Section 6.8 of each of the Qualified Indentures) if the Company shall have sustained the burden of proving by this

application to the Commission and after opportunity for hearing thereon, that the trusteeships of the Bank under the Qualified Indentures and under the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from continuing to act as trustee under the Qualified Indentures were it to continue to act as trustee under the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture.

The Company has alleged that:

(1) On September 30, 1982, the Company had outstanding $150,000,000 aggregate principal amount of the Notes under the Qualified Note Indenture. The Notes issued pursuant to the Qualified Note Indenture were registered under the Securities Act of 1933 and the Qualified Note Indenture was qualified under the Trust Indenture Act of 1939.

(2) On September 30, 1982, the Company had outstanding $100,000,000 aggregate principal amount of the Debentures under the Qualified Debenture Indenture. The Debentures issued pursuant to the Qualified Debenture Indenture were registered under the Securities Act of 1933 and the Qualified Debenture Indenture was qualified under the Trust Indenture Act of 1939.

(3) The Florida Issuer has entered into the First Indenture with the Bank, pursuant to which the Florida Issuer has issued $1,000,000 aggregate principal amount of its Industrial Development Revenue Bonds (St. Regis Paper Company Project) Series 1982 (the "1982 IDR Bonds (Florida)"). The principal of and interest and premium, if any, on the 1982 IDR Bonds (Florida) will be payable solely from revenues and Receipts paid by the Company to the Florida Issuer under an agreement of Sale and Security Agreement entered into by the Florida Issuer and the Company (the "Florida Sale Agreement"), pursuant to which the Florida Issuer will finance a portion of the cost of the acquisition, construction and installation of certain additions of equipment and other items of personal property to certain pollution control facilities (the "Florida Project") to be acquired, constructed and installed at the Company's pulp and paper manufacturing mill in the County of Escambia, Florida and sell such items to the Company for an amount equal to the aggregate principal amount of the 1982 IDR Bonds (Florida). The payment of the principal of and premium, if any, and interest on the 1982 IDR Bonds (Florida) is secured to the extent of the security interest in the Florida Project granted by the Company to the Florida Issuer pursuant to the Florida Sale agreement and assigned to the Bank, as trustee under the First Indenture.

(4) The Florida Issuer has entered into the Second Indenture with the Bank, pursuant to which the Florida Issuer has issued $6,000,000 aggregate principal amount of its Pollution Control Revenue Bonds (St. Regis Paper Company Project) Series 1982 (the "1982 Pollution Control Bonds (Florida)"). The principal of and interest and premium, if any, on the 1982 Pollution Control Bonds (Florida) will be payable solely from revenues and receipts paid by the Company to the Florida Issuer under an Agreement of Sale entered into by the Florida Issuer and the Company (the "Florida Pollution Sale Agreement"), pursuant to which the Florida Issuer will finance a portion of certain pollution control facilities at the Company's pulp and paper manufacturing mill located in the County of Escambia, Florida and sell such facilities to the Company, for an amount equal to the Aggregate principal amount of the 1982 Pollution Control Bonds (Florida).

(5) The Minnesota Issuer has entered into the Third Indenture with the Bank, pursuant to which the Minnesota Issuer has issued $19,600,000 aggregate principal amount of its Pollution Control Revenue Bonds (St. Regis Paper Company Project) Series 1982 (the "1982 Pollution Control Bonds (Minnesota)"). The principal of and interest and premium, if any, on the 1982 Pollution Control Bonds (Minnesota) will be payable solely from revenues and receipts paid by the Company to the Minnesota Issuer under a loan Agreement entered into by the Minnesota Issuer and the Company (the "Minnesota Loan Agreement"), pursuant to which the Minnesota Issuer will finance the acquisition, construction and installation of certain pollution control facilities at the Company's pulp and paper manufacturing mill located in the City of Sartell, Minnesota by lending the Company an amount equal to the aggregate principal amount of the 1982 Pollution Control Bonds (Minnesota).

(6) The Minnesota Issuer has entered into the Fourth Indenture with the Bank, pursuant to which the Minnesota Issuer has issued $1,000,000 aggregate principal amount of its 10¼% Industrial Development Revenue Bonds (St. Regis Paper Company Project) Series 1982 (the "1982 IDR Bonds (Minnesota)"). The principal of and interest and premium, if any, on the 1982 IDR Bonds (Minnesota) will be payable solely from revenues and receipts paid by the Company to the Minnesota Issuer under a Loan and Security Agreement entered into by the Minnesota Issuer and the Company (the "Minnesota Loan and Security Agreement"), pursuant to which the Minnesota Issuer will finance the acquisition, construction and installation of certain machinery, equipment and other tangible personal property (the "Minnesota Project") at the Company's pulp and paper manufacturing mill located in the City of Sartell, Minnesota by lending the Company an amount equal to the aggregate principal amount of the 1982 IDR Bonds (Minnesota). The Payment of the principal of and premium, if any, and interest on the 1982 IDR Bonds (Minnesota) is secured to the extent of the security interest in the Minnesota Project granted by the Company to the Minnesota Issuer pursuant to the Minnesota Loan and Security Agreement and assigned to the Bank, as Trustee under the Fourth Indenture.

(7) The Missouri Issuer has entered into the Fifth Indenture with the Bank, pursuant to which the Missouri Issuer has issued $1,600,000 aggregate principal amount its 10¼% Industrial Development Revenue Bonds (St. Regis Paper Company Project) Series 1982 (the "1982 IDR Bonds (Missouri)"). The principal of and interest and premium, if any, on the 1982 IDR Bonds (Missouri) will be payable solely from revenues and receipts paid by the Company to the Missouri Issuer under an Agreement of Sale entered into by the Missouri Issuer and the Company (the "Missouri Sale Agreement"), pursuant to which the Missouri Issuer will finance (i) the acquisition, construction and installation of certain equipment at the Company's pulp and paper manufacturing plant located in Kansas City, Missouri and (ii) modate such equipment, and sell such items to the company for an amount equal to the aggregate principal amount of the 1982 IDR Bonds (Missouri).

(8) The obligations of the Company under the Qualified Note Indenture and the Qualified Debenture Indenture to pay amounts in respect of the notes and the Debentures outstanding thereunder, respectively, and the obligations of the Company under the Florida Pollution Sale Agreement to pay amounts that, together with other funds available therefor, will provide amounts for payments in respect of the principal of and premium, if any, and interest on the 1982 Pollution Control Bonds (Florida), the 1982 Pollution Control Bonds (Minnesota) and the 1982 IDR Bonds (Missouri) outstanding under the Second

Indenture, the Third Indenture and the Fifth Indenture, respectively, are wholly unsecured and all such obligations rank equally without seniority or subordination of any such obligations to any of the others. Although the obligations of the Company under the Florida Sale Agreement and the Minnesota Loan and Security Agreement to pay amounts that, together with other funds available therefor, will provide amounts for payments in respect of the principal of and interest and premium, if any, on the 1982 IDR Bonds (Florida) and the 1982 IDR Bonds (Minnesota), respectively, are secured to the extent of the security interests granted in the Florida Project and the Minnesota Project, respectively, the Company notes that: (1) the aggregate principal amounts of the 1982 IDR Bonds (Florida) and the 1982 IDR Bond (Minnesota) are immaterial as compared with the aggregate principal amount of the Notes and the Debentures; (2) the Company understands from the purchaser of the 1982 IDR Bonds (Florida) that the 1982 IDR Bonds (Florida) were not purchased on the basis of the security interest granted with respect thereto in the Minnesota Project, as evidenced by Official Statement relating to the 1982 Bonds IDR (Minnesota) which states that "because of the nature and use to be made of [the Minnesota] Project, no representation is made herein as to the value of the [Minnesota] Project at any time or as to the realizable amount of recovery upon any foreclosure of the security interest in or other forced sale of such Project."

(9) No event of default exists under the Qualified Note Indenture or the Qualified Debenture Indenture and no event of default arising by reason of any action or omission by the Company, or, to the knowledge of the Company, any other event of default, exists under the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture or the Fifth Indenture.

(10) Such differences as exist between the Qualified Indentures and the first Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the Qualified Indentures where it to continue to act as trustee under the First Indenture, the Second Indenture, the Third Indenture, the Fourth Indenture and the Fifth Indenture.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after November 18, 1982, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, not later than November 18, 1982 at 5:30 p.m., Eastern Standard Time, in writing, submit to the Commission his view or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29892 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19124; File No. SR PHLX 82-10]

Self-Regulatory Organizations; Proposed Rule Change by Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 6, 1982, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX") is proposing new rule 274 which primarily requires a specialist and alternate specialist to file daily reports with the PHLX setting forth the closing position in each PHLX primary issue in which such specialist or alternate specialist is registered.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the propoosed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Itaem IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. *Self-Regulaltory Organization's Statements of the Purpose of, and Statutory Basis for the Proposed Rule Change.* The purpose of the proposed rule change is to strengthen equity surveillance by requiring each specialist and alternate specialist to file a daily report with the PHLX setting forth the closing position (shares long or short) for each PHLX primary issue in which such specialist or alternate specialist is registered as well as the name of the bank, broker dealer or clearing corporation carrying and providing financing (margin) for any such positions. With respect to specialists and alternate specialists who clear through a registered clearing corporation or use the services of another broker dealer to clear their positions, compliance with the rule may be achieved through an arrangement whereby such clearing corporation or broker dealer automatically provides to the PHLX the information requested by the rule.

The proposed rule change is consistent with section 6(b)(5) of the Act which provides, in pertinent part, that "[t]he rules of the exchange [be] designed to prevent fraudulent and manipulative acts and practice * * *"

B. *Self-Regulatory Organization's Statement on Burden on Competition.* The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. *Self-Regulaltory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.* No comments on this proposed rule change have ben solicited or received from members.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 14, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-28975 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 22675; 70-6782]

The Columbia Gas System, Inc. and Columbia Gas of Ohio, Inc.; Proposed Transactions Related to Sale and Leaseback of New System Office Building

October 20, 1982.

The Columbia Gas System, Inc., ("Columbia") 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, and Columbia Gas of Ohio, Inc. ("COH") 99 North Front Street, Columbus, Ohio 43215, a wholly-owned subsidiary of Columbia, have filed an application-declaration with this Commission, insofar as applicable, pursuant to Sections 6(a), 7, 9(a), 10, 12(b), and 12d) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 44 and 45 promulgated thereunder.

The application-declaration states that seven of Columbia's eight natural gas distribution subsidiaries, including COH, are centrally managed from offices in Columbus, Ohio, and that new facilities for these operations are currently under construction by COH in Columbus. The facilities are expected to be ready for occupancy in July 1983 and will consist of a 15-story office building and separate parking garage, the combined cost of which is estimated at $32 million.

COH proposes to enter into a sale and leaseback arrangement with a yet to be determined purchaser/lessor. While COH will be the lessee of record, the lease rentals will be allocated among all of the distribution companies sharing the headquarters' facilities. As currently contemplated, the lease will have an initial term of 20 years and will have eight five-year renewal terms, each at the option of COH. At the end of the basic lease term and at the end of any renewal term, COH will have the option to purchase the building at the appraised fair market value. The process of selecting a lessor is underway and the terms and conditions of the sale and leaseback will be filed by amendment.

It is also proposed that Columbia guarantee COH's lease obligations. COH has been advised that the interest rate on the lessor's permanent debt financing used to fund a portion of the purchase price of the facilities will be lower and, consequently, COH's rental payments will be lower if Columbia provides such a guarantee.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by November 15, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicants-declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29898 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12749; (812-5334)]

Nationwide Life Insurance Co., Nationwide Variable Account and Heritage Securities, Inc.; Application

October 19, 1982.

Notice is hereby given that Nationwide Life Insurance Company ("Nationwide Life"), a stock life insurance company organized under the laws of the State of Ohio, Nationwide Variable Account (the "Account"), registered under the Investment Company Act of 1940 (the "Act") as a unit investment trust, and Heritage Securites, Inc. ("Heritage") (together, "Applicants"), One Nationwide Plaza, Columbus, Ohio 43216, filed an application on October 5, 1982, and an amendment on October 15, 1982, pursuant to Section 11 of the Act, for an order approving the terms of certain offers of exchange and, pursuant to Section 6(c) of the Act, for an order granting an exemption from Section 26(a) (2)(D) of the Act, insofar as such exemptions are necessary to permit the transactions described in the application and contracts. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below.

The Account was established for the purpose of funding certain variable annuity contracts issued by Nationwide Life ("Contracts"). Nationwide Life is the depositor of the Account and Heritage is the principal underwriter for

the of Contracts. Presently under the Contracts, owners may split the allocation purchase payments among any one or more of the four sub-accounts of the Account, each of which is comprised of the shares of one of four mutual funds (*see* Investment Company Release No. 11594, January 30, 1981). Four new mutual funds and two series offered by the Nationwide Investing Foundation ("Foundation"), are being added as new Account sub-accounts by post-effective amendment. Applicants propose to permit, for Contracts issued prior to the effective date of the aforementioned post-effective amendment, Account purchase payments to be allocated only to the sub-accounts consisting of the four mutual funds described in the current prospectus. For new Contracts issued on or after the effective date of the aforementioned post-effective amendment, Applicants propose to permit Account purchase payments to be allocated only to the sub-accounts consisting of the four mutual funds and the two series of the Foundation being added as new Account sub-accounts.

The shares of the series of the mutual funds available as the underlying investment media for the Account are issued on an open account arrangement without the issue of stock certificates. Ownership of mutual fund series shares will be shown only on the books and records of the Account and of each fund or series. Owership will not be represented by securities which require a custodianship for safekeeping purposes. Under the custodian agreement between Nationwide Life and The Huntington National Bank of Columbus, Ohio, the custodian of the Account ("Custodian"), the assets of each sub-account will be kept physically segregated by the Custodian and held separate from the assets of any other firm, person, or corporation. The Custodian will maintain a record of all purchases and redemptions of fund shares in each applicable sub-account. Although the Custodian meets the qualifications described in Section 26(a) of the Act, the custodial agreement does not create a trust with respect to the assets of the Variable account because Nationwide Life, as an Ohio insurance company, must retain ownership and control of the disposition of its property under applicable Ohio law.

Section 26(a)(2)(D)

Section 26(a)(2)(D) provides that no principal underwriter for or depositor of a registered unit investment trust shall sell any security of which such trust is the issuer (other than short-term paper), unless the agreement of custodianship provides, in substance, that the custodian shall have possession of all securities and other property in which the funds of the trust are invested. Pursuant to Section 6(c) of the Act, Applicants request an exemption from the requirement of Section 26(a) (2)(D) to the extent necessary to permit the custodian to have possession of all securities in which the funds of the trust are invested.

Section 6(c) authorizes the Commission generally to exempt any person, security or transaction from any provision of the Act if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants contend that the requested exemption is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act.

Section 11(a) and 11(c)

Section 11(a) of the Act provides generally that it shall be unlawful for any registered open-end company to make an offer to the holder of a security of such company or any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted or approved by the Commission. Secion 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

Applicants request an order pursuant to sections 11(a) and 11(c) to permit new Contractowners, upon written request, to transfer part or all of their Account contract value among the six sub-accounts of the account, pursuant to such terms and conditions as may be imposed by the four mutual funds or two series of the Foundation comprising the new sub-accounts of the Account.

Notice is further given that any interested person may, not later than November 15, 1982, 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, if any, 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, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued, as of course, following November 15, 1982, unless the Commission thereafter orders a hearing upon request or upon its 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, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29897 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12748; (812-5337)]

NWNL Select Variable Account, Northwestern National Life Insurance Co. and Clarendon Insurance Agency, Inc.; Filing of Application

October 19, 1982.

Notice is hereby given that NWNL Select Variable Account ("Select"), a separate account of Northwestern National Life Insurance Company (the "Company") which is registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and Clarendon Insurance Agency, Inc. ("Clarendon"), the principal underwriter for Select (Select, the Company and Clarendon are collectively referred to as the "Applicants"), 20 Washington Avenue South, Minneapolis, Minnesota 55440, filed an application on October 8, 1982 for an order approving the terms of certain offers of exchange pursuant to Section 11 of the Act. All interested persons are referred to the application of file with the Commission for a statement of the representations therein which are summarized below.

The Company is the depositor of Select, which is an issuer of individual variable annuity contracts (the "Contracts"). Purchase payments made by or on behalf of Contractowners are allocated to one or more Sub-Accounts of Select. The assets of each Sub-Account are invested in shares (at net asset value) of one of a group of mutual

funds on the list provided by the Company. The only fund currently offered is Select Cash Management Fund, Inc. (a so-called "money market mutual fund") ("SCM").

The Applicants propose to add a second Sub-Account, the assets of which would be invested in shares of Select Capital Growth Fund, Inc. ("SCG") (the principal investment objective of which is long-term growth of capital), and propose to permit Contract owners to request the transfer of all or part of the value of one of Select's Sub-Accounts to the other Select Sub-Account. There would be no charge by the Applicants for such a transfer, and no such charge is currently imposed by SCM or SCG.

Section 11

Section 11(a) of the Act provides generally that it shall be unlawful for any registered open-end investment company to make an offer to the holder of a security of such company, or of any other open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have been first submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of Section 11(a) shall be applicable to any type of offer of exchange of the securities of registered unit investment trusts for the securities of any other investment company.

The Applicants submit that the proposed transfer rights will afford a Contract owner a choice between shares of mutual funds having different objectives. The Applicants further assert that the proposed transfer rights involve only a change in the underlying accumulation or annuity units related to a Contract, which are merely accounting units of measure to quantify Contract value and, thus, do not involve the exchange of a unit investment trust security for the security of any other investment company. However, to avoid any questions that might be raised as to the applicability of Section 11(c), the Applicants request an order pursuant to Section 11 to the extent necessary approving the terms of the proposed offer of exchange described above.

Notice is further given that any interested person may, not later than November 12, 1982 at 5:30 p.m., submit to the Commission a written 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, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon the Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. An order disposing of the application will be issued as of course following November 12, 1982, unless the Commission thereafter orders a hearing upon request or upon its 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, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29900 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12757; (812-5237)]

Putnam Convertible Funds Inc., et al.; Filing of an Application

October 22, 1982.

In the Matter of Putnam Convertible Fund, Inc., Putnam International Equities Fund, Inc., The George Putnam Fund of Boston, The Putnam Growth Fund, Putnam Health Sciences Trust, Putnam High Yield Trust, The Putnam Income Fund, Inc., Putnam Investors Fund, Inc., Putnam Option Income Trust, Putnam Tax Exempt Income Fund, Putnam Vista Fund, Inc., Putnam Voyager Fund, Inc., Chemical Fund, Inc., Eberstadt Energy-Resources Fund, Inc., Serveyor Fund, Inc., and Putnam Fund Distributors, Inc., One Post Square, Boston, Massachusetts 02110.

Notice is hereby given that Putnam Convertible Fund, Inc., Putnam International Equities Fund, Inc., The George Putnam Fund of Boston, The Putnam Growth Fund, Putnam Health Sciences Trust, Putnam High Yield Trust, The Putnam Income Fund., Inc., Putnam Investors Fund, Inc., Putnam Option Income Trust, Putnam Tax Exempt Income Fund, Putnam Vista Fund, Inc., Putnam Voyager Fund., Inc., Chemical Fund, Inc., Eberstadt Energy-Resources Fund, Inc. and Serveyor Fund, Inc. (the "Funds"), and Putnam Fund Distributors, Inc. ("DIstributors") (the Funds and Distributiors are collectively referred to as "Applicants"), filed an application on July 9, 1982 for an order, pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), amending two existing orders of the Commission and thereby further exempting Applicants from the provisions of Section 22(d) of the Act and Rule 22d-1 thereunder to the extent necessary to permit sales of shares of the Funds at net asset value to members of qualified groups. The orders of the Commission proposed to be amended are *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Release No. 9918 (Sept. 7, 1977) and *Putnam Convertible Fund, Inc., et al.*, Investment Company Act Release No. 11484 (December 10, 1980). All interested persons are referred to the application of file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the funds are each registered under the Act as diversified, open-end management investment companies. Distributors is a registered broker-dealer and serves as principal underwriter for the Funds. Applicants state that the Funds generally offer their shares in continuous public offerings at public offering prices equal to net asset value plus a sales load which varies with the size of the purchase. According to the application, currently, the maximum sales load of certain Funds is 8.5% of the offering price on transactions of less than $10,000. The maximum sales load is less for certain other Funds with income-oriented objectives, ranging from 6.75% of the offering price to 4.75%. Applicants further state that the sales load reduces as the size of the transaction increases to a minimum of 1% on transactions of more than $1,000,000 but less than $4,000,000, and is eliminated on transactions over $4,000,000.

Applicants state that pursuant to the exemption provided by the two orders of the Commission now proposed to be amended (the "Group Sales Exemption"), Applicants also offer shares of the Funds to members of qualified groups, as defined, at a group sales charge rate which differs from the sales charge rate currently in effect for sales to non-group purchasers. Applicants state that prospectuses of the Funds provide that members of qualified groups may buy shares of such funds at a flat group sales charge rate or 4.5% of the offering price without regard to the size of the group investment. To be eligible for the group sales charge rate

under the existing Group Sales Exemption, purchases by group members have to be made through a single investment dealer designated by the group, and initial purchases have to be transmitted by such investment dealer, although subsequent purchases may be sent directly to Distributors.

Applicants represent that, if the proposed amendment of the Group Sales Exemption is approved, in addition to group sales at a 4.5% sales charge, shares of the Funds would be offered to "members" of "qualified groups" which have a certain minimum number without regard to the size of investments made by the members of the group.

Applicants represent that the minimum number of members is proposed to be set at 2,500 and would be subject to revision from time to time by the Funds. Applicants state that in setting the minimum number of members, the Funds may take into account recommendations of the principal underwriter as to membership levels that are likely to lead to economies in sales effort and expense on account of mass merchandising and other marketing techniques that may be employed in sales to groups of relatively large size.

Applicants state that a "qualified group" for purposes of net asset value group sales will include the employees of a corporation or a sole proprietorship, members and employees of a partnership or association, or other organized groups of persons (the members of which may include other qualified groups), provided that: (i) The group has at least that number of members specified from time to time by the Funds; (ii) the group has been in existence for at least six months; (iii) the group has some purpose in addition to the purchase of Fund shares at a reduced sales charge; (iv) the group's sole organizational nexus or connection is not that the members are credit card holders of a company, policy holders of an insurance company, customers of a bank or a broker-dealer, clients of an investment adviser or security holders of a company; (v) arrangements are made for access to the group which are satisfactory to the Funds' principal underwriter (or its designate); and (vi) arrangements satisfactory to the Funds or their shareholder servicing agent are established for verification that the group meets the minimum membership requirement. Applicants represent that the Funds would reserve the right to waive the requirement that the group continue to meet the minimum membership requirement or the requirement that an investor continue to belong to the group in order to qualify for the net asset value sales charge (but not to waive either of these requirements initially). Applicants state that this would allow persons who have begun a net asset value investment program as qualifying group members to continue it after they have left the group or in the event their group has become smaller through attrition or in the event the minimum membership requirement is increased.

Applicants state that the basis proposed by the Applicants for this amendment of the Group Sales Exemption is similar in certain respects to that offered in support of the original Group Sales Exemption. Applicants further state that a significant difference is that the original Group Sales Exemption was intended to promote solicitation of the group market by investment dealers, and was structured using a flat 4.5% sales charge to provide sufficient incentive to dealers. Applicants represent that this amendment is intended to expand group sales to a market to which investment dealers are not believed to have access, and, accordingly, dealer incentive is not a basis of this proposal.

Applicants represent that the offering of the Funds shares, as proposed in the application, may not be permissible absent on exemption such as is requested hereby.

Section 22(d) of the Act prohibits mutual funds, underwriters and dealers from selling fund shares to the public "except at a current public offering price described in the prospectus." Rule 22d-1 provides for exemption from Section 22(d) to permit sales at reduced or without any sales charges in specified circumstances.

Effective December 16, 1974, the Commission, in Investment Company Act Release No. 8569, dated Nov. 4, 1974 ("Release 8569"), amended Rule 22d-1, *inter alia*, by the addition of a new paragraph (b) which permits funds to provide the quantity discounts previously allowed to specified persons by Rules 22d-1(a) to additional groups of persons and by amendment of paragraph (e)—redesignated "(f)"—to permit sales at reduced, or without any, sales charges to a certain type of group, that is, nonqualified employee benefit plans.

Paragraph (b) of Rule 22d-1 requires that the group (i) have been in existence for at least six months, (ii) have a purpose other than the purchase of mutual fund shares at a discount, (iii) satisfy uniform criteria relating to realization by the fund of economies of scale in sales effort and sales related expenses selected by the fund and described in its prospectus,[1] and (iv) not have as its sole organizational nexus that its members are credit card holders of a company, policyholders of an insurance company, customers of a bank or broker-dealer or clients of an investment adviser. Applicants represent that, these four requirements have been included as criteria which would be applicable to the group sales to be made by the Applicants at net asset value if this proposed amendment to the Group Sales Exemption is granted.

Groups eligible for the 4.5% group sales charge provided for in the existing Group Sales Exemption and those groups which could purchase at net asset value pursuant to the amendment proposed by this Application are not, however, limited to those permitted by paragraph (f), that is tax-exempt organizations, tax qualified and non-tax qualified employee benefit plans. While it seems likely that many of the groups that might participate would be employee benefit plans such as individual retirement account ("IRA") plans, others are likely to include alumni, trade or professional associations and other affinity groups.

In adopting the revisions to paragraph (f), the Commission noted that prior to the amendment, that paragraph (then designated "(e)") had permitted reduced sales loads pursuant to a uniform offer to tax-exempt organizations and tax qualified employee benefit plans, and that these preferences were based upon public policy considerations favoring systematic savings by payroll deduction. Release No. 8569, pp. 3-4. Applicants submit there is no clear policy which supports discrimination in favor of groups which have an employment relationship over groups which have an organizational nexus other than common employment. Applicants further submit that recent changes in tax laws with respect to IRAs indicate no policy favoring common employment as a condition to tax sheltered retirement savings accumulations by individuals.

Applicant states that Distributors expects the market for net asset value group sales to be sponsors of large size and often geographically diverse groups to which retail investment dealers have not historically been able to sell, that competitive conditions in these markets

[1]Applicants state that economies of scale in sales effort and sales related expense may benefit the Funds in that they may serve to increase sales of Fund shares. Sales effort and sales related expenses normally do not involve direct expenditures by the Funds other than for transfer agency and custodial services.

effectively exclude load funds. Applicants further state that Distributors expects that the sales effort with respect to members of participating groups will typically first involve Distributors (or others on its behalf) soliciting group sponsors for their approval of establishment of group investment programs funded with Fund shares. Applicants represent that Distributors may incur significant marketing expenses in the initial solicitations of group sponsors, but expects there should be substantial savings in terms of selling effort and expense once a relationship with a sponsor is established. Applicants state that Distributors anticipates that the sales effort directed to group members would typically consist of standardized group sales material furnished by Distributors and distributed in a mailing to group members. Applicants represent that once a member becomes a participant, selling costs with respect to periodic investments should be substantially reduced, particularly in the case of IRA programs or other programs which involve systematic investment.

Applicants represent that Groups Sales at a flat 4.5% will continue to be available and both group sales exemptions would be described in the Funds prospectuses. Applicants submit that the group sales proposal contained in this proposed amendments to the Group Sales Exemption is not unjustly discriminatory and is in the public interest.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision of the Act or of any rule or regulation under the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than November 16, 1982, at 5:30 p.m., submit to the Commission, in writing, a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reasons for such request and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the 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 herein will be issued as a matter 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, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29901 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12742A; (812-5274)]

Sun Life Assurance Company of Canada (U.S.), et al.; Correction

October 20, 1982.

In the Matter of Sun Life Assurance Company of Canada (U.S.) and Sun Life of Canada (U.S.) Variable Account C, 1 Sun Life Executive Park, Wellesley Hills, Massachusetts 02181 and Clarendon Insurance Agency, Inc., 200 Berkeley Street, Boston, Massachusetts 02116.

This is to correct errors made in Investment Company Act Release No. 12742 issued October 15, 1982. In the matter of Sun Life Assurance Company of Canada (U.S.), Sun Life of Canada (U.S.) Variable Account C, and Clarendon Insurance Agency, Inc. In the above-referenced notice, the application file number read "812-5323." This number should have read "812-5274." Additionally, the above-referenced notice stated that the application was filed on September 20, 1982. It should have stated that the application was filed on August 11, 1982.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29899 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12759; (812-5323)]

Sun Life Assurance Company of Canada (U.S.), et al.

October 22, 1982.

In the Matter of Sun Life Assurance Company of Canada (U.S.), Money Market Variable Account, Capital Appreciation Variable Account and High Yield Variable Account, 1 Sun Life Executive Park, Wellesley Hills, Massachusetts 02181 and Clarendon Insurance Agency, Inc., 200 Berkeley Street, Boston, Massachusetts 02116.

Notice is hereby given that Sun Life Assurance Company of Canada (U.S.) ("Sun Life (U.S.)"), Money Market Variable Account, Capital Appreciation Variable Account and High Yield Variable Account (collectively, the "Variable Account"), separate accounts of Sun Life (U.S.) registered under the Investment Company Act of 1940 ("Act") as open-end investment companies, and Clarendon insurance Agency, Inc. (collectively, "Applicants") filed an application on September 20, 1982, and amendments thereto on October 15, 1982 and October 19, 1982, pursuant to Section 6(c) of the Act for an order of the Commission exempting certain transactions from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 22(e), 26(a), 27(c)(1), and 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the transactions described in the application. All interestd persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant state that (i) the Variable Accounts serve as the investment media for the variable portion of certain fixed and variable annuity contracts ("Contracts"); (ii) an accumulation account will be established in the name of each contractowner; (iii) State Street Bank and Trust Co. ("Custodian") will hold the assets of the Variable Accounts; (iv) any assets of the Variable Accounts held pursuant to the book-entry system will be so held in conformance with the requirements of Rule 17f-4 under the Act; (v) a daily asset charge at an annual rate of 1.3% of the value of the Variable Accounts will be deducted for mortality and expense risks; (vi) Applicants will deduct an investment advisory fee equal to an effective annual rate of .50% of average daily net assets of Money Market Variable Account from that account and .75% of the average daily net assets of the other Variable Accounts from the respective accounts, (vii) the contract maintenance charge described below

will be deducted from a contract owner's accumulation account and upon annuitization from annuity payments; and (viii) the contingent deferred sales charge described below may also be deducted from accumulation accounts.

Applicants assert that they will deduct, during the accumulation period, an annual contract maintenance charge of $25 on the contract anniversary date and upon total redemption of the contract on other than a contract anniversary date. Additionally, if the annuity commencement date is a date other than the contract anniversary date, the contract maintenance charge will be deducted pro rata on the annuity commencement date to reflect the time elapsed between the last contract anniversary and the day before the annuity commencement date. Finally, the contract maintenance charge during the annuity period will be deducted pro rata from each annuity payment.

Applicants state that no contingent deferred sales charge is assessed against either purchase payments held by Sun Life (U.S.) for more than five years or 10% of purchase payments held less than five years. However, upon full or partial withdrawal of purchase payments held less than 5 years, a contingent deferred sales charge may be imposed upon purchase payments being withdrawn. All withdrawals will be treated as made on a first-in, first-out basis. If the sales charge is imposed, it is equal to (a) the amount withdrawn which is subject to the charge divided by 0.95 minus (b) the amount withdrawn which is subject to the charge. In no event shall the aggregate contingent deferred sales charge assessed against a contract exceed 9% of the aggregate purchase payment made under the contract. Finally, upon the death of the annuitant no contingent deferred sales charge is imposed upon withdrawals by the beneficiary.

Relief Requested

Applicants request an exemption from Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder to the extent deemed necessary or appropriate to impose the contingent deferred sales charge.

Applicants request an exemption from Sections 26(a) and 27(c)(2) to the extent deemed necessary or appropriate to impose the contract maintenance charge, daily asset charge, and investment advisory fee and to deduct premium taxes.

Applicants request an exemption from Sections 2(a)(32), 22(c), 26(a), 27(c)(1) and 27(d) of the Act and Rule 22c-1 thereunder to the extent deemed necessary or appropriate to allow Applicants to deduct the contract maintenance charge non pro rata at the time of a total redemption on a date other than the contract anniversary date.

Applicants request an exemption from Sections 26(a) and 27(c)(2) to allow the Custodian to hold the assets of the Variable Accounts pursuant to the book-entry system and not under an agreement of trust.

Texas Optional Retirement Program

Pursuant to Texas law, all Texas institutions of higher education make available to certain employees an Optional Retirement Program ("Program") funded through fixed or variable annuity contracts. As interpreted in an opinion by the Attorney General of Texas, certain 1973 amendments to the legislation establishing the Program now prohibit provisions in a fixed or variable contract issued in connection with the Program which provide for making available the redemption value of such contract prior to death, retirement or termination of employment in all institutions of higher education. Applicants request an exemption from Sections 22(e), 27(c)(1), and 27(d) to the extent deemed necessary or appropriate to allow Applicants to impose restrictions on redemption on the contracts issued to Program participants that are consistent with the Attorney General's interpretation.

Applicants represent that sales representatives will be instructed to inform prospective purchasers that withdrawal rights under the Program are restricted. Applicants will review any sales literature used to ensure that the restrictions on redemption are disclosed. Moreover, purchasers will be required to sign a statement acknowledging that they are aware of the restrictions. Finally, the prospectuses used will describe the restrictions on redemption.

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested party may, not later than November 16, 1982 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 shall be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. 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 its own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29902 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19172; File No. SR-CBOE-82-11]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1982, the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Chapter XXIV

Index Options

Introduction

The rules in this Chapter are applicable only to index options (options on indices of securities as defined below). The rules in Chapters I through XIX are also applicable to the options provided for in this Chapter. In some cases rules in Chapters I through

XIX are replaced or are supplemented by rules in this Chapter.

Rule 24.1 Definitions

(a) The term "put" means an option contract under which the holder of the option has the right, in accordance with the terms and provisions of the option, to sell to the Clearing Corporation the current index value times the index multiplier.

(b) The term "call" means an option contract under which the holder of the option has the right, in accordance with the terms of the option, to purchase from the Clearing Corporation the current index value times the index multiplier.

(c) The term "aggregate exercise price" means the exercise price of the option contract times the index multiplier.

(d) The term "exercise price" means the specified price per unit at which the current index value may be purchased or sold upon the exercise of the option.

(e) The term "underlying security" or "underlying securities" with respect to an index option contract means any of the stocks that are the basis for the calculation of the index.

(f) The term "index multiplier" means the amount specified in the contract by which the current index value is to be multiplied to arrive at the value required to be delivered to the holder of a call or by the holder of a put upon valid exercise of the contract.

(g) The term "current index value" means the level of the index that is derived from the current market prices of the stocks that are the basis of the index.

Rule 24.2 Designation of the Index

All of the stocks that are the basis for the calculation of the index need not meet the requirements in Rule 5.3. A particular index upon which options are traded must be approved by the Securities and Exchange Commission.

Rule 24.3 Dissemination of Information

(a) The Exchange shall disseminate or shall assure that the current index value is disseminated after the close of business and from time-to-time on days on which transactions in index options are made on the Exchange.

(b) The Exchange shall maintain, in files available to the public, information identifying the stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

Rule 24.4 Position Limits

(a) In determining compliance with Rule 4.11, index option contracts shall be subject to a contract limitation fixed by the Board, which shall not be larger than the equivalent of a $300 million position. For this purpose a position shall be determined by the product of the current index times the index multiplier times the number of contracts on the same side of the market.

(b) Option contracts on an index shall not be aggregated with option contracts on any stocks whose prices are the basis for calculation of the index.

Rule 24.5 Exercise Limits

Index option contracts shall not be subject to an exercise limit.

Rule 24.6 Reports Related to Position Limits

In determining compliance with Rule 4.13, the reporting threshold shall be contracts representing an underlying securities position valued at 10% of the position limit.

Rule 24.7 Trading Halts or Suspensions

Trading on the Exchange in any option shall be halted or suspended whenever trading in underlying stocks, whose weighted value represents more than 20% of the value of the current market index, are halted or suspended. Trading shall also be halted whenever the Exchange deems such action appropriate in the interests of a fair and orderly market and to protect investors. Among the factors that may be considered are the following:

(i) All trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;

(ii) The current calculation of the index derived from the current market prices of the stocks is not available; or

(iii) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

Trading in options of a class or series that has been the subject of a halt or suspension by the Exchange may resume if the Exchange determines that the conditions which led to the halt or suspension are no longer present and that the interests of a fair and orderly market are best served by a resumption of trading.

Rule 24.8 Meaning of Premium Bids and Offers

Bids and offers shall be expressed in terms of dollars and fractions or dollars and decimals per unit of the index (*e.g.*, a bid of 85½ and a bid of 85.50 would each represent a bid of $85.50 per unit).

Rule 24.9 Terms of Option Contracts

The Exchange shall determine fixed point intervals of exercise prices for call and put options.

Rule 24.10 Restrictions on Contracts

Contracts provided for in this chapter shall not be subject to the restriction in Rule 4.16, Interpretation and Policy .01.

Rule 24.11 Margin

(To be supplied.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) *Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change.* The option contracts covered by this rule-change filing will be very similar to the standardized stock option contracts now traded on CBOE and other national securities exchanges. Like stock options contracts, index options would be issued by the Options Clearing Corporation ("OCC"). Performance of each contract would be guaranteed by OCC as issuer. Standardization of contract terms would permit active trading of these contracts on CBOE as the secondary market, with OCC as the clearing house for all transactions.

The main difference between the index option and currently traded stock option products is that the index option would be settled upon exercise by the payment of cash and not by delivery of the securities which comprise the index. Because of the practical difficulties and transaction costs which delivery of the index components would entail, CBOE has fashioned its contract so that the writer of a call option contract, when called upon to deliver by an exercising holder, will deliver cash representing the difference between the closing value of the index on the date of exercise and the exercise price of the option.

At this time CBOE is requesting permission to list put and call options on the CBOE–100 Stock Index. The options on this index will have the following characteristics:

Underlying Index: The CBOE–100 Stock Index will serve as the underlying index for the index options. The index is

a broadly based, capitalization weighted index of 100 stocks on which options are listed on the CBOE. (The index is discussed in more detain under Rule 24.2)

Unit of Trading: Each index option contract will represent $500 (the multipler) times the current index value as derived from the current market prices of the stocks comprising the index. For example, an index of 50 will result in a dollar value of $25,000 ($500 ×.50).

Exercise Prices: Exercise prices will be set at five point intervals in terms of the current value of the CBOE–100 Index.

Aggregate Exercise Price: The multipler ($500) times the exercise price.

Expiration: Index options will be introduced expiring in the months of March, June, September and December for up to six (6) three-month expiration periods.

Premium Quotations: Option premiums will be expresed in terms of dollars and fractions per unit of the index. Each point will represent $500. The minimum fraction will be 1/16. For example, a premium of 1 1/16 will represent $531.25.

Position Limits: Index options contracts will be subject to limitation of a $300 million equivalent position in the securities underlying the index. For example, when the index is at 50, one option contract will represent a dollar value of $25,000 and the position limit will be 12,000 contracts.

If in the future it is determined that Dow-Jones & Company, Inc. does not have proprietary right in the averages it devises and publishes, CBOE will consider listing an option contract one or more of Dow-Jones averages.

In general, those who do a public business in index options will be subject to CBOE Chapter IX, "Doing Business with the Public." Chapter IX sets forth, in the context of equity options, such matters as the requirements for representatives and member organizations, supervision and opening of accounts and confirmations, statements and communications to customers. This is a the proper regulatory framework for index options because they are essentially a new variety of equity option. The mechanics of index options trading will be the same as that of equity options trading and the vocabulary will also be the same. The purposes of trading and basic trading strategies will be similar to those used with equity options. For example, buying index option calls would enable one to achieve leverage, limit risk or hedge a short portfolio position. There are two significant differences between equity options and index options. The first major difference is that at this time there is not a specific underlying instrument which could be used to obtain an exact cover position. The second major diffence involves the terms of index options, which will be similar to those used with equity options but for settlement upon exercise, which will occur through delivery of case rather than stock. Both of these differences are east to understand and will be addressed in the special risk disclosure document that will be distributed in connection with index options.

Rule 24.1 Definitions

In order to accomplish cash settlement Rules 24.1(a) and (b) redefine "put" and "call" to require delivery or receipt of cash rather than shares of stock. The terms "aggregate exercise price", "exercise price" and "underlying securities" are also redefined to account for the differences between this contract and stock option contracts.

The term "index multipler" is defined in Rule 24.1(f), although a specific number is not stated. The number that will be used with regard to a particular index will be supplied at the time SEC permission is sought (pursuant to Rule 24.2 as discussed below) to trade a particular index. The term "current index value" defined in Rule 24.1(g) means simply the day-to-day changing value of the index.

Rule 24.2 Designation of the Index

The rules proposed in this filing are designed to permit trading on CBOE of an option on the value of one or more indices of securities. At this time the Exchange intends to trade options based upon the CBOE–100 Stock Index.

The CBOE–100 Stock Index is a broadly based value weighted index of 100 stocks on which options are listed on the CBOE. The index was designed to reflect the performance of the stock market as measured by changes in the market prices of the individual stocks making up the index. Since each stock in the index is weighted by the market value of its shares outstanding, the index is extremely useful for measuring the performance of large portfolios. To compute the CBOE–100 Index the following formula is used:

$$\text{CBOE–100 Index} = \frac{\sum_{j=1}^{100} P_j S_j}{\sum_{j=1} P_{b,j} S_{b,j}} \times 50$$

where

P_j = the current market price of stock j.
S_j = the current number of shares of outstanding of stock j.
$P_{b,j}$ = the price of stock j on the base date.
$S_{b,j}$ = the number of shares of stock j outstanding on the base date.

As is evident from the equation above, each stock's current market price is multipled by its number of outstanding shares. The resulting market values are then added to determine the current aggregate market value of the 100 stocks included in the index. To arrive at the current index value, the aggregate market value is divided by the base value and mulitplied by 50. The CBOE–100 Index was set to equal 50 as of January 2, 1976, the start date of the index. Periodically, the base value needs to be adjusted to account for changes in capitalization as a result of mergers, acquisitions, stock rights, delisting, substitutions, etc. The adjustments are necessary to insure that events affecting the capitalization of any of the component stocks will not change the index value, and also to maintain the current index value comparability to the base value. Adjustments to the base value have been and will continue to be made using the following formula:

$$NBV = OBV \times \frac{NMV}{OMV}$$

where

NBV = new base value
OBV = old base value
NMV = new market value
OMV = old market value

To illustrate how an adjustment to the base value is made, assume that as a result of adding a stock as a replacement for a delisted stock, the current aggregate market value increases from $770 million to $777.7 million (up $7.7 million). If the old base value is $700 million, the new base value would equal $707 million ($707 million × (777.7/770)).

The CBOE–100 Stock Index value would then be 55 (777.7/707 x 50) which is equal to the index value before the adjustment (770/700 x 50). Therefore, as is shown above, the index value is not affected by changes in the composition of stocks making up the index or by changes due to recapitalization.

Correlation analysis over the period January 2, 1976 through May 7, 1982 yields CBOE–100 Stock Index daily returns correlation coefficients of 0.975 with the S&P 500 and 0.950 with the Dow Jones Industrial Average. CBOE makes no representation as to the future correlation of the CBOE 100 Stock Index with these or any other indices.

Rule 24.3 Dissemination of Information

At the present time, CBOE intends to calculate and disseminate the current index value every fifteen (15) minutes. CBOE will have the capacity to increase the frequency of the calculation up to a real-time basis, and will increase the frequency if there is a request from those who trade the option or if market conditions make it reasonable to increase the frequency.

Rule 24.4 Position Limits

CBOE believes it is appropriate to limit permissible positions in order to deter persons from dominating the options market.

Rule 24.5 Exercise Limits

CBOE believes that exercise limits are not necessary in the context of options that are settled with cash. Because the deliverable supply is available currency, it does not seem possible for the price of dollars to be changed by options positions of less than $300 million being exercised against short writers. Similarly, it does not seem possible to squeeze the market by staying in it as a long when the deliverable supply is scarce because cash is the deliverable supply, or is it possible to corner the supply of United States currency through the index option market.

For these reasons the Exchange proposes to not have an exercise limit for index options.

Rule 24.6 Reports Related to Position Limits

The reporting threshold has been set at 10% of the position limit for index option contracts. The Exchange will consider revising this standard after it has gained experience in trading index options.

Rule 24.7 Trading Halts or Suspensions

It would be inappropriate for the index option contract to be traded if the current calculation of the index is not available. Accordingly, the Exchange intends to halt trading if the current index option value is not available and under other unusual circumstances. The Exchange may permit trading to resume when it determines that such resumption would best serve the interests of a fair and orderly market.

Rule 24.8 Meaning of Premium Bids and Offers

The Exchange anticipates that bids and offers will be expressed in the same terms that are used to express the current calculation of the index. This does not affect the unit of trading that is covered by an option contract. That is determined by the index multiplier. This method is designed for ease of understanding by public investors.

Rule 24.9

At the time CBOE seeks Commission approval to trade a particular index option contract, it will establish exercise price intervals. The Board of Directors may from time-to-time vary the price intervals. One factor that may be considered is the volatility of the index.

Rule 24.10 Restrictions on Contracts

This rule provides that if a security that is a part of the group that is the basis for calculation of the index becomes subject to a stabilizing bid during a distribution, the contract provided for in this chapter need not necessarily be restricted as would an option on the security under Rule 4.16. Under this circumstance, the Exchange will consider whether it is appropriate to suspend trading pursuant to Rule 24.7.

The basis under the Securities Exchange Act of 1934 (the Act) for the proposed rules change is Section 6(b)(5) in that the proposed changes are designed to facilitate transactions in options on a stock index or indices and to bring such transactions within the regulatory framework of the Act and CBOE's own rules.

(B) *Self-Regulatory Organization's Statement on Burden on Competition.* The Exchange does not believe the proposed rule change will impose any burden on competition.

(C) *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others.* Comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 22, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29904 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-19163; File No. SR-PHLX-82-4]

Self-Regulatory Organizations; Proposed Rule Change By Philadelphia Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 5 U.S.C. 78s(b)(1), notice is hereby given that on August 27, 1982, the Philadelphia Stock Exchange filed with the Securities and Exchange Commission the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc., (PHLX) proposes amendments to its Certificate of Incorporation, By-Laws and Rules to define and to standardize the methods by which title to memberships (seats) may be held; to implement a program for the leasing of memberships and to clarify the use of ABC Agreements relating to memberships; and to achieve certain

objectives relating to the use of memberships and the satisfaction of members debts.

Legal title to a membership in the PHLX, *i.e.*, the membership privilege, franchise or access, may be held only by an individual natural person (except for a wholly-owned subsidiary of the Exchange) who becomes an Exchange member and who confers membership privileges upon a broker-dealer partnership or corporation with which he is affiliated by registering it as a member organization with the Exchange. Equitable title to a membership represents the property interest in the membership, *i.e.*, the interest of the entity or person who provided the financial means to purchase the membership. A person who holds only equitable title to a membership is not a member or member organization of the PHLX.

Legal and equitable title to a membership may be held by the same natural person, in which case title and use agreements are not needed. However, legal and equitable titles to memberships may be held by different persons or entities, some of whom are affiliated and others of whom are unaffiliated. The amendments will define and standardize the terminology of the Lease or the ABC Agreement which will reflect such divisions of title.

Under present By-Law XV, upon any transfer of a membership or pursuant to a sale by the Committee on Admissions, the proceeds thereof are first to be applied to satisfaction of the debts owed by the transferor member and his affiliated member organization to the Exchange, certain clearing corporations, and other members and member organizations. Under prevailing agreements, since legal title to a membership may be transferred without a corresponding transfer of equitable title to the membership, the transfer of legal title may take place without payment of any proceeds. Thus, even though equitable owners have agreed to subordinate their claims to the membership, as well as proceeds from the sale thereof, to the creditors specified under By-Law XV, there is currently no ready mechanism at hand to cause a sale to obtain proceeds for satisfaction of the debts of such creditors, or to provide otherwise therefor, when only legal title to a membership changes hands without a corresponding change of equitable title to the membership. The amendments will provide for remedies for the satisfaction of members' debts during the transfer of a membership in the case of a membership subject to a lease or ABC agreement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in secitons (A), (B), and (C), below, of the most significant aspects of such statements.

A. *Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for the Proposed Rule Change.* The rule changes are designed to implement a program to standardize the terminology, substantive requirements, and procedures for agreements relating to the use of legal and equitable titles to memberships subject to a lease or ABC agreement.

The proposed rule changes would also provide the means for creditors specified in Article XV to look to the membership for satisfaction of their claims when transfer of legal title is contemplated without a corresponding transfer of equitable title and related payment of proceeds. If there are unpaid claims against a membership when a lease or ABC agreement relating to the membership is terminated and transfer of legal title is pending, the Exchange will be empowered to sell the membership to satisfy such claims from the proceeds of this sale. Naturally, if such claims were satisfied from other sources, the transfer of legal title without further consideration of these claims would be allowed.

Other proposed rule changes would define and authorize the use of ABC and lease agreements, require the posting of transfers of legal and equitable title, prohibit transfers of legal titles unless all claims filed against a membership pursuant to certain By-law provisions are resolved, and grant recognition to a member's agreement to sell his seat for the benefit of his creditors, subject to the claim priorities under By-law XV.

The proposed rule changes would also affirm that the lessee is accorded all the rights and privileges of a PHLX member except the right to vote on a compromise or arrangement with Exchange creditors or on a subsequent reorganization, or the right to share in the PHLX's assets upon its dissolution. These latter rights would remain in the lessor. The terms lessor, lessee and approved person would be defined, as would also the terms of a sale and subordination agreement which would recognize and implement the PHLX's right to sell the membership subject to lease under certain circumstances.

The basis for the proposed rule changes under the Act includes Sections 6(b)(1), 6(b)(2), and 6(b)(5). The application of Section 6(b)(8) is discussed in Subsection B hereof.

The proposed rule changes require members holding memberships subject to a lease or an ABC agreement to comply with PHLX rules requiring satisfaction of financial obligations arising out of fines incurred in disciplinary proceedings or out of transactions or dealings in the securities business. They are intended to facilitate the protection of members, creditors, investors and the PHLX in the light of the purposes of such provisions as Sections 6(c)(3)(A) and 6(d)(3)(B) of the Act. They also facilitate the admission to membership of any registered broker or dealer or natural person associated with a registered broker or dealer by eliminating existing confusion relating to procedures and substantive requirements attendant to an application for membership which is to be subject to a lease or an ABC agreement.

The proposed rule changes are designed to standardize applicable procedures and requirements concerning the establishment and use of lease or ABC agreements in connection with the acquisition of memberships. Hence, they would remove impediments to and perfect the mechanism of a free and open market and a national market system. They would also protect investors since they establish certain means to assure members' satisfaction of their financial obligations.

B. *Self-Regulatory Organization's Statement on Burden on Competition.* The proposed rule changes do not impose any burden on competition. The proposed rule changes would, however, eliminate any burden currently created by the absence of any delineated procedures and substantive requirements for a person who wishes to lease a membership or to enter into an ABC agreement or for an existing member who wishes to lease his membership, or to transfer a membership subject to an ABC agreement, to another person. Moreover, to the extent any burden is placed on members and other creditors specified in Article 15–3 who are unable to receive satisfaction of financial obligations of a member who holds a

leased membership or a membership subject to an ABC agreement, the proposed rule changes would facilitate the resolution of such obligations and would relieve any related impact on the creditors' financial condition.

C. *Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.* No comments have been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and coping at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 21, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-29903 Filed 10-29-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Change of Name of Approved Trustee

Notice is hereby given that effective January 4, 1982, St. Louis Union Trust Company, St. Louis, Missouri, an approved Trustee pursuant to Pub. L. 89-346, changed its name to Centerre Trust Company of St. Louis.

Dated: October 21, 1982.

By Order of the Maritime Administrator.

Robert J. Patton, Jr.,

Secretary.

[FR Doc. 82-29814 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-81-M

[Docket No. S-722]

Crowley Maritime International, Inc. and Holiday Inns, Inc.; Application for Approval of Stock Transfer; Extension of Comment Period

A notice was published in the **Federal Register** (47 FR 46406) on October 18, 1982, for the purpose of noticing for public comment applications filed by Crowley Maritime International, Inc. (CMI) and Holiday Inns, Inc. (Holiday) dated September 1, 1982, as amended, and September 3, 1982, respectively, for approval by the Maritime Administration of the transfer of stock of Delta Steamship Lines, Inc. (Delta) by Holiday to CMI. CMI's application contemplates that, simultaneously with CMI's acquistion of all of Delta's stock, the Operating-Differential Subsidy Agreements between Delta and the United States will be terminated and that the United States will make specified lump sum payments in installments over a period of time.

Comments on the applications were to be submitted not later than October 28, 1982. We have received requests to extend the comment period to November 16, 1982. After consideration of said requests, it has been decided to extend the comment period to November 5, 1982. Interested parties who desire to comment on CMI's and Holiday's applications may submit their views thereon to the Secretary, Maritime Subsidy Board, in triplicate, on or before November 5, 1982. All timely responses will be considered in the Maritime Administration's evaluation of these applications.

(Catalog of Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS))

By Order of the Maritime Subsidy Board/ Maritime Administration.

Dated: October 26, 1982.

Georgia P. Stamas,

Assistant Secretary.

[FR Doc. 82-29815 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

[Docket No. IP82-1; Notice 2]

National Coach Corp.; Denial of Petition for Inconsequential Noncompliance

This notice denies the petition by National Coach Corporation of Gardena, California to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for a defect in certain of its buses that it deems is safety-related. The basis of the petition was that the defect is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on January 28, 1982, and an opportunity afforded for comment (47 FR 4190).

National manufactured 116 "Escort" buses from May 1980 to June 1981 with seating capacities of 17 and 20 passengers. Its design incorporated a wheelbase that is short relative to the vehicle's overall length which would result in an overloading of the rear axle if the bus is loaded to its full complement of passengers. The rear gross axle weight rating (RGAWR) required by 49 CFR 567.4(g)(4) to be on the vehicle's certification label, was stated at 7,400 pounds for both types of Escorts. The buses should have been equipped with rear axles rated either 7,840 pounds or 8,220 pounds, depending on the vehicle and equipment involved. In no instance, however, would the overall gross vehicle weight rating be exceeded if the buses were fully loaded.

The petitioner made several arguments in support of its contention that the erroneous RGAWR figure is inconsequential as it relates to motor vehicle safety. First, over 72 percent of the vehicles are used either as demonstrators or in airports in shuttle service (average load of 9 passengers per vehicle) and this actual load level does not approach the maximum stated capacity. A complement of 15 passengers is required to approach an overloading of the rear suspension. Because of the type of service involved, the buses are operated at low speeds

and away from regular highway traffic. Further, National said that the values assigned to indicate the suspension system capacity are not the product of a stress-to-limit test but usually include a substantial safety factor. The rating, therefore, is indicative of an acceptable tolerance level rather than an ultimate limit of capacity. National stated that its rear suspension system can "most probably" sustain weights "substantially" in excess of the stated RGAWR and any overloading would be temporary and would not create a hazard; no complaints have been received to date.

Two comments were received on the petition, submitted by Wayne Corporation, a bus manufacturer, and Minnesota Body and Equipment Company, a bus distributor. Both comments recommended denial of the petition. National submitted a rebuttal of the comments.

NHTSA's Office of Defects Investigation has conducted a number of investigations concerning overloading of suspension components in buses, vans, and recreational vehicles. These investigations have resulted in notification and remedy campaigns to upgrade suspension components for adequate load carrying capability. Not only does overload affect a vehicle's handling ability, it affects the tires as well. Tires on a particular axle should have sufficient load capacity to handle to maximum expected load on that axle. NHTSA research has shown that overloaded tires cannot generate the required cornering forces during accident avoidance maneuvers. The proper cure is to redistribute some of the load to the front axle, increase the load carrying capacity of the rear suspension and tires, and increase the front roll stiffness so that a greater portion of the vehicle full movement is reacted on the front axle, thereby decreasing the maximum dynamic normal load on the outside rear tires.

Furthermore, although the current users of the "Escort" buses may be aware of the possibility of overloading, it is not likely that subsequent purchasers of the bus would be cognizant of the condition. National does not believe that the way its vehicles are utilized will create a safety problem, and in its experience the useful life of vehicles employed in this manner is from two to three years.

In view of the fact that other manufacturers similarly affected have recalled vehicles in the past, and of the potential effect of overload upon the safety-related components involved, the National Highway Traffic Safety Administration has concluded that petitioner has failed to meet its burden of persuasion and its petition is denied.

The engineer and attorney responsible for this notice are James Thomas and Taylor Vinson, respectively.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 22, 1982.

Lynn L. Bradford,

Associate Administrator for Enforcement.

[FR Doc. 82-29906 Filed 10-29-82; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

[Notice 82-7]

Senior Executive Service Performance Review Boards (PRB); Membership List

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act (CSRA).

FOR FURTHER INFORMATION CONTACT: Robert S. Smith, Director, Office of Personnel and Training, and Executive Secretary, DOT Executive Resources Board, (202) 426-4088.

SUPPLEMENTARY INFORMATION: The CSRA of 1978, which created the Senior Executive Service, requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, CSRA requires each agency to establish one or more PRB's, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRB's.

Issued in Washington, D.C., on October 25, 1982.

Robert L. Fairman,

Assistant Secretary for Administration.

Department of Transportation

Senior Executive Service

Performance Review Boards

Office of the Secretary

James L. McInerney, Special Assistant to the Deputy Secretary
Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement
Barclay W. Webber, Assistant General Counsel for Environmental, Civil Rights and General Law
Katherine M. Anderson, Director, Executive Secretariat
Wiliam H. FitzGerald, Jr., Director, Office of Budget
Charles Swinburn, Deputy Assistant Secretary for Policy and Program Development
Vance Fort, Director, Office of International Policy and Programs
Richard F. Walsh, Director, Office of Economics
B. Kelley Andrews, Director, Office of Intergovernmental Affairs
Angelo P. Picillo, Deputy Director, Office of Installations and Logistics
Gail T. Young, Director, Office of Financial Management
Diane K. Steed, Deputy Administrator, National Highway Traffic Safety Administration
Charles E. Weithoner, Associate Administrator for Administration, Federal Aviation Administration
Thomas A. Till, Deputy Administrator, Federal Railroad Administration

Inspector General

Karen S. Lee, Deputy Assistant Secretary for Administration, Office of the Secretary
James L. McInerney, Special Assistant to the Deputy Secretary, Office of the Secretary
Donald R. Trilling, Executive Assistant to the Deputy Secretary, Office of the Secretary
Joseph A. Sickon, Inspector General, General Services Administration
Wallace Busbee, Executive Assistant to the Inspector General, Veterans Administration
Raymond F. Randolph, Assistant Inspector General for Auditing, Small Business Administration

United States Coast Guard

RADM Richard P. Cueroni, Chief, Office of Personnel
RADM William P. Kozlovsky, Comptroller
RADM Bobby F. Hollingsworth, Chief, Office of Marine Environment and Systems
Karen S. Lee, Deputy Assistant Secretary for Administration, Office of the Secretary
James G. Gross, Deputy Associate Administrator for Research and Development, Maritime Administration
Leon C. Watkins, Director, Office of Civil Rights, Federal Aviation Administration
Courtney M. Price, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration

Federal Aviation Administration

Albert P. Albrecht, Associate Administrator for Engineering and Development
Paul K. Bohr, Director, Great Lakes Region
Joseph M. Del Balzo, Director, Eastern Region
Benjamin Demps, Jr., Director, Aeronautical Center
Robert L. Faith, Director, Alaskan Region
Charles R. Foster, Director, Northwest Mountain Region
Jonathan Howe, Director, Southern Region

Walter S. Luffsey, Associate Administrator for Aviation Standards
Homer C. McClure, Director, Western-Pacific Region
Clarence R. Melugin, Jr., Director, Southwest Region
John E. Murdock, III, Chief Counsel
Donald R. Segner, Associate Administrator for Policy and International Aviation
William F. Shea, Associate Administrator for Airports
Murray E. Smith, Director, Central Region
Leon C. Watkins, Director, Office of Civil Rights
Charles E. Weithoner, Associate Administrator for Administration
Robert E. Whittington, Director, New England Region
Raymond J. VanVuren, Director, Air Traffic Service
Franklin K. Willis, Deputy Assistant Secretary for Planning and Policy Analysis, Office of the Secretary
Linda J. Gosden, Director, Office of Public Affairs, Office of the Secretary

Federal Highway Administration

Daniel Markoff, Associate Administrator for Adminstration
Marshall Jacks, Jr., Associate Administrator for Safety
Edwin M. Wood, Associate Administrator for Research, Development and Technology
M. Eldon Green, Regional Federal Highway Administrator, Region 10
Richard B. Robertson, Associate Administrator for Planning and Policy Development
Donald L. Ivers, Chief Counsel
Wesley S. Mendenhall, Jr., Regional Federal Highway Administrator, Region 6
Katherine M. Anderson, Director, Executive Secretariat, Office of the Secretary

Federal Railroad Administration

Thomas A. Till, Deputy Administrator
Charles Swinburn, Deputy Assistant Secretary for Planning and Policy Development, Office of the Secretary
Gail T. Young, Director, Office of Financial Management, Office of the Secretary
Harold B. Williams, Deputy Associate Administrator for Management and Demonstrations, Urban Mass Transportation Administration
John H. Broadley, General Counsel, Interstate Commerce Commission

National Highway Traffic Safety Administration

Diane K. Steed, Deputy Administrator
Courtney M. Price, Associate Administrator for Rulemaking
Michael M. Finkelstein, Associate Administrator for Research and Development
Barry I. Felrice, Associate Administrator for Plans and Programs
J. Kenneth Klinge, Special Assistant to the Secretary, Office of the Secretary

Urban Mass Transportation Administration

Thomas R. Hunt, Associate Administrator for Administration
Robert H. McManus, Associate Administrator for Grants Management
Harold B. Williams, Deputy Associate Administrator for Management and Demonstrations
Raymond J. Sander, Executive Director
Lawrence L. Schulman, Deputy Associate Administrator for Budget and Policy
Richard E. Bowman, Chief, Transportation Operations Division, Office of the Secretary
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Katherine M. Anderson, Director, Executive Secretariat, Office of the Secretary
Charles F. Bingman, Special Assistant to the Deputy Secretary, Office of the Secretary
Kevin E. Heanue, Director, Office of Highway Planning, Federal Highway Administration

Research and Special Programs Administration

Leon D. Santman, Director, Materials Transportation Bureau
James Costantino, Director, Transportation Systems Center
William J. Driscoll, Chief Counsel
Lloyd J. Money, Director, Office of University Research
Charles F. Bingman, Special Assistant to the Deputy Secretary, Office of the Secretary
Carolina L. Mederos, Director, Office of Programs and Evaluation, Office of the Secretary

Maritime Administration

Howard A. Watters, Deputy Administrator (Inland Waterways and Great Lakes)
Stuart R. Breidbart, Chief Counsel
Russell F. Stryker, Jr., Associate Administrator for Policy and Administration
Gerard E. Neumann, Associate Administrator for Maritime Aids
Thomas W. Pross, Director, Office of Shipbuilding Costs
James G. Gross, Deputy Associate Administrator for Research and Development
Franklin K. Willis, Deputy Assistant Secretary for Planning and Policy analysis, Office of the Secretary
Charles Swinburn, Deputy Assistant Secretary for Policy and Program Development, Office of the Secretary
B. Kelley Andrews, Director, Office of Intergovernmental Affairs, Office of the Secretary
William T. Hudson, Director, Office of Civil Rights, United States Coast Guard

[FR Doc. 82-29345 Filed 10-29-82; 8:45 am]
BILLING CODE 4910-62-M

DEPARTMENT OF TREASURY

Public Information Collection Requirements Submitted to OMB for Review

During the period October 15 through October 21, 1982 the Department of Treasury submitted the following public information collection requirements to OMB, for review and clearance under Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained from the Treasury Department clearance Officer, by calling (202) 634-2179. Comments regarding these information collections should be addressed to the Treasury Reports Management Officer, Information Resources Management Division, Room 309, 1625 I St. NW., Washington, D.C. 20220; *and* to the OMB reviewer listed at the end of entry.

Date Submitted: October 19, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: 1545-0644.
Form Number: 6781.
Type of Submission: Revision.
Title: Gains and Losses from Commodity Futures Contracts and Straddle Positions.
Purpose: Form 6781 is used by taxpayers in computing their gains and losses from regulating futures contracts and straddle positions and its special tax treatment. The data is used to verify that the tax reported accurately reflects any such gains or losses.
OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: October 19, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: N/A (new submission).
Form Number: 8013.
Type of Submission: New.
Title: Radio Informercials Bounce Back Card.
Purpose: Informercials are public announcements of approximately 2-4 minutes in length, providing taxpayers with tax information and assistance. The bounce back card will provide feedback enabling us to target our future informercials to meet the needs of affected audiences.
OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.
Submitting Bureau: Internal Revenue Service.
OMB Number: N/A (new submission).
Form Number: 8012.
Type of Submission: New.
Title: Television Informercials Bounce Back Card.
Purpose: Informercials are public announcements of approximately 2-4 minutes in length, providing taxpayers with tax information and assistance. The bounce back card will provide feedback enabling us to target our future

informercials to meet the needs of affected audiences.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Date Submitted: October 19, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0086.

Form Number: 1040C.

Type of Submission: Revision.

Title: U.S. Departing Alien Income Tax Return.

Purpose: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire taxable year determined as nearly as possible the date of intended departure. The data collected is used to insure that the departing alien has no outstanding U.S. tax liability.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

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Date Submitted: October 15, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1545-0160.

Form Number: ATF F 3020(5130.20).

Type of Submission: Extension.

Title: Transfer of Concentrate Produced from Beer.

Purpose: Form is necessary to document a shipment on beer concentrate in bond between brewers. Describes the shipping and receiving brewers, amount of beer concentrate involved and shipping containers sent and received and certification by the brewers of the shipment. Form is used to account for beer concentrate in bond by both the brewers and ATF.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 18, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1512-0135.

Form Number: ATF F 5110.37.

Type of Submission: Extension.

Title: Storages Summary Account.

Purpose: Form is necessary to determine the movement of spirits into and out of storage account of a distilled spirits plant. Describes by class and type of spirits in the container sizes, the amount of proof gallons, the related transaction forms showing entry and removals and at certain times a balancing for the on-hand amount of the spirit.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.

Submitting Bureau: U.S. Customs Service.

OMB Number: 1515-0065.

Form Number: CF 7501, 7501-A, 7501-B and 7501-C.

Type of Submission: Revision.

Title: Entry Summary; Entry Summary-Permit; Entry Summary Continuation Sheet; Entry Summary Permit Continuation Sheet.

Purpose: A document which specifically describes and identifies imported merchandise entered into the commerce of the U.S. shows the amount of duties/taxes paid, provides statistical data for Census, and becomes a permanent record to which other pertinent documents may be attached for Customs/broker/importer/other agency use. It is a recordkeeping requirement pursuant to 19 CFR 162.1c with a retention period of 8 years from date of entry of merchandise.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 19, 1982.

Submitting Bureau: Comptroller of the Currency.

OMB Number: 1557-0081.

Form Number: FFIEC 010, 011, 011J, 012, 013, 014, 015, 0135; FDIC 8040/52, 8040/58.

Type of Submission: Revision.

Title: Interagency Call Report.

Purpose: To collect additional data from all national banks bearing directly on assessing their safety and soundness.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1512-0390.

Form Number: ATF F 5020.29.

Type of Submission: Extension.

Title: Request for Disposition of Offense.

Purpose: When an applicant applies for a license or permit and the applicant has an arrest record (charged with a violation of Federal or State law) there is no record present of the disposition indicating the arrest record. This form is sent to the custodian of records to ascertain the disposition of the case records. The information is needed to determine if the applicant is eligible to receive the license or permit.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Alcohol, Tobacco and Firearms.

OMB Number: 1512-0128.

Form Number: ATF F 3066 (5210.10).

Type of Submission: Extension.

Title: Record of Small and Large Cigars and Cigarettes.

Purpose: Form is necessary for tobacco products manufacturers whose commercial records are inadequate to protect the revenue on taxable products. On a daily basis this form describes the receipt, manufacture, and disposition of cigarettes and small and large cigars by a tobacco products manufacturer. Serves as a basis for accounting by ATF and manufacturer.

OMB Reviewer: Suzann Evinger (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: N/A (New submission).

Form Number: None.

Type of Submission: New.

Title: Questionnaire for Computer Prepares.

Purpose: The Service is currently studying the use of optical character recognition and magnetic tape as substitute methods for entering tax return data into IRS computers. The Government could save significant resources if our present data entry operation could be enhanced by more direct entry. The results of the questionnaire will help IRS better understand the technology used by return preparers and its application to IRS processing.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0047.

Form Number: 990 and Schedule A.

Type of Submission: Revision.

Title: (1) Return of Organization Exempt from Income Tax; (2) Organization Exempt Under 501(c)(3).

Purpose: Form 990 is needed to determine that IRC section 501(a) exempt organizations fulfill the

operating conditions of their tax exemption. Sch. A (Form 990) is used to elicit special information from section 501(c)(3) organizations. IRS uses the information from these forms to determine if the filers are operating within the rules of their exemption.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

* * * * *

Date Submitted: October 20, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1545-0130.

Form Number: 1120S, Schedules D and K-1.

Type of Submission: Revision.

Title: U.S. Small Business Corporation Income Tax Return, Capital Gains and Losses.

Purpose: Form 1120S, Schedule D (Form 1120S), and Schedule K-1 (Form 1120S) are used by a Subchapter S corporation to figure its taxable income, undistributed taxable income, and other tax-related information. Copy B of Schedule K-1 (Form 1120S) is given to shareholders of the corporation to assist them in preparing their separate income tax returns. IRS uses the information to determine the correct tax.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

* * * * *

Date Submitted: October 21, 1982.

Submitting Bureau: Internal Revenue Service.

OMB Number: 1510-0187.

Form Number: 4835.

Type of Submission: Revision.

Title: Farm Rental Income and Expenses and Summary of Gross Income from Farming and Fishing.

Purpose: Form 4835 is attached to Form, 1040 for use by landowners (or sub-lessors) to report farm, rental income based on crops or livestock produced by the tenant where the landowners (or sub-lessors) do not materially participate in the operation or management of the farm. The data is used to determine whether the proper amount of rental income has been reported.

OMB Reviewer: Michael Abrahams (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Joy Tucker,

Departmental Reports Management Officer.

October 26, 1982.

[FR Doc. 82-30004 Filed 10-27-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF THE TREASURY

National Productivity Advisory Committee; Meeting

October 19, 1982.

The Subcommittee on the Role of Government in the Economy of the National Productivity Advisory Committee will hold a meeting on November 3, 1982 from 2:00 p.m. until 4:00 p.m. at the Continental Illinois Center (Third Floor), 520 Madison Avenue, New York, New York.

The purpose of the meeting will be to discuss ways in which changes in government policy can improve national productivity.

Roger B. Porter,

Executive Secretary, National Productivity Advisory Committee.

[FR Doc. 82-30000 Filed 10-29-82; 8:45 am]

BILLING CODE 4810-25-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 211
Monday, November 1, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., November 9, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., 5th floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Final rules on options on physicals.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-1571-82 Filed 10-28-82; 11:35 am]

BILLING CODE 6351-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From October 28th Open Meeting

The following item has been deleted at the request of the Office of Commissioner Rivera from the list of agenda items scheduled for consideration at the October 28, 1982 Open Meeting and previously listed in the Commission's Notice of October 21, 1982.

Agenda, Item Number, and Subject

General—1—Title: Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979. Summary: The FCC will consider amendment of Part 2 of its Rules to implement domestically the radio frequency spectrum allocations adopted by the 1979 World Administrative Radio Conference.

Issued: October 27, 1982.

William K. Tricarico,

Secretary, Federal Communications Commission.

[S-1569-82 Filed 10-28-82; 10:02 am]

BILLING CODE 6712-01-M

3

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NO. 1554.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, November 4, 1982, at 10:00 a.m.

CHANGE IN MEETING: The following matter has been deleted for the meeting of this date:

Draft advance notice of proposed rulemaking—Party Committee expenditure limitations (11 C.F.R. 110.7).

The following matter has been added for the meeting of this date:

Proposed revisions to the Presidential Primary Matching Fund Regulations and related sections.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer, Telephone: 202-523-4065.

[S-1576-82 Filed 10-28-82; 3:45 pm]

BILLING CODE 6715-01-M

4

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10 a.m., Thursday, November 4, 1982.

PLACE: Board Room, 6th Floor, 1700 G St, NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Lockwood (202-377-6679).

MATTERS TO BE CONSIDERED:

Request for Approval of Additional Suretyship Authority—First Federal Savings and Loan Association, Warner Robins, Georgia.

Request for Extension of Time To Open a Branch Office—Fulton Federal Savings and Loan Association, Atlanta, Georgia.

Request for Modification of Insurance Condition—Sentry Savings and Loan Association, Stamford, Connecticut.

Application for Bank Membership—Dollar Savings and Loan Association of New York, Bronx, New York.

No. 74, October 28, 1982.

[S-1570-82 Filed 10-28-82; 11:35 am]

BILLING CODE 6720-01-M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, October 28, 1982.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Florence Mining Company, Docket No. PITT 75-15, etc., (IBMA 77-32); Motion for reconsideration. (Issues include whether the Commission should reconsider its decision in this case issued August 31, 1982).

It was determined by a unanimous vote of Commissioners that Commission business required that a meeting be held on this item and that no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632.

[S-1574-82 Filed 10-28-82; 3:45 pm]

BILLING CODE 6735-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 3, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Joseph W. Herman v. Imco Services, Docket No. WEST 81-109-DM. (Issues include whether judge properly dismissed the discrimination complaint.)
2. Thompson Brothers Coal Company, Docket No. PENN 81-171; Petition for Discretionary Review. (Issues include whether the judge properly found a violation of 30 CFR 77.400(a).)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

[S-1575-82 Filed 10-28-82; 3:45 pm]

BILLING CODE 6735-01-M

7

[USITC SE-82-47]

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, November 10, 1982.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Certain vertical milling machines (Docket No. 885).
5. Investigations 731-TA-113/114 [Preliminary] (Carbon Steel Wire Rod from Brazil and Trinidad and Tobago)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1573-82 Filed 10-28-82; 3:26 pm]

BILLING CODE 7020-02-M

8

NUCLEAR REGULATORY COMMISSION.

DATE: Week of November 1, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED:

Tuesday, November 2

2:00 p.m.—Options Regarding High Level Waste Rule—Technical Criteria (Part 60) (Public Meeting).

Wednesday, November 3

10:00 a.m.—Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 and 6).

2:00 p.m.—Discussion of Order in Waste Confidence Proceeding (Closed—Exemption 10).

Thursday, November 4

3:30 p.m.—Affirmation/Discussion and Vote (Public Meeting): a. NRDC and Sierra Club "Petition to the Commissioners to Exercise Their Inherent Supervisory Authority to Delineate the Scope of the LWA Proceeding for the Clinch River Breeder Reactor."

ADDITIONAL INFORMATION: On October 21 the Commission voted 5–0 to hold Discussion of Management-Organization and Internal Personnel Matters, held that day.

On October 21 the Commission voted 5–0 to hold Discussion of Pending Adjudicatory Matters in Diablo Canyon Proceeding (Closed—Exemption 10), scheduled to be held on October 29.

On September 23 the Commission voted 4–0 (Commissioner Roberts not present) to hold Discussion of Management-Organization and Internal Personnel Matters (Closed—Exemptions 2 & 6), scheduled to be held on October 29.

Automatic telephone answering service for schedule update: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

October 26, 1982.

[S-1577-82 Filed 10-28-82; 3:47 pm]

BILLING CODE 7590-01-M

9

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published).

STATUS: Closed meeting.

PLACE: Room 6059, 450 5th Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, October 19, 1982.

CHANGES IN THE MEETING: Additional item.

The following additional item will be considered at a closed meeting scheduled for Wednesday, October 27, 1982, at 10:00 a.m.

Freedom of Information Act appeal.

Chairman Shad and Commissioners Evans, Longstreth and Treadway determined by vote that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Catherine McGuire at (202) 272-3085.

October 27, 1982.

[S-1572-82 Filed 10-28-82; 11:35 am]

BILLING CODE 8010-0-M

federal register

Monday
November 1, 1982

Part II

Interstate Commerce Commission

Revision and Redesignation of the Rules of Practice

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 55 (Sub-55)]

Revision and Redesignation of the Rules of Practice

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Interstate Commerce Commission adopts its proposed revision and redesignation of all its procedural regulations governing the conduct of formal and informal cases which come before it for decision. (The prior notice of proposed rulemaking appeared at 47 FR 28115, June 29, 1982.) The purpose of this revision and redesignation is to bring the arrangement of the procedural regulations into conformity with the recodified Interstate Commerce Act (49 U.S.C. 10101 et seq.); to simplify our regulations, and to make the regulations easier to locate and to be used by persons practicing before the Commission.

EFFECTIVE DATE: November 1, 1982.

ADDRESSES: To purchase a copy of this decision contact: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT:
James H. Bayne, 202-275-7429
or
Kathleen M. King, 202-275-0956

SUPPLEMENTARY INFORMATION: On June 29, 1982, the Commission instituted this proceeding by issuing a notice of proposed rulemaking [47 FR 28115] to revise and redesignate the Commission's Rules of Practice.

Comments on our proposal were submitted by American Trucking Associations, Inc., (ATA); Arsham & Keenan (Arsham); Association of American Railroads (AAR); Association of Interstate Commerce Practitioners (Practitioners); Consolidated Rail Corporation (Conrail); Department of the Army; Grain Processing Corporation; Greyhound Lines, Inc.; McCarthy, Sweeney & Harkaway, PC (McCarthy); Slover and Loftus (Slover); Motor Carrier Lawyers Association (MCLA); Regular Common Carrier Conference of the American Trucking Associations, Inc. (RCCC); jointly South Carolina Public Service Authority, Systems Fuels, Inc., Arkansas Power & Light Company and Public Service Company of Indiana, Inc. (South Carolina); Verner, Liipfert, Bernhard and McPherson, Chartered (Verner); Joseloff, Joseloff & Cramer (Joseloff). Three individuals, Herbert Dubin, Esquire, Arthur L. Moon; and George H. Morin, Registered Practitioner, separately submitted comments on their own behalf.

All the commentors generally approve of our proposed revisions and redesignation of the Rules of Practice. The AAR stated that "[our proposal] * * * represents a significant effort by the Commission to facilitate the use of the rules." One individual, Arthur L. Moon, commented that "Revision and redesignation of the rules of practice is particularly appropriate at this time." The commentors offered may suggestions and recommendations which will improve our Rules of Practice. We are adopting many of those suggestions. However, several issues which were raised by commentors go beyond the scope of this rulemaking. For example, the MCLA has requested that the Commission modify its rules in present 49 CFR 1100.11 relating to disciplinary proceedings. We believe that such a proposal is beyond the scope of this proceeding. That recommendation, along with several other matters outside the present scope will shortly be considered for future action.

Finally, we recognize that the new numbering system, as well as the content of many rules, do not integrate a number of pending matters. We will make all necessary adjustments in the individual cases. Postponement here, pending those final actions, is not warranted. To do so would prevent this overall reorganization from being codified this year.

Proposed Redesignation

All commentors approve of our general plan to redesignate Chapter X of Title 49 of the Code of Federal Regulations. Some commentors suggested moving various parts of Subchapter A, to Subchapter B, such as Part 1002 *Fees*, and Part 1003 *List of Forms*. However, others thought that there was no need to move those parts. We believe that Parts 1002 and 1003 should remain in Subchapter A because they are general provisions. At this time the only part we will move to Subchapter B is Part 1031A.

Part 1106 *Implementation of Energy Policy and Conservation Act of 1975* and Part 1108 *Guidelines for Implementation of the National Environmental Policy Act of 1969* will remain in Subchapter B, rather than moving to Subchapter A as we initially proposed. Those two parts will be assigned appropriate part numbers in Subchapter B.

We have made a few adjustments in the numbering plan originally proposed in order to provide more reserved parts in the Licensing Procedure categories. Accordingly, we will adopt the redesignation of Subchapter B of Title 49 of the Code of Federal Regulations as set forth in this document.

Revisions to the Rules of Practice

This document contains the text of those revisions that we will be adopting. It should be noted that in those instances in which we are updating statutory references or making editorial changes, we will be using only piecemeal amendments. However, when a substantial number of revisions have been made the full text will appear.

To aid the user we have included Redesignation, Derivation, and Removal Tables in this notice. We also are including a table of contents which lists all part and section titles in redesignated Subchapter B. This should aid users during the period of time before the 1982 volume of Title 49 CFR Part 1000–1199 is available to the public through the Superintendent of Documents.

All comments have been thoroughly considered. In the following sections, we will review the comments which warrant specific discussion and explain all changes that we will make in our original proposed text.

We will refer to our proposed rules by the newly redesignated section. If reference is made to existing rules, the prior section number will be used.

Part 1101.—Definitions and Construction

The AAR suggests that we amend § 1101.2(b) by adding a cross reference to 49 CFR Part 1011 *Commission Organization; Delegations of Authority*, because such an addition would refer the reader to provisions explaining the assignments of jurisdiction and responsibility within the Commission. We agree and we will make that addition.

Another of AAR's suggestions is that we add an additional category, petition for exemption, to the definition of proceeding in § 1101.2(e). Such an addition would be helpful and it will be included in our final rules as follows:

(5) A petition for exemption filed under 49 U.S.C. § 10505 or requesting the Commission to exempt from all or part of the application of Subtitle IV of Title 49 of the United States Code any person, class of persons, transaction or service related to a rail carrier.

Part 1102.—Communications

One commentor suggests that in § 1102.2 *Ex Parte Communications prohibited: penalties provided*

paragraphs (a) and (b) could be read as prohibiting any communications whether or not addressed to the merits of a proceeding. They suggest that a specific provision authorizing the making of communications not related to the merits be added. Rather than add an additional provision we believe it is more appropriate to revise § 1102.2 so that the words defined in § 1102.2(a), "*ex parte* communications concerning the merits", are used instead of "*ex parte* communication".

The AAR would assign to the Commission, instead of the Chairman, the authority to deal with *ex parte* communications. This would be a substantive change from the present rule (49 CFR 1100, App. C, Par. 4). No change is warranted since this falls logically under the Chairman's executive and administrative duties as described in 49 U.S.C. 10301(f).

Part 1103.—Practitioners

We received many comments on our proposed revisions of the Canons of Ethics. The ATA and the RCCC are concerned about § 1103.13 *Attempts to exert political or personal influence on the Commission are prohibited.* Both commentors are concerned about the proscription against "enlisting the influence or intercession of members of the Congress or other public officers." While we note that such language is taken from Old Canon 4, we will delete that phrase so there is no conflict between our canons, on the one hand, and, on the other, the right of individuals to petition their government and the right of free speech. The RCCC is also concerned about the use of the term propaganda. We recognize its concerns and will delete that term also. The revised § 1103.13(a) will read:

It is unethical for a practitioner to attempt to influence the judgment of the Commission by threats of political or personal reprisal.

Commentors McCarthy and Verner point out that our proposed revision of § 1103.16(c) would unreasonably limit the ability of practitioners to practice before the Commission. This problem will be resolved by adding the phrase "with respect to which confidence has been reposed" which appears in original Canon 9.

Section 1103.17 deals with joint association of practitioners and conflicts of opinions. The AAR questions our proposed revision in § 1103.17(c) because it does not believe that a practitioner should be required to notify another practitioner when the first practitioner has been retained or consulted regarding a complaint against the other practitioner. The prior Canon 10 contained the same requirement. We believe that our proposed revision should be adopted because it provides an avenue for informal resolution of problems before the Commission gets involved in the dispute. Accordingly we will not revise § 1103.17(c) any further.

Our proposed addition to § 1103.21 of the sentence "Most particularly, a practitioner shall refrain from filing documents in cases before the Commission containing material misstatements, false representation of fact and unauthorized affidavit of support.", generated significant comment. It was not our intention to impose any liability on a practitioner who unknowingly submits false or unauthorized statements or other evidence. The purpose of the addition was to make it clear that a practitioner cannot be forced by a client to submit false or unauthorized statements or other evidence. However, we will delete that additional language to avoid any problems of interpretation.

In their comments the Practitioners have requested that we include the phrase "professional corporation" in § 1103.35. We have adopted this proposal since it reflects the fact that law firms as well as other associations of practitioners are now choosing the corporate organizational form, so that the term "partnership" alone is no longer sufficient.

The MCLA has requested that we reinstate old Canon 40 *Prior Government Service.* However, we hold to the view that this matter is covered by Federal law, 18 U.S.C. § 207 and by other Commission regulation. Therefore, old Canon 40 will be deleted.

Part 1104.—Pleadings; Generally

The AAR requests that § 1104.2 *Typographical specifications generally* be amended to permit pleadings with text on both sides of the paper because such a provision will allow savings on postage and duplication costs. We will adopt that suggestion and add the following sentence to § 1104.2(a): "Printing may appear on both sides of a page."

Another of AAR's suggestions is to clarify § 1104.4 *Attestation and verification* by specifying that a person not an attorney or practitioner is required to sign only the original document. We will make that change by revising § 1104.4(b) to read in part: "The original of each document not signed by a practitioner or attorney must be . . . ."

The Practitioners suggest that proposed § 1104.5, *Affirmation in lieu of oath,* be revised to permit declaration under penalty of perjury in accordance with 28 U.S.C. § 1746 in lieu of an oath wherever an oath is required by the provisions of the Rules of Practice. Declarations under penalty of perjury are already accepted in motor carrier operating rights applications as the Commission stated in Ex Parte No. 55 (Sub-No. 43) *Rules Governing Applications for Operating Authority,* [45 FR 86771, 86782, (December 31, 1980)]:

Use of declarations in lieu of formal oaths will not diminish the legal sanctions available to the Commission. Sanctions are found in two types of statutes in the United States Code, involving prosecution for fraud and perjury. See 18 U.S.C. 1001 and 18 U.S.C. 1621.

Accordingly, there appear to be valid reasons to permit the use of such declarations under other circumstances where oaths or verifications are normally required. Such revision will also relieve small businesses that do not otherwise have direct or immediate access to a notary public from notarization requirements.

We will include additional language which will advise those who practice before the Commission of the penalties that can be imposed for knowing and willful misstatements or omission of material facts. It should be noted that the form of the declaration must follow the form set forth in our regulations. The following language will be adopted in § 1104.5 (b) and (c).

(b) Whenever any rule of this Commission requires or permits matter to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, oath of office, or an oath required to be taken before a special official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proven by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in the following form:

I declare (certify, verify, or state) under penalty of perjury (under the laws of the United States, if executed outside of the United States) that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this (specify type of document). Executed on (date).

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signature

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621

which provides for fines up to $3,000 or imprisonment up to 5 years for each offense.

Our revision of § 1104.6—*Timely filing required* generated significant comments from the AAR, the Practitioners and Greyhound. These three commentors have requested that we modify the rule further so that documents sent by United States express mail postmarked one day prior to the due date and documents received by private express mail carriers one day prior to the due date, will be accepted as timely filed. They argue that U.S. express mail or private express mail service has improved significantly since 1977, when the Commission considered a similar suggestion and that today it is extremely rare for such services not to satisfy the next-day delivery standard. The Practitioners state that such ". . . revisions would accomplish the Commission's major goal of receiving pleadings on their due date at the same time provide more equitable treatment for non-Washington DC practitioners". We believe that this modification should be adopted at this time because U.S. express mail and private express mail are reliable. This revision will be adopted. However, we reserve the right to modify this rule, if we find that this modification causes time delays and interferes with statutory deadlines. A new sentence will be added to § 1104.6 and the last two sentences of that section will be modified as follows:

However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the express carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service guarantees next day delivery to Washington, DC.

The AAR has requested that we modify § 1104.7 *Computation and extension of time* so that if requests for extension are served personally on the Commission, service on the parties by first class or express mail is permissible. We will make that modification since the same exception applies to service of all other pleadings in § 1104.12.

It also asks that "must" be changed to "should," with regard to meeting the 10-day rule for seeking extensions. Section 1101.3 provides adequate leeway to accommodate unusual situations. We do not believe the 10-day rule has posed a problem in the past. As appropriate, exceptions are allowed.

The Practitioners also recommend that proposed § 1104.7 *Computation and extension of time*, be revised to permit the parties to a proceeding to stipulate to a one-time only 3-day extension of a due date for any pleading to be filed with the Commission, without a need for formal Commission approval, provided such extension does not interfere with a statutorily imposed evidentiary deadline.

At the present time, requests for a short time extension to which all parties consent are routinely granted by the Commission, as long as the extension would not otherwise affect the procedural posture of the case. The benefit to the public, Congress and the Commission of having the Commission control the timing of all proceedings far outweighs the cost of administering requests for extensions. Accuracy and certainty about deadlines are crucial to smooth administration of the Commission. We may not delegate responsibility for meeting them to others. We will not adopt the suggestion.

One commentor, Joseloff, has requested that we modify § 1104.12 *Service of pleading and papers*. He is concerned that practitioners should not have to use air express to serve parties, when service is made to the Commission by that method because of the cost of air express. In view of short response time, it is often necessary for opposing parties to review pleadings and other documents as quickly as possible. However, in cases in which there are numerous parties, it may be a heavy burden on a party to bear the cost of air express service to all parties. Accordingly, we will provide the following exception to § 1104.12. "If service is made to the Commission by air express and air express service on the other parties is not feasible, service should be made by first-class or express mail."

Part 1110.—Procedures Governing Informal Rulemaking Proceedings

One commentor questions our use of the term "informal" in the title of this section because there are no rules governing "formal" rulemaking proceedings. It suggests that the word informal should be stricken from the title of this part. The proposed rules, which follow the present ones, use the generally accepted terminology. See, *Attorney General's Manual on the Administrative Procedure Act*, Department of Justice, 1947, pages 31–33. "Informal rulemaking" must follow procedures established by section 553 of the Administrative Procedure Act, but it does not involve an "on the record" proceeding. "Formal rulemaking" is a different procedure used when there is a statutory requirement that rules be made on the record only after the opportunity for an agency hearing. See 5 U.S.C. 553(c). For the most part, our rulemakings are of the informal type. Accordingly, we will make no change in the title.

Part 1111.—Complaint and Investigation Procedures

The AAR suggests that the full text of old § 1100.31 be retained and that filing dates be stated for amended and supplemental complaints. We accept this proposal, and will replace § 1111.2 *Amended and supplemental complaints* with the text proposed by the AAR, as follows:

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have occurred within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to sections 1111.4 and 1111.5 as if the amended or supplemental complaint was an original complaint.

Slover contends that the proposed § 1111.4 *Answers and cross complaints* is confusing and that answers should be required to every complaint. The AAR suggests that the language of old § 1100.33(d) which provides that the "issues are joined" if no answer is filed, be retained. It further argues that the proposed rule would have the effect of instituting a default procedure, which, it maintains, would be inappropriate for an administrative agency which is required by law to determine the pertinent facts and to make specific factual findings. The proposed rule was an attempt to resolve what appears to be an ambiguity rising when § 1100.33(a) is read in conjunction with old § 1100.44(a). Section 1100.33(a) states that an answer *may* be filed; rule § 1100.44(a) states that if a complaint is set for modified procedure, the defendant is relieved of the *obligation* to answer. Any rule which we would adopt must define the nature of the "obligation" to answer and, since the actual filing of an answer cannot be compelled, must state the consequences of not answering. Under present § 1100.33(d), if no answer is filed, the "issues are joined" as to the defendant failing to answer. This means that the Commission may proceed to a decision based on the material contained in the complaint. This may seem like a default procedure, but it has the obvious advantage of prompt resolution of a controversy when further evidence is not required at the lowest possible cost to the Commission and the parties.

We agree that the language of the proposed rule is still not sufficiently clear, and we are inclined to agree with AAR that familiar terminology should be retained. Proposed § 1111.4 will be revised as follows:

§ 1111.4 Answers and cross complaints

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, issue is joined at the conclusion of the time for filing answers, and the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participating in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and six copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of an answer to a cross complaint upon the other parties.

The AAR proposes a revision of the first sentence of § 1111.5 *Motions to dismiss or to make more definite* to make it clear that motions to dismiss may be filed at any time during the pendency of a complaint proceeding. We will adopt this suggestion and substitute the following for the first sentence of proposed § 1111.5:

An answer to a complaint or cross-complaint may be accompanied by a motion to dismiss the complaint or cross-complaint or a motion to make the complaint or cross-complaint more definite. A motion to dismiss can be filed at any time during a proceeding.

The AAR suggests that, if a complaint is satisfied, it is necessary to obtain a statement to that effect from the complainant only, and not from all the parties. We agree, and we will amend proposed § 1111.6 *Satisfaction of complaint* to read as follows:

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied.

Part 1112.—Modified Procedure

The AAR points out that old § 1100.43 provides for the use of modified procedure when all "material" issues of fact can be resolved on the written record. The proposed rule in § 1112.1 *When modified procedure is used* changes "material" to "relevant". We agree with the AAR that the present terminology is preferable, and the change which it suggests will be made.

The AAR would have us add to § 1112.1 and numerous other sections a reference to the procedures for handling appeals from individual employee decisions in procedural matters. These procedures are now found in § 1011.7. We will not incorporate that reference, but we will include in part 1115 governing appelate procedures a new paragraph restating the procedures governing appeals from individual employee decisions.

The AAR objects to the use of the terms "reply" and "rebuttal" to describe, respectively, the opponent's initial pleading and the proponent's response in the normal modified procedure case in § 1112.2 *Decisions directing modified procedure.* Technically, the AAR is correct since the opponent's initial submission includes its case in chief and is not limited to material responsive to the proponent's presentation, whereas a "reply is normally thought of as a purely responsive pleading. Nevertheless, these terms are in common use, and they provide the most convenient means of designating these several submissions. No other party has suggested that their use is likely to cause confusion, and no change in the proposed rule is warranted.

In its comments on § 1112.4 *Petitions to intervene* the ATA seeks reassurance that a trade association such as itself may request leave to intervene at any stage of a proceeding. Neither the present nor the proposed rule set any limit as to the point in a proceeding under modified procedure at which any party may seek leave to intervene. There seems to be no reason for changing the proposed rule.

The AAR believes paragraph (c) of this rule is contradictory. We have revised the language to make clear that, in those limited cases where petitions are not required, intervenors must still comply with certain substantive (as opposed to procedural) requirements. This follows old § 1100.71.

In their comments on proposed § 1112.4, the Practitioners ask us to retain the present provisions under which intervention is permitted without petition in investigation and rate cases under both the modified and oral hearing procedures. We do not believe that it is an undue burden to require a party to submit a brief petition explaining its reasons for wanting to intervene in a proceeding. It provides the Commission with greater control over the proceeding, and enables it to screen out potential parties that have no real interest. Where time is really of the essence, in investigation proceedings involving rate-related matters handled under the modified procedure, the proposed rule allows intervention without petition. Given the extreme rarity of orally-heard rate investigations, and the benefits gained in control by the presiding judge, no further exceptions to the rule appear necessary. We have, however, modified the language to reflect the old rule by referring to rate-related rather than only reasonableness cases.

The Practitioners also ask that in those cases involving the reasonableness of rates, persons intending to intervene be required to give 15 days' notice of that intention. The Practitioners seem to think that this additional time is necessary to permit the other parties to prepare their respective cases, but they offer no convincing arguments as to why this should be the case. Accordingly we will not adopt that suggestion.

In § 1112.6 *Verified statements; contents,* we will accept the essence of the AAR's suggested editorial revisions. However, we will not use the exact wording of the proposal.

The AAR suggests that the provisions dealing with authority of officers found in § 1113.3 of the oral hearing rules be included also in the modified procedure rules. This appears to be a valid suggestion, and the following new section will be added at the end of this part:

§ 1112.11 Authority of officers

Except to the extent that they apply only to the conduct of a public hearing, the officer assigned to handle a proceeding under the modified procedure shall have the same authority as officers assigned to conduct oral hearings as described in 49 CFR § 1113.3(a) and (b).

Part 1113.—Oral Hearings

The AAR points to an ambiguity in proposed § 1113.12(a). This is caused by the erroneous inclusion of the last sentence in that paragraph. That sentence will be stricken.

The AAR's proposed editorial changes in proposed § 1113.17(a) and § 1113.13 will be accepted.

The AAR says that the filing of reply briefs is a normal Commission practice, and that the statement to the contrary in § 1113.18(a) is incorrect and should be stricken. We disagree. While reply briefs are allowed in certain instances, the usual practice is to provide for the filing of only one round of briefs simultaneously by all parties, and time limits usually preclude the acceptance of reply briefs. The rule as drafted states the normal practice and leaves ample discretion for the hearing officer to allow reply briefs if time permits and the issue requires them.

Part 1114.—Subpart B—Discovery

One commentor asks that the discovery rules be thoroughly revised and rewritten. While we agree that a reexamination of these provisions could be profitable, their substantive revision is beyond the scope of this proceeding. This comment will be taken under advisement for possible consideration at a future date.

The AAR believes that the present exclusion of modified procedure application proceedings from the discovery rules has been eliminated in the revision of § 1114.21. This is not correct. First, these proceedings were never completely excluded from the operation of the discovery procedures. Instead, under old § 1100.55(a) discovery could be had in such proceedings, but only if the Commission acted favorably on a petition seeking such relief. Second, this provision is, in fact, retained in § 1114.21(b)(1) of the proposed rules.

The AAR suggests a modification in the protective conditions in paragraph (c)(8) which would add "competitively sensitive" information to the list of privileged material. We cannot see that the language the AAR proposes would add any necessary degree of protection to the rule as it reads at present, and as proposed, and in which "confidential commercial information" is protected from disclosure.

The AAR suggests an addition to paragraph § 1114.26(b) to provide extended protection from disclosure in cases where the information in the possession of the party upon which the interrogatory has been served is extracted not by that person but by an independent professional organization employed and paid by the party seeking the information. We cannot agree that this additional protection is necessary. The information extracted would, by definition, be discoverable, and there is no reason to protect it from disclosure. To the extent that it is not discoverable, it remains the property of the owner of the material from which it was extracted, and could be disclosed by another party or that party's agent only at its peril. In connection with § 1114.26(c), the Practitioners suggest an overall review of use of the terms "should" and "shall". While we agree in theory, and will consider this further, certain rules do not easily lend themselves to such a choice. For example, it may not be appropriate, in a rule describing the kinds of relevant evidence in a particular case, to *require* certain information. Our change to § 1114.26(c) was proposed to eliminate the problem caused when discovery is sought in a complaint case handled under the modified procedure. Typically, there is not sufficient time to serve interrogatories within 20 days of the opening statement due date. This has caused many parties a great deal of concern and confusion. We have changed "should" back to "shall". The language "unless under special circumstances and for good cause" should be broad enough to cover the situation described above.

In comments on § 1114.31 *Failure to respond to discovery,* McCarthy asks that the time within which a request for an order compelling an answer must be filed be extended from 10 to 20 days. Given the statutory deadlines under which we must operate, we cannot agree that 10 days is an unreasonably short time for filing such a request. In exceptional circumstances, the time can be extended upon request.

Part 1115.—Appellate Procedures

The AAR and Verner ask that the appeal procedures governing such procedural matters as the assignment of cases for hearing be included in § 1115.1 *Scope of rule.* These procedures are now found in 49 CFR 1011.7, which is the portion of the Commission's regulations providing for the apportioning of jurisdiction among the Commission, divisions, of the Commission, individual Commissioners, employee boards, and individual employees. Procedural decisions are in large part made by individual employees, under authority delegated to them by the Chairman of the Commission, and we think that the provision for appealing their decisions should remain where it is, since that provision constitutes the assignment to the Chairman of authority to act on the appeals. However, we agree that it would be helpful to have the procedures governing these appeals readily available as a part of the procedural regulations generally, and we will add a new paragraph (c) to § 1115.1 which simply restates the procedures outlined at § 1011.7. This addition necessitates a minor change in the text of paragraph 1115.1(a) as well.

Arsham suggests a revision of § 1115.2(d) to make it clear that the 30-page limit on the length of appeals and replies does not include a table of cases and authorities, and to change that provision so that the page limit does not include a subject matter index. Such a change would bring our regulations into closer conformity with the Federal Rules of Appellate Procedures and will be adopted. Paragraph 1115.2(d) will be modified to read:

(d) Appeals and replies shall not exceed 30 pages in length, including argument, appendices, and other attachments, but excluding a table of cases and authorities and an index of subject matter.

The AAR would have us alter § 1115.2(e) to state that a division, as well as the Commission, may grant extensions of time. This change is not necessary since the term "Commission" is defined in § 1101.2(b) to include any decisionmaking body within the Commission, including a division, which is empowered to act in a given situtation. We will adopt AAR's proposed word change in § 1115.2(f).

Slover suggests that § 1115.3(f)(3) should be deleted, as (f)(1) is adequate. However, subparagraph (f)(3) is a catch-all provision designed to cover all situations except where some specific provision of the rules is applicable. Paragraph (f)(1) is one such specific provision dealing only with procedures in rail cases, and does, as Slover points out, control in those cases. The provisions proposed are the same as those currently in effect, and we are not convinced a change is needed.

Part 1116.—Oral Argument Before the Commission

The AAR asks that the time limit for filing requests for oral argument, set at 20 days in proposed § 1116.1(c), be fixed at 30 days, as is now the case. The change was proposed both because of the statutory time limits now applying to virtually all Commission proceedings and also to attain greater uniformity in filing deadlines generally. Twenty days seems ample time to prepare a request for oral argument.

Part 1117.—Petitions (for Relief) Not Otherwise Covered

We will not adopt AAR's proposal to refer again to § 1011.7. See discussion, *infra.*

Part 1118.—Procedures in Informal Proceedings Before Certain Employee Boards

We believe that it is necessary to modify the proposed appellate procedures in § 1118.4 insofar as they

relate to motor carrier temporary authority proceedings. Revision is necessary because it is unreasonable to require a protestant to an emergency temporary authority application to file an appeal within any fixed time because no public notice of these grants of authority is given and a potentially interested party cannot be expected to learn of a grant of emergency temporary authority until the recipient of the authority actually starts to operate. We also have decided that the question of the administrative finality of appellate decisions in temporary authority proceedings should not be resolved on the limited record available in this proceeding; but, instead be reserved for decision, pending in Ex Parte No. 67 (Sub-No. 8), *Rules Governing Temporary Authority and Emergency Temporary Authority.*

§ 1118.4(c) will be revised to read as follows:

(c) *Time for filing.* Except as provided in paragraph (e) of this section with respect to matters involving emergency temporary authority, appeals in proceedings governed by this part must be filed within 20 days after the date of service of the decision.

The following new paragraph (e) will be included:

(e) *Appeals in emergency temporary authority proceedings.*

An applicant seeking reconsideration of a decision concerning emergency temporary authority must file a petition within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting emergency temporary authority may file a petition at any time during the life of the authority. Replies may be filed within 15 days after the filing of the petition. Pleadings must be served on all parties of record.

Present paragraphs (e) and (f) will be redesignated as paragraphs (f) and (g).

The last sentence of redesignated paragraph (g) will be revised to read:

A decision on appeal by an appellate body is administratively final, except for decisions of review boards in temporary authority and emergency temporary authority proceedings under 49 U.S.C. 10928.

Part 1130.—Informal Complaints

Verner suggests that 49 CFR Parts 1005 and 1008, governing loss and damage claims and overcharge claims, respectively, either be cross referenced or incorporated into Part 1130. We do not believe that this change would add to the clarification of Part 1130. The jurisdiction of the Commission to resolve overcharge claims is limited to the rail area. The Commission has no jurisdiction to award monetary relief in motor overcharge disputes. Nor does it possess jurisdiction to resolve either rail or motor loss and damage claims. Therefore, the inclusion of a cross reference to Parts 1005 and 1008 would merely confuse rather than clarify Part 1130.

The AAR and Practitioners indicate in their comments that the United States Court of Appeals for the Eleventh Circuit recently held in *Southern Motor Carrier Rate Conference v. United States,* 667 F.2d 971, *amended opinion,* 676 F.2d 1374 (1982) that 49 U.S.C. 10762(e) does not authorize the Commission to reject or strike an effective tariff using Tariff Integrity Board procedures. Therefore, they propose the elimination of § 1130.2 in its entirety. However, the more recent decision of the United States Court of Appeals for the Fifth Circuit in *Aberdeen & Rockfish Railroad Company v. United States,* 682 F.2d 1092 (1982) held that § 10762(e) permits the rejection of tariffs under certain circumstances. We recognize that some changes are necessary but, as we did not propose them here and the issue is both complex and controversial, we will address this separately at a future date. No harm can result, as the Board is not now acting.

However, one change with respect to § 1130.2 will be made. Section 1130.2(b)(6) will be revised to limit the definition of an unlawfully established tariff to one which purports to change *non-rail carrier* schedules in effect for less than 30 days. This change is made necessary by the Commission decision in No. 37517, *Reduction of the Notice Period for Filing Railroad Tariffs* (not printed), decided December 19, 1980, which revoked the requirement that rail rates remain in effect for a minimum of 30 days.

The order of § 1130.2 and § 1130.3 should be reversed. It would be more logical for the section on informal complaints when damages are sought to follow the section on informal complaints when no damages are sought. Under the current proposal, the section on Tariff Integrity Board procedures separates these sections. Since this change would clarify the rules it will be made.

Other changes will be made to update the Special Docket rules contained in proposed § 1130.3(e) and the six-month rule contained in proposed § 1130.3(f) to comply with No. 37130 (Sub-No. 1), *Special Docket Proceedings—Simplification of Proc.,* 365 I.C.C. 544 (1982).

Part 1131.—Formal Complaints, Rail Intrastate Petitions and Investigations

The AAR suggests that the title of Part 1131 be revised to read "Formal Rate Complaints, Rail Intrastate Petitions and Investigations" in order to distinguish Part 1131, which applies to formal complaint proceedings involving rate matters from Part 1111, which contains general provisions applicable to all other formal complaint proceedings. This change will clarify the rules and will be made.

With respect to § 1131.1(a), South Carolina submits that the proposed language that a formal rate complaint should include a specific reference to the pertinent statutory provisions or Commission regulations which "have been violated" should be changed to "have been or are violated or will be violated." This is the language used prior to this revision. The Commission is empowered to and has in the past ruled on complaints filed in anticipation of the beginning of a movement. Accordingly, the earlier language will be restored.

South Carolina also proposes to revise § 1131.4. It believes that this section should provide for service of the petition not only upon the State authority but also upon the parties to the State proceeding. It notes that this is particularly important in light of the short reply period and the short period within which the Commission must render a decision. Slover concurs and, in addition, suggests that replies be required to be filed within 10 days after receipt of a carrier petition. We agree with the proposed changes regarding service, but will require replies to be filed 10 days after a petition is filed.

The Department of the Army recommends that the first sentence of § 1131.6(c) be revised to reflect decisions in No. 38436S, *Ford Motor Co. v. Union Pac. R. Co.,* 365 I.C.C. 630 (1982) and No. 37925S, *Department of Defense v. Seaboard Coast Line Railroad Company* (not printed), served May 10, 1981. In those decisions the Commission found that all persons participating in through transportation by continuous carriage had to be made defendants even though no order had been sought against all such persons. Conrail also urges that all participants be made defendants in the proceeding. We appreciate these parties' concerns. However, we will make no rule change at this time because the Commission has been unable to reach an agreement on the substance of this issue. See *Department of Defense, supra,* decision served October 12, 1982. Thus, due to the uncertain state of the law, we caution parties to recognize the risks involved if a complainant fails to name as defendants all carriers participating in the challenged transportation movement.

The AAR urges revision of the second sentence of this section to provide that a complainant challenging a classification must serve notice of the complaint upon the tariff agent for the subscribers to the tariff containing the challenged classification. Since the requirement would not impose a significant burden on complainant and because it would benefit subscribers to the tariff, we will adopt AAR's suggestion. We will not now adopt Conrail's suggestion that all participants in the classification be made defendants. Service upon the agent offers constructive notice to all defendants. We will, however, study this matter further.

Section 1131.7—See 1111.2
Section 1131.9—See 1111.4
Section 1131.10—See 1111.5

Part 1132.—Protests Against Tariffs; Procedures in Certain Suspension and Long and Short Haul Restriction Matters

We have found that it is necessary to eliminate in § 1132.1(a) the requirement that a protest against a tariff state what protestant offers by way of substitution. This requirement is generally ignored and although a protest will occasionally request suspension without prejudice to refiling a lesser increase, protestant would probably do so without the requirement.

Another change which we believe is necessary is the addition in § 1132.1(b) of language providing that protests to tariffs filed on less than 10 days' notice will be acted on only if received not later than the last workday before the effective date for the tariff and that appeals to those protests will be considered only if the protest reaches the Suspension Board not later than the second workday before the effective date. The reason this change is needed is that in the case of tariffs filed on less than 10 days' notice the current 5-day requirement for filing a protest is simply not met. Since the Suspension Board is able to act within shorter time frames than those provided in the proposed rule, the rule will be revised to reflect that capability.

For purposes of clarity, the language pertaining to replies to protests contained in proposed § 1132.1(c) will be moved to § 1132.1(f). This would further the purpose of consolidating the requirements for replies to protests in one place in the rules.

McCarthy objects to the increased filing requirement for protestants in Ex Parte No. MC-82 proceedings contained in proposed § 1132.1(d). Currently an original plus 11 copies of protests are required. The proposed language increases the requirement to an original plus 15 copies. We proposed the change to accomplish greater uniformity in the rules. However, we agree that a more important goal is minimizing the amount of paper filed. Eleven copies is adequate here and we will amend the final rule accordingly.

Conrail points out that, because of the tight deadlines for filing protests against tariffs and replies, time is of the essence. However, proposed § 1132.1(d) requires service of a copy of the protest upon the publishing carrier, freight forwarder *or* agent. Because service on the agent results in loss of time to the respondent for review of and reply to the protest, Conrail proposes language to remedy this situation. Its proposal is to require service directly on a carrier if that carrier elects to list itself on the cover page of the tariff. This proposal entails little inconvenience to protestant, while affording respondent carrier essential time to frame a reply. Therefore, the proposal will be adopted.

We believe that the reference in § 1132.1(g) to protest against and requests for suspension of, tariffs or schedules containing proposed rates, classifications, rules, or practices filed by rail carriers, or their publishing agents "that result in revisions of rates or charges" should be deleted because of its susceptibility to misinterpretation. The word "rate" has a much broader application than generally understood. In order to eliminate this confusion, the subject language will be deleted.

Slover suggests the removal from § 1132.1(g)(3) of the reference to Ex Parte No. 320 (Sub-No. 2) since that decision is on appeal in court. We will retain the reference as proposed. The rules promulgated in that proceeding are final, have not been stayed and, if changed by the courts, will be changed in the same proceeding.

We believe that additional language is necessary for proposed § 1132.1(h) to deal with the continuing problem of the lack of specific notice as to the procedures when the Commission acts initially on protested household goods rate increase proposals.

There appears to be widespread confusion on the part of attorneys regarding § 1132.2(b), which deals with petitions for reconsideration in suspension matters. We will revise that section to spell out more clearly when such petitions may be filed.

The rejection by the Secretary of a late-filed petition for suspension needs to be made permissive rather than mandatory to take into account possible problems with the mails, but more importantly, to permit the use of discretion by the Commission. The rationale is that if the matter is to be resolved against appellant it is better to do so on the merits, whereas, if the matter is to be resolved against the proponent, then the Commission should not lose the opportunity to act. Therefore, the language will be made permissive.

Part 1163.—Temporary Operating Authorities and Approvals

No change was proposed in this part, except that it be renumbered part 1163 instead of part 1101. However, there appears to be considerable confusion in applying the present rule. In adopting the present rule in 1976, a provision for the automatic extension of temporary authorities upon the filing of a corresponding permanent authority application was adopted. Prior to that time, extensions were acted upon individually at the carriers's request. In adopting the automatic extension provision, procedures for obtaining TA extensions by petition were eliminated. There are situations in which the automatic provisions do not, for some reason, apply, but in which extension is nonetheless warranted. We will add a new provision to deal with this problem. That new provision, § 1163.1(c), will read as follows:

(c) When an applicant has not made a timely and sufficient application for a renewal, or new, authority or approval in accordance with applicable Commission rules, the Commission will determine upon written request of any interested party, or upon its own initiative, whether any temporary authority granted under 49 U.S.C. 10928 may be continued in force beyond the expiration date of such temporary authority for an extended term as defined in paragraph (a) above. A written request for such a determination must be filed with the Regional Motor Carrier Board with which the temporary authority application was filed not later than 30 days prior to expiration of the temporary authority.

Additional Comments

The Practitioners request that present § 1100.78 be retained. As we stated in the notice of proposed rulemaking, that rule is redundant and the presiding officers have ample power to deal with documents containing a high proportion of irrelevant matter. Therefore, that rule should be left out.

Commentor McCarthy requests that we include our revised procedure to calculate interest rates set forth in *Notice of Revised Procedure to Calculate Interest*, (not printed), decided April 14, 1977. We agree that the matter of computation of interest rates is of sufficient significance to be included with our Rules of Practice. Therefore, we

will add a new Part 1141 *Procedures to Calculate Interest Rates.* The language of that part will be as follows:

§ 1141.1 Procedures to calculate interest rates.

Interest rates to be computed following the Commission decision shall be the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

Effective Date of These Rules

There is good cause under 5 U.S.C. 553(d)(3) for making these revisions to the Commission's Rules of Practice effective on less than 30 days' notice. The revisions that we are adopting here primarily classify existing rules of procedure and practice. They impose no new burdens on those who practice before the Commission. The few substantive changes that we have made, such as revision of the 3-day mail rule and the notorization rules, relieve persons of procedural burdens. Accordingly, the public will benefit from having these rules made effective as soon as possible.

Also, these Revised Rules of Practice need to be effective on November 1, 1982 so that they will be included in the 1982 edition of the Code of Federal Regulations. The CFR volumes are updated and published annually by the Office of the Federal Register. Normally, the Commission's volumes of the CFR close on October 1, 1982. Since it would have been inconvenient for those who practice before the Commission to work without the full text for more than one year, the Commission obtained a one month extension of the closing date for the volume 49 CFR Parts 1000 to 1199 so that the redesignated and revised Rules of Practice would appear in the 1982 edition of the CFR. Therefore, these redesignated and revised Rules of Practice will be made effective on November 1, 1982 to meet this publication schedule.

Regulatory Flexibility Act Statement

In this proceeding we adopt our proposal to reorganize and simplify our Rules of Practice. The language of some of the rules is modified to make our rules easier to read and understand. However, no substantial changes have been made. Therefore, it is certified that this rule has no significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This action will not significantly affect the quality of the human environment and conservation of energy.

We adopt the revisions to 49 CFR Chapter X, Subpart B set forth in the Final Rules section of this notice.

List of some of the subjects in 49 CFR Part 1031A and 49 CFR Chapter X, Subchapter B:

Administrative Practice and Procedure, Motor Carriers, Railroads, Maritime Carriers, Freight Forwarders, Buses, Freight, Securities.

Authority 49 U.S.C. 10321 and 5 U.S.C. 553.

Decided: October 13, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

REDESIGNATION TABLE

Old section	New section
Part 1031a	Part 1138.
1045.11	1181.32.
Part 1100:	
1100.1	1100.1, 1100.2.
1100.2	1100.3.
1100.3	1100.4.
1100.4	1102.1, 1100.2, 1104.6, 1100.8, & 1100.10.
1100.5	Part 1101.
1100.6	
1100.7	1103.1.
1100.8	1103.2.
1100.9	1103.3.
1100.10	1103.4.
1100.11	1103.5.
1100.12	1113.31.
1100.13	1104.2.
1100.14	1104.3.
1100.15	1104.4.
1100.16	1104.5.
1100.17	1104.9.
1100.18	1104.11.
1100.19	1104.7.
1100.20	1104.12.
1100.21	1104.13.
1100.22	1130.1.
1100.22a	1130.3.
1100.23	1130.2.
1100.24	Removed.
1100.25	1131.6 & 1111.1.
1100.26	1131.1 & 1111.1.
1100.27	1131.2.
1100.28	Removed.
1100.29	1131.2, 1131.5 & 1111.1.
1100.30	1131.1.
1100.31	1131.7.
1100.32	1111.2.
1100.33	1131.9 & 1111.4.
1100.34	1131.10 & 1111.5.
1100.35	1131.11 & 1111.6.
1100.36	Removed.
1100.37	Removed.
1100.38	Removed.
1100.39	1118.4(e).
1100.40	1132.1.
1100.41	1111.7.
1100.43	1112.1 & 1112.2.
1100.44	1131.9(d), 1111.4, & 1112.3.
1100.45	Removed.
1100.46	1112.5.
1100.47	1112.6, 1112.7, & 1133.1.
1100.48	1112.8 & 1112.9.
1100.49	Removed.
1100.50	Removed.
1100.51	1112.10.
1100.52	Removed.
1100.53	1113.1.
1100.54	1113.2.
1100.55	1114.21.
1100.56	1114.22.
1100.57	1114.23.
1100.58	1114.24.
1100.59	1114.25.
1100.60	1114.26.
1100.61	1114.27.
1100.62	1114.28.

REDESIGNATION TABLE—Continued

Old section	New section
1100.63	1114.29.
1100.64	1114.30.
1100.65	1114.31.
1100.66	1113.3.
1100.67	1113.4.
1100.68	1113.5.
1100.69	1113.3 & 1113.6.
1100.70	1113.7.
1100.71	1113.7.
1100.72	1113.8.
1100.73	1114.1.
1100.74	1113.3.
1100.75	1113.9.
1100.76	1114.2.
1100.77	1114.3.
1100.78	Removed.
1100.79	1114.4.
1100.80	1113.10 & 1114.5.
1100.81	1113.11.
1100.82	1114.7 & 1113.12.
1100.83	Removed.
1100.84	1113.13.
1100.85	1113.14 & 1113.15.
1100.86	1113.16.
1100.87	1113.1.
1100.88	1113.17.
1100.89	1113.18.
1100.90	1113.18.
1100.91	Removed.
1100.92	Removed.
1100.93	Part 1116.
1100.94	1119.1.
1100.95	1133.2.
1100.96	Removed.
1100.98	Part 1115.
1100.99	1117.1.
1100.100	Removed.
1100.101	Removed.
1100.102	Removed.
1100.200	1132.2.
1100.225	Part 1118.
1100.240	1182.1.
1100.241	1182.2.
1100.242	1182.3.
1100.243	1182.4.
1100.244	1182.5.
1100.245	Part 1161.
1100.246	1153.9.
1100.248	Removed.
1100.249	Removed.
1100.250	Part 1134.
1100.251	1160.1–1160.23.
1100.252	1160.40–1160.49.
1100.253	1160.66–1160.68.
Appendix A	1103.11–1103.35.
Appendix B:	
Form 1	Removed.
Form 2	Removed.
Form 3	1104.12.
Form 4	Removed.
Form 5	1133.2.
Form 6	1112.9.
Form 7	1161.5 Appendix.
Appendix C	1102.2.
Appendix D	Removed.
Appendix E	Removed.
Appendix F	Removed.
Appendix G	Removed.
Part 1101	Part 1163.
Part 1102	Part 1135.
Part 1103	Part 1110.
Part 1104	Part 1139.
Part 1104A	Part 1120.
Part 1105	Part 1136.
Part 1106	Part 1106.
Part 1107	Removed.
Part 1108	Part 1105.
Part 1109:	
1109.5	11371.1.
1109.15	11371.2.
Part 1110	Removed.
Part 1111	Part 1180.
Part 1112	Part 1185.
Part 1113	Removed.
Part 1114	Part 1176.
Part 1115	Part 1175.
Part 1116	Part 1177.
Part 1117:	Part 1190.
1117.1–1117.12	1190.1–1190.12.
1117.51–1117.55	1190.20–1190.24.
Part 1118	Part 1191.
Part 1120	Part 1150.

REDESIGNATION TABLE—Continued

Old section	New section
Part 1120A	Removed.
Part 1121:	Part 1152.
1121.10	1152.1.
1121.11	1152.2.
1121.20-.25	1152.10-1152.15.
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[1] Removed by Ex Parte No. 433, *Deletion of General Requirements* (49 CFR 1110), served June 4, 1982 [47 FR 24594, June 7, 1982].

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PARTS 1193–1199—[RESERVED]

Final Rules

Subchapter B of Title 49, Chapter X of the *Code of Federal Regulations* is amended as follows:

PART 1100—[AMENDED]

(1) Part 1100 is amended by removing the following sections, paragraphs and appendices: §§ 1100.24, 1100.28, 1100.36, 1100.37, 1100.38, 1100.45, 1100.49, 1100.50, 1100.52, 1100.78, 1100.83, 1100.91, 1100.92, 1100.96, 1100.100, 1100.101, 1100.102, 1100.225, (d) and (g), 1100.248, 1100.249, Forms 1, 2, and 4 of Appendix B, and Appendices D and G.

PART 1107—[REMOVED]

(2) Part 1107 is removed.

PART 1113—[REMOVED]

(3) Part 1113 is removed.

PART 1120A—[REMOVED]

(4) Part 1120A is removed.

PART 1122—[AMENDED]

(5) Part 1122 is amended by removing § 1122.9.

The heading of Subchapter B is revised to read as follows:

SUBCHAPTER B—RULES OF PRACTICE

Parts 1100–1129—Rules of General Applicability

(6) Former §§ 1100.1–1100.3 are redesignated as Part 1100 and a center heading is added to precede the newly redesignated Part 1100 to read as set forth above.

(7) The newly redesignated Part 1100 is revised to read as follows:

PART 1100—GENERAL PROVISIONS

Sec.
1100.1 Scope of rules.
1100.2 Applicability.
1100.3 Liberal construction.
1100.4 Information and inquiries.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1100.1 Scope of rules.

These rules govern practice and procedure before the Interstate Commerce Commission under Title 49, subtitle IV of the United States Code (49 U.S.C. 10101 *et seq.*). This subchapter will be referred to as the "Rules of Practice".

§ 1100.2 Applicability.

The rules in Parts 1100–1119, Rules of General Applicability, establish general rules applicable to all types of proceedings. Other rules in this subchapter establish special rules applicable to particular types of proceedings. When there is a conflict or inconsistency between a rule of general applicability and a special rule, the special rule will govern.

§ 1100.3 Liberal construction.

The rules will be construed liberally to secure just, speedy and inexpensive determination of the issues presented.

§ 1100.4 Information and inquiries.

Persons with questions concerning these rules should either send a written inquiry addressed to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, or should telephone the Secretary's Office, (202) 275–7428.

(8) Former §§ 1100.5 and 1100.6 are redesignated as Part 1101, and the newly redesignated Part 1101 is revised to read as follows:

PART 1101—DEFINITIONS AND CONSTRUCTION

Sec.
1101.1 Statutory definitions.
1101.2 Definitions applicable to this subchapter.
1101.3 Construction.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1101.1 Statutory definitions.

The definitions contained in section 10102 of the Act (49 U.S.C. 10102) apply in this chapter.

§ 1101.2 Definitions applicable to this subchapter.

(a) "Act" or "Interstate Commerce Act" means subtitle IV of Title 49 of the United States Code (49 U.S.C. 10101 et seq.).

(b) "Commission" means (1) the Interstate Commerce Commission and (2) any body or individual to which or to whom decision making authority is assigned by the Commission or the Chairman of the Commission, including a division of the Commission, the Chairman, another Commissioner, employee board, an individual employee, an administrative law judge, a joint board, or other hearing officer entitled to act in a particular proceeding. See 49 CFR Part 1101, Commission Organization and Delegation of Authority.

(c) "Decision" means any formal, published action of the Commission, including orders and notices.

(d) "Party" means a complainant, defendant, applicant, respondent, protestant, intervener, or petitioner in any proceeding, or other persons permitted or directed by the Commission to participate in a proceeding. It will not include persons merely signing certificates of support or witnesses at oral hearing or in modified procedure proceedings, unless they are otherwise a party to the proceeding. Persons on the docket service list merely for the purpose of receiving copies of Commission releases are not considered parties to the proceeding.

(e) "Proceeding" includes: (1) An "informal complaint" filed under 49 C.F.R. 1130.1, or 1130.3 or a "formal complaint" alleging violation of any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, including petitions on special dockets;

(2) An "application" for (i) the granting of any right, privilege, authority, or relief under or from any provision of the Act or of any regulation or requirement made pursuant to a power granted by such Act, or (ii) the consideration of any submission required by law to be made to the Commission;

(3) An "investigation" instituted by the Commission;

(4) A "rulemaking" proposal instituted by the Commission; or

(5) A petition for exemption filed under 49 U.S.C. 10505 requesting the Commission to exempt from application all or part of subtitle IV of Title 49 of the United States Code any person, class of persons, transaction, or service related to a rail carrier.

§ 1101.3 Construction.

The rules of construction contained in chapter 1 of Title 1 of the United States Code (1 U.S.C. 1 et seq.) apply in this chapter. Among other things, they provide that the singular includes the plural, and vice versa; that the masculine includes the feminine; that the word "person" includes corporations, associations, and the like; that "county" includes parish and similar subdivisions; and that "company" includes successors and assigns.

(9) Former paragraphs § 1100.4 (a) and (e) and Appendix C to Part 1100 are redesignated as Part 1102, and the newly redesignated Part 1102 is revised to read as follows:

PART 1102—COMMUNICATIONS

Sec.
1102.1 How addressed.
1102.2 Ex parte communications prohibited; penalties provided.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1102.1 How addressed.

All communications should be addressed to the Secretary of the Commission, Interstate Commerce Commission, Washington, DC 20423 unless otherwise specifically directed by another Commission regulation. All communications should designate the docket number and title, if any. The person communicating shall state his address, and the party he represents.

§ 1102.2 Ex parte communications prohibited; penalties provided.

(a) *Definitions.* (1) "On-the-record proceeding" means any matter described in Sections 556–557 of the Administrative Procedure Act (5 U.S.C. 556–557) or any matter required by the Constitution, statute, Commission rule, or by decision in the particular case, that is decided solely on the record made in a Commission proceeding.

(2) "Person who intercedes in any proceeding" means any person, partnership, corporation, or association, private or public, outside of the Commission which is neither a party nor party's agent, that volunteers a communication that it has reason to know may advance or adversely affect the interest of a party or party's agent in any proceeding before the Commission.

(3) "*Ex Parte* communication concerning the merits" means an oral or written communication by or on the behalf of a party which is made without

the knowledge or consent of any other party that could or is intended to influence anyone who participates or could reasonably be expected to participate in the decision.

(b) *Communications that are not prohibited.* (1) Any communication to which all the parties to the proceeding agree, or on which the Commission formally rules, may be made on an *ex parte* basis;

(2) Any communication of facts or contention which has general significance for a regulated industry if the communicator cannot reasonably be expected to have known that the facts or contentions are material to a substantive issue in a pending on-the-record proceeding in which it is interested;

(3) Any communication by means of the news media that in the ordinary course of business of the publisher is intended to inform the general public, members of the organization involved, or subscribers to such publication with respect to pending on-the-record proceedings.

(c) *Prohibitions.* (1) No party, counsel, agent of a party, or person who intercedes in any on-the-record proceeding shall engage in any *ex parte* communication concerning the merits of the proceeding with any Commissioner, hearing officer, joint board member, employee board member or employee of the Commission who participates, or who may reasonably be expected to participate, in the decision in the proceeding.

(2) No Commissioner, hearing officer, joint board member, employee board member or employee of the Commission who participates, or is reasonably expected to participate, in the decision in an on-the-record proceeding shall invite or knowingly entertain any *ex parte* communication concerning the merits of a proceeding or engage in any such communication to any party, counsel, agent of a party, or person reasonably expected to transmit the communication to a party or party's agent.

(d) *When prohibitions take effect.* The prohibitions against *ex parte* communications concerning the merits of a proceeding apply from the date on which a proceeding is noticed for oral hearing or for the taking of evidence by modified procedure, or when the person responsible for the communication has knowledge that the proceeding will be so noticed, or at any time the Commission, by rule or decision, specifies.

(e) *Procedure required of Commission members and employees upon receipt of ex parte communications concerning the merits of a proceeding.* Any person who receives an *ex parte* communication concerning the merits of a proceeding must promptly transmit either the written communication, or a written summary of the oral communication with an outline of the surrounding circumstances to the Secretary of the Commission. The Secretary shall place all of the material in the correspondence section of the public docket of the proceeding. A recipient of such *ex parte* communication, who has doubt as to the nature of the communication, may request a ruling on the question from the Commission's General Counsel. The General Counsel shall promptly reply to such requests. The Secretary shall promptly notify the Chairman of the Commission of such *ex parte* communications sent to the Secretary. The General Counsel shall promptly notify the Chairman of all requests for rulings sent to the General Counsel. The Chairman may require that any communication be placed in the correspondence section of the docket when fairness requires that it be made public, even if it is not a prohibited communication. The Chairman may direct the taking of such other action as may be appropriate under the circumstances.

(f) *Sanctions.* (1) The Commission may censure, suspend, or revoke the privilege of practicing before the agency of any person who knowingly and willfully engages in or solicits prohibited *ex parte* communication concerning the merits of a proceeding.

(2) The relief or benefit sought by a party to a proceeding may be denied if the party, or his agent knowingly and willfully violates the foregoing rules.

(3) The Commission may censure, suspend, dismiss, or institute proceedings to suspend or dismiss any Commission employee who knowingly and willfully violates the foregoing rules.

(10) Former §§ 1100.7–1100.11 (which fell under the center heading "PRACTITIONERS") and former Appendix A to Part 1100 are redesignated as Part 1103, and the newly redesignated Part 1103 is revised to read as follows:

PART 1103—PRACTITIONERS

Subpart A—General Information

Sec.
1103.1 Register of practitioners.
1103.2 Attorneys-at-law—qualifications and requirements to practice before the Commission.
1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.
1103.4 Initial appearances.
1103.5 Discipline.

Subpart B—Canons of Ethics

Sec.
1103.10 Introduction.

The Practitioner's Duties and Responsibilities Toward the Commission

Sec.
1103.11 Standards of ethical conduct in courts of the United States to be observed.
1103.12 The practitioner's duty to and attitude toward the Commission.
1103.13 Attempts to exert political or personal influence on the Commission are prohibited.
1103.14 Private communications with the Commission are prohibited.

The Practitioner's Duties and Responsibilities Toward a Client

1103.15 The practitioner's duty to clients, generally.
1103.16 Adverse influence and conflicting interests.
1103.17 Joint association of practitioners and conflicts of opinion.
1103.18 Withdrawal from employment.
1103.19 Advising upon the merits of a client's cause.
1103.20 Practitioner's fees and related practices.
1103.21 How far a practitioner may go in supporting a client's cause.
1103.22 Restraining clients from improprieties.
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The Practitioner's Duties and Responsibilities Regarding Witnesses, Other Litigants and the Public

1103.24 Use of adverse witnesses.
1103.25 Treatment of witnesses, litigants and other counsel.
1103.26 Discussion of pending litigation in the public press.
1103.27 Candor and fairness in dealing with other litigants.
1103.28 Negotiations with opposing party.
1103.29 Public communication and solicitation.
1103.30 Acceptance of employment.
1103.31 Responsibility for litigation.
1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.
1103.33 Responsibility when proposing a person for admission to practice before the Commission.
1103.34 Intermediaries.
1103.35 Partnership or professional corporation names and titles.

Authority: 49 U.S.C. 10308 and 10321; 5 U.S.C. 559.

Subpart A—General Information

§ 1103.1 Register of practitioners.

The Commission maintains a register containing the names of all non-attorneys entitled to practice before it. The register is maintained according to the individual non-attorney practitioner's name and not by corporate or firm name. Corporations

and firms are not admitted or recognized as practitioners before the Commission.

§ 1103.2 Attorneys-at-law—qualifications and requirements to practice before the Commission.

Any person who is a member in good standing of the bar of the highest court of any State, Commonwealth, possession, territory, or the District of Columbia may represent persons before the Commission.

§ 1103.3 Persons not attorneys-at-law—qualifications and requirements for practice before the Commission.

(a) *In general.* Any citizen or resident of the United States, not an attorney-at-law, who files an application for admission to practice, accompanied by the payment of the fee prescribed by rule or order of the Commission, and who successfully completes the practitioners' examination, and shows that applicant possesses the necessary legal and technical qualifications to enable applicant to render valuable service before the Commission and that applicant is competent to advise and assist in the presentation of matters before the Commission, may be permitted to practice before the Commission.

(b) *Qualifications standards.* A non-attorney applicant for admission to practice must meet one of the following requirements:

(1) An applicant must have completed 2 years (60 semester hours or 90 quarter hours) of post secondary education and must possess technical knowledge, training or experience in the field of transportation which is regarded by the Commission as the equivalent of 2 additional years of college education;

(2) An applicant must have worked in the field of transportation for at least 10 years;

(3) An applicant must have received a bachelor's degree with at least 12 semester hours or 18 quarter hours in transportation or business; or

(4) An applicant must have received a bachelor's degree and worked in the field of transportation for at least one year. An applicant's statement of college education must be supported by a transcript of records attached to the original application. Transcripts from any college accredited by the United States Department of Education will be accepted without question. With all other institutions, the burden of proof is on the applicant to establish that the formal education satisfies the standards set forth above. The qualifications standards are intended as general guidelines. Individual situations that vary from the standards will continue to be evaluated on their own merits.

(c) *Application for admission.* An application filed pursuant to this rule under oath for admission to practice must be completed in full on the form provided by the Commission, and must be addressed to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, to the attention of the room number indicated on the form.

(d) *Application fee.* Each application filed pursuant to this rule must be accompanied by a non-refundable fee of $50.00. Payment must be made either by check or money order payable to the Interstate Commerce Commission. Cash payment will not be accepted.

(e) *Additional certification.* (1) When an application meets the required standards, a copy will be referred to the Association of Interstate Commerce Commission Practitioners for a report to the Commission as to the reputation and character of the applicant. Inquiry also will be made by the Commission of the sponsors as to their knowledge of the applicant's legal and technical qualifications as contemplated by the Commission's Rules of Practice. If the Commission is satisfied as to the applicant's qualifications, reputation and character, then applicant will be considered eligible to take the examination.

(2) The Commission may require an applicant's sponsors to provide a detailed statement of the nature and extent of their knowledge of applicant's qualifications. Upon consideration of this material, if the Commission is not satisfied as to the adequacy of applicant's qualifications, the applicant will be notified by registered mail. Applicant may then request a hearing to prove his qualifications. If applicant makes such a request, the Commission will allow a hearing. In the absence of a request for a hearing within 20 days after receipt of the notice, the application will be considered withdrawn.

(f) *Scope of examination.* If applicant meets the educational and experience standards, and is found to be of good character, the applicant will be permitted to take the examination. The examination tests the applicant's experience and knowledge of the principal regulations, laws, and economic principles in the field of transportation as well as knowledge of the Commission's Rules of Practice and Canons of Ethics.

(g) *Time and Place of Examination.* Examinations are conducted twice a year on the first Tuesday in June and December of each year. Applications may be filed at any time. Those filed from October 1 to March 31, both inclusive, will be considered for the June examination. Applications filed from April 1 to September 30, both inclusive, will be considered for the December examination. Notice of time and place to appear for examination will be mailed to qualifying applicants approximately 30 days prior to the date of the examination.

(h) *Location of Examination.* Examinations will ordinarily be conducted in selected cities where Commission offices are located. A listing of the available sites will be attached to the application form. Applicants may select their preferred examination site. If a group of prospective applicants (three applicants or more) wishes to take the examination at a location not listed, a letter stating the preferred test site should be included with the application. The Commission will make every effort to administer the test at the requested location.

(i) *Examination Results.* Results will be released within 90 days after the examination. Individual results will be forwarded to the applicants at least 1 week before being publicly released. To protect the privacy of those taking the examination, individual grades will not be released over the telephone to anyone. Requests for grades may, however, be submitted in writing to the Office of the Secretary to the attention of the address stated in the application form.

(j) *Failure to appear for examination.* Applicants who have failed to appear for, or postponed taking an examination, a total of three times without showing good cause will have any subsequently filed application returned.

(k) *Failing or postponing the examination.* Applicants who failed the examination may reapply by submitting a request in writing with an additional $50 fee. Applicants who have postponed taking the examination three times without showing good cause will have their applications returned.

(l) The $50 filing fee is not refundable.

(m) Any application resubmitted to the Commission after being returned must be accompanied by a $50 filing fee.

(n) *Content and grading of examination.* The Employee Board on Education and Practice is responsible, under the general supervision of the Vice-Chairman, for the examination of non-attorney applicants, for the preparation of examination questions, and for grading examinations. The Board consists of two attorneys and one non-attorney appointed by the Chairman with the approval of the

Commission. Under the supervision of this Board, a seven-member Committee of Examiners will grade the examination questions. The members of this Committee must have at least 2 years experience with the Commission and are appointed for a 2 year term by the Chairman, with the approval of the Commission. Members may be reappointed and, to the extent possible, no more than three members of the Committee will be replaced at one time.

(o) *Applicant's oath.* No applicant shall be admitted to practice before the Commission until applicant shall subscribe to an oath or affirmation that applicant will conduct practice uprightly and according to the law, as a practitioner before the Commission, and that applicant will support the Constitution of the United States and laws of the United States and will conform to the rules and regulations of the Commission.

§ 1103.4 Initial appearances.

Practitioners shall file a declaration that they are authorized to represent the particular party on whose behalf they appear at the time of making an initial appearance, in all proceedings. This requirement can be met by:

(a) Entering the practitioner's name as the representative of an applicant in the appropriate space on an application form;

(b) Signing any complaint, petition, protest, reply or other pleading with a designation following the practitioner's signature that he is the representative of a party;

(c) Entering an appearance at any hearing on the form provided; or

(d) Filing a letter with the Secretary of the Commission stating that practitioner is authorized to represent a party. The party represented, their address, and the docket number of the proceeding must also be identified at the time of the initial appearance.

§ 1103.5 Discipline.

(a) A member of the Commission's bar may be subject to suspension, disbarment, or other disciplinary action if it is shown that the practitoner:

(1) Has been suspended or disbarred from practice in any court of record;

(2) Violated any of the Commission's rules including the Canons of Ethics set out in §§ 1103.10–1103.35; or

(3) Engaged in conduct unbecoming a member of the bar of the Commission.

(b) The practitioner will be afforded an opportunity to show why he should not be suspended, disbarred, or otherwise disciplined. Upon the practitioner's timely response to the show cause order after any requested hearing, or upon failure to make a timely response to the show cause order, the Commission shall issue an appropriate decision.

Subpart B—Canons of Ethics

§ 1103.10 Introduction.

The following canons of ethics are adopted as a general guide for those admitted to practice before the Interstate Commerce Commission. The practitioners before the Commission include (a) lawyers, who have been regularly admitted to practice law and (b) others who have fulfilled the requirements set forth in § 1103.3. The former are bound by a broad code of ethics and unwritten rules of professional conduct which apply to every activity of a lawyer. The canons do not release the lawyer from any of the duties or principles of professional conduct by which lawyers are bound. They apply similarly to all practitioners before the Commission, but do not negate the applicability of other ethical codes. The canons are organized under three headings, The Practitioner's Duties and Responsibilities to the Commission, The Practitoner's Duties and Responsibilities to the Client, The Practitioner's Duties and Responsibilities to Other Litigants, Witnesses and the Public.

The Practitioner's Duties and Responsibilities Toward the Commission

§ 1103.11 Standards of ethical conduct in courts of the United States to be observed.

These canons further the purpose of the Commission's Rules of Practice which direct all persons appearing in proceedings before it to conform, as nearly as possible, to the standards of ethical conduct required of practice before the courts of the United States. Such standards are taken as the basis for these specifications and are modified as the nature of the practice before the Commission requires.

§ 1103.12 The practitioner's duty to and attitude toward the Commission.

(a) It is the duty of the practitioner to maintain a respectful attitude toward the Commission and for the importance of the functions it administers. In many respects the Commission functions as a Court, and practitioners should regard themselves as officers of that Court and uphold its honor and dignity.

(b) It is the right and duty of the practitioner to submit grievances about a member or employee of the Commission to the proper authorities when proper grounds for complaint exists. In such cases, charges should be encouraged and the person making them should be protected.

(c) It is the duty of the practitioner to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

§ 1103.13 Attempts to exert political or personal influence on the Commission are prohibited.

(a) It is unethical for a practitioner to attempt to influence the judgment of the Commission by threats of political or personal reprisal.

(b) Marked attention and unusual hospitality on the part of a practitioner to a Commissioner, administrative law judge, or other representative of the Commission, which is unwarranted by the personal relationship of the parties, is subject to misconstruction of motive and should be avoided.

§ 1103.14 Private communications with the Commission are prohibited.

To the extent that the Commission acts in a quasi-judicial capacity, it is improper for litigants, directly or through any counsel or representative, to communicate privately with a Commissioner, administrative law judge, or other representative of the Commission about a pending case, or to argue privately the merits thereof in the absence of the adversaries or without notice to them. Practitioners at all times shall scrupulously refrain from going beyond *ex parte* representations which are clearly proper in view of the administrative work of the Commission in their communication with the Commission and its staff.

The Practitioner's Duties and Responsibilities Toward a Client

§ 1103.15 The practitioner's duty to clients, generally.

The practitioner shall be respectful of the law and its official ministers, and shall not be involved in corruption of public officials or deception of the public. In giving improper service or advice, the practitioner invites and deserves stern condemnation. The practitioner shall observe and advise all clients to observe the statutory law to the best of his knowledge or as interpreted by competent adjudication. The practitioner owes a general duty to practice candor toward his client with respect to all aspects to his service to the client.

§ 1103.16 Adverse influences and conflicting interests.

(a) At the time of the retainer, the practitioner shall disclose to the client all circumstances of his relations to the

parties, and any interest in or connection with the case.

(b) It is unethical for a practitioner to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this section, a practitioner represents conflicting interest, when on behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

(c) The obligation to represent the client with undivided fidelity and not to divulge secrets or confidence forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

§ 1103.17 Joint association of practitioners and conflicts of opinion.

(a) A client's offer of the assistance of an additional practitioner should not be regarded as evidence of lack of confidence, but the matter should be left to the determination of the client. A practitioner shall decline association as colleague if it is objectionable to the practitioner first retained, but if the client should relieve the practitioner first retained, another may come into the case.

(b) When practitioners jointly associated in a case cannot agree as to any matter vital to the interest of the client the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted by them unless the nature of the difference makes it impracticable for the practitioner whose judgment has been overruled to cooperate effectively. In that event, it is the practitioner's duty to ask the client to relieve him of his obligation.

(c) It is the right of any practitioner to give proper advice to those seeking relief against an unfaithful or neglectful practitioner. The practitioner against whom the complaint is made should be notified of such action.

§ 1103.18 Withdrawal from employment.

The right of a practitioner to withdraw from employment, once begun, arises only from good cause. The desire or consent of the client is not always sufficient cause for withdrawal. The practitioner shall not abandon the unfinished task to the detriment of the client except for reasons of honor, or the client's persistence over the practitioner's remonstrance in presenting frivolous defenses, or the client's deliberate disregard of an obligation as to fees or expenses. In these cases, the practitioner may be warranted in withdrawing after due notice to the client with time allowed for the employment of another practitioner. Other reasons for withdrawal might include instances in which a practitioner discovers that his client has no cause and the client is determined to continue the cause, or the practitioner's own inability to conduct a case effectively. Upon withdrawing from a case, the practitioner shall refund any part of a retainer which clearly has not been earned.

§ 1103.19 Advising upon the merits of a client's cause.

A practitioner shall try to obtain full knowledge of his client's cause before advising thereon. The practitioner shall give a candid opinion of the merits and probable result of bringing the case or of any related pending or contemplated litigation. The practitioner shall beware of bold and confident assurances to clients, especially where employment may depend upon such assurances. Whenever a fair settlement can be reached, the client shall be advised to avoid or to end litigation.

§ 1103.20 Practitioner's fees and related practices.

(a) *Establishing fees.* In establishing fees, a practitioner shall avoid charges which overestimate the value of his advice and services. A client's ability to pay cannot justify a charge in excess of the value of the service although a client's poverty may require a lesser charge or even no charge at all. Publicly quoted fees should be adhered to when actual charges are made. Practitioners are bound to charge no more than the quoted rates for 30 days following the date of their quotations unless a different period of time for the effectiveness of such rates is clearly specified when quoted, or unless permission to charge a higher rate is obtained from the Vice Chairman of the Commission.

(b) *Compensation, commissions and rebates.* A practitioner shall accept no compensation, commissions, rebates or other advantages from the parties in a proceeding other than his client without the knowledge and consent of his client after full disclosure.

(c) *Contigent fees.* Contigent fees should be only those sanctioned by law. In no case, except a charity case, should fees be entirely contingent upon success.

(d) *Division of fees.* Fees for services should be divided only with another member of the bar of practitioners and should be based upon a division of service or responsibility. It is unethical for a practitioner to retain laymen to solicit his employment in pending or prospective cases, and to reward them by a share of the fees. Such a practice cannot be too severely condemned.

(e) *Suing clients for fees.* Controversies with clients concerning compensation are to be entered into only insofar as they are compatible with self-respect and with the right to receive reasonable compensation for services. Lawsuits against clients should be resorted to only to prevent injustice, imposition or fraud.

(f) *Acquiring interest in litigation.* The practitioner shall not purchase or otherwise acquire any pecuniary interest in the subject matter of litigation which the practitioner is conducting.

(g) *Expenses.* A practitioner may not properly agree with a client that the practitioner shall pay or bear the expenses of litigation. He may in good faith advance expenses as a matter of convenience but must do so subject to reimbursement by the client. A practitioner shall bill and collect from a client, and thereafter retain only such payments and reimbursements for expenses as have actually been incurred in behalf of the client.

(h) *Witnesses' compensation.* Compensation of a witness is not to be made contigent on the success of a case in which the witness is called.

(i) *Dealing with trust property.* Money of the client or other trust property coming into the possession of the practitioner should be reported promptly, and, except with the client's knowledge and consent, should not be commingled with the practitioner's private property or be put to the practitioner's private use.

§ 1103.21 How far a practitioner may go in supporting a client's cause.

A practitioner shall put forth his best effort to maintain and defend the rights of his client. Fear of disfavor of the Commission or public unpopularity should not cause a practitioner to refrain from the full discharge of his duty. The client is entitled to the benefit of any and every remedy and defense authorized by law. The client may expect his counsel to assert every such remedy or defense. However, the practitioner shall act within the bounds of the law. A practitioner shall not violate the law or be involved in any manner of fraud or chicanery for any client.

§ 1103.22 Restraining clients from improprieties.

A practitioner should see that his clients act with the same restraint that the practitioner himself uses, particularly with reference to the client's

conduct toward the Commission, fellow practitioners, witnesses and other litigants. If a client persists in improper conduct, the practitioner should terminate their relationship.

§ 1103.23 Confidences of a client.

(a) The practitioner's duty to preserve his client's confidence outlasts the practitioner's employment by the client, and this duty extends to the practitioner's employees as well. Neither practitioner nor his employees shall accept employment which involves the disclosure or use of a client's confidences without knowledge and consent of the client even though there are other available sources of information. A practitioner shall not continue employment when he discovers that this obligation presents a conflict in his duty between the former and the new client.

(b) If a practitioner is falsely accused by his client, he is not precluded from disclosing the truth in respect to the false accusation. The announced intention of a client to commit a crime is not included in the confidence which a practitioner is bound to respect. The practitioner may properly make such disclosures to prevent the act or protect those against whom that is threatened.

The Practitioner's Duties and Responsibilities Regarding Witnesses, Other Litigants and the Public

§ 1103.24 Use of adverse witnesses.

A practitioner shall not be deterred from seeking information from a witness connected with or reputed to be biased in favor of an adverse party, if the ascertainment of the truth requires that such a person be called as a witness in a proceeding.

§ 1103.25 Treatment of witnesses, litigants and other counsel.

(a) A practitioner shall always treat adverse witnesses and other litigants with fairness and due consideration. He should never minister to the prejudice of a client in a trial or conduct in a cause. The client has no right to demand that the practitioner representing him abuse the opposing party or indulge in offensive personal attacks.

(b) A practitioner shall not attempt to obstruct Commission investigations or corruptly to influence witnesses and potential witnesses during an investigation.

(c) In conducting a case it is improper for a practitioner to allude to the personal history or the personal peculiarities or idiosyncracies of practitioners on the other side, or otherwise engage in personal abuse of other practitioners.

§ 1103.26 Discussion of pending litigation in the public press.

Attempts to influence the action and attitude of the members and administrative law judges of the Commission through propaganda or through colored or distorted articles in the public press, should be avoided. However, it is not against the public interest or unfair to the Commission if the facts of pending litigation are made known to the public through the press in a fair and unbiased manner and in dispassionate terms. When the circumstances of a particular case appear to justify a statement to the public through the press, it is unethical to make it anonymously.

§ 1103.27 Candor and fairness in dealing with other litigants.

(a) The conduct of practitioners before the Commission and with other practitioners should be characterized by candor and fairness. The practitioner shall observe scrupulously the principles of fair dealing and just consideration for the rights of others.

(b) It is not candid or fair for a practitioner knowingly to misstate or misquote the contents of a paper, the testimony of a witness, the language or the argument of an opposing practitioner, or the language or effect of a decision or a text book; or, with knowledge of its invalidity to cite as authority a decision which has been overruled or otherwise impaired as a precedent or a statute which has been repealed; or in argument to assert as a fact that which has not been proved, or to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

(c) It is dishonorable to deal other than candidly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of cases.

(d) A practitioner shall not offer evidence which he knows the Commission should reject, in order to get the same before the Commission by argument for its admissibility, or arguments upon any point not properly calling for determination. He shall not introduce into an argument remarks or statements intended to influence the bystanders.

(e) A practitioner shall rely on his judgment concerning matters incidental to the trial which may, in some cases, affect the proceeding. For example, a practitioner should not force a matter to trial when there is affliction or bereavement on the part of the opposing practitioner if no harm will come from postponing the proceeding.

(f) A practitioner shall not ignore known customs or practice of the Commission, even when the law permits, without giving timely notice to the opposing practitioner.

(g) Insofar as is possible, important agreements affecting the rights of the clients should be made in writing. It is, however, dishonorable to avoid performance of an agreement fairly made only because it is not made in writing.

§ 1103.28 Negotiations with opposing party

A practitioner shall not in any way communicate upon the subject of controversy with a party represented by another practitioner except upon express agreement with the practitioner representing such party. He shall not negotiate or make compromises with the other party, but shall deal only with the opposing practitioner. The practitioner shall avoid everything that may tend to mislead a party not represented by a practitioner and should not advise that party as to the law.

§ 1103.29 Public communication and solicitation.

(a) A practitioner shall not make any public communication or solicitation for employment containing a false, fraudulent, misleading, or deceptive statement or claim. This prohibition includes, but is not limited to:

(1) the use of statements containing a material misrepresentation of fact or omission of a material fact necessary to keep the statement from being misleading;

(2) statements intended or likely to create an unjustifiable expectation; statements of fee information which are not complete and accurate;

(3) statements containing information on past performance or prediction of future success;

(4) statements of prior Commission employment outside the context of biographical information; statements containing a testimonial about or endorsement of a practitioner;

(5) statements containing an opinion as to the quality of a practitioner's services, or statements intended or likely to attract clients by the use of showmanship, puffery, or self-laudation, including the use of slogans, jingles, or sensational language or format.

(b) A practitioner shall not solicit a potential client who has given the practitioner adequate notice that he does not want to receive communications from the practitioner, nor shall a practitioner make a

solicitation which involves the use of undue influence.

(c) A practitioner shall not solicit a potential client who is apparently in a physical or mental condition which would make it unlikely that he could exercise reasonable, considered judgement as to the selection of a practitioner.

(d) A practitioner shall not pay or otherwise assist any other person who is not also a practitioner and a member or associate of the same firm to solicit employment for the practitioner.

(e) If a public communication is to be made through use of radio or television, it must be prerecorded and approved for broadcast by the practitioner. A recording of the actual transmission must be retained by the practitioner for a period of 1 year after the date of the final transmission.

(f) A paid advertisement must be identified as such unless it is apparent from the context that it is a paid advertisement.

(g) A practitioner shall not compensate or give anything of value to a representative of any communication medium in anticipation of or in return for professional publicity in a news item.

§ 1103.30 Acceptance of employment.

(a) The practitioner must decline to conduct a case or to make a defense when convinced that it is intended merely to harass or to injure the opposing party, or to work oppression or wrong. Otherwise, it is the practitioner's right, and having accepted retainer, it becomes the practitioner's duty, to insist upon the judgement of the Commission as to the merits of the client's claim. The practitioner's acceptance of a case is equivalent to the assertion that the client's case is proper for determination.

(b) No practitioner is obliged to act either as adviser or advocate for every potential client. The practitioner has the right to decline employment. Every practitioner shall decide what employment he will accept, what cases he will bring before the Commission for complainants, or contest for defendants or respondents.

§ 1103.31 Responsibility for litigation.

The practitioner bears the responsibility for advising as to questionable transactions, bringing questionable proceedings, or urging questionable defenses. Client's instructions cannot be used as an excuse for questionable practices.

§ 1103.32 Discovery of imposition and deception and duty to report corrupt or dishonest conduct.

(a) The practitioner, upon detecting fraud or deception practiced against the Commission or a party in a case, shall make every effort to rectify the practice by advising his client to forego any unjustly earned advantage. If such advice is refused, the practitioner should inform the injured party or that party's practitioner so that appropriate steps may be taken.

(b) Practitioners shall expose without fear or favor before the proper tribunals any corrupt or dishonest conduct and should accept without hestitation employment against a practitioner who has wronged his client. The practitioner upon the trial of a case in which perjury has been committed owes it to the Commission and to the public to bring the matter to the knowledge of the prosecuting authorities.

§ 1103.33 Responsibility when proposing a person for admission to practice before the Commission.

The practitioner shall aid in guarding the bar of the Commission against admission of candidates unfit or unqualified because deficient in either moral character or qualification. A practitioner shall propose no person for admission to practice before the Commission unless from personal knowledge or after reasonable inquiry he sincerely believes and is able to vouch that such person possesses the qualifications prescribed in § 1103.3.

§ 1103.34 Intermediaries.

(a) The services of a practitioner should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and practitioner. The responsibility and qualifications of the practitioner are individual. The practitioner shall avoid all relations which direct the performance of his duties in the interest of such intermediaries. The practitioner's relationship and responsibility to the client should be direct.

(b) The practitioner may accept employment from any organization (such as an association, club or trade organization) authorized by law to be a party to proceedings before the Commission, to render services in such proceedings in any matter in which the organization, as an entity, is interested. This employment should only include the rendering of such services to the members of the organization in respect to the individual affairs as are consistent with the free and faithful performance of his duties to the Commission.

(c) Nothing in this canon shall be construed as conflicting with § 1103.20(d).

§ 1103.35 Partnership or professional corporation names and titles.

In the formation of a partnership or professional corporation among practitioners care should be taken to avoid any misleading name or representation which would create a false impression as to the position or privileges of a member not duly authorized to practice. No person should be held as a practitioner who is not duly qualified under § 1103.2 or 1103.3 of these rules. No person who is not duly admitted to practice should be held out in a way which will give the impression that he is so admitted. No false or assumed or trade name should be used to disguise the practitioner or his partnership or professional corporation.

(11) Former §§ 1100.13–1100.16, §§ 1100.18–1100.21, and former paragraphs § 1100.4(a)–(d) are redesignated as Part 1104, and the newly redesignated Part 1104 is revised to read as follows:

PART 1104—PLEADINGS; GENERALLY

Sec.
1104.1 Address.
1104.2 Typographical specification generally.
1104.3 Copies.
1104.4 Attestation and verification.
1104.5 Affirmation or delegations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.
1104.6 Timely filing required.
1104.7 Computation and extension of time.
1104.8 Objectionable matter.
1104.9 [Reserved].
1104.10 Rejection of a deficient document.
1104.11 Amendments.
1104.12 Service of pleadings and papers.
1104.13 Replies and motions.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1104.1 Address.

Pleadings should be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423, and should designate the docket number and title of the proceeding, if known.

§ 1104.2 Typographical specification generally.

Requirements. All pleadings should:

(a) Be on opaque, unglazed, durable paper not exceeding 8½ by 11 inches. Printing may appear on both sides of a page.

(b) Be doubled-spaced except long quotations which must be singled-spaced and indented.

(c) Be reproduced by printing, or by any other process that results in clear and permanently legible copies. Any print that cannot be reproduced by photography is not acceptable.

§ 1104.3 Copies.

The original and 6 copies of every pleading document or paper permitted or required to be filed under this subchapter must be furnished for the use of the Commission, unless otherwise specifically directed by another Commission regulation or notice in an individual proceeding.

§ 1104.4 Attestation and verification.

(a) *Signature of Attorney or Practitioner.* If a party is represented by a practitioner or an attorney, the original of each paper filed should be signed in ink by the practitioner or attorney, whose address should be stated. The signature of a practitioner or attorney constitutes a certification that the representative:

(1) Has read the pleading, document or paper;

(2) Is authorized to file it;

(3) Believes that there is good ground for the document;

(4) Has not interposed the document for delay;

A pleading, document or paper thus signed need not be verified or accompanied by affidavit unless required elsewhere in these rules.

(b) *Signature by one not authorized to represent others before the Commission.* The original of each document not signed by a practitioner or attorney must be:

(1) Signed in ink;

(2) Accompanied by the signer's address; and

(3) Verified, if it contains allegations of fact, under oath by the person, in whose behalf it is filed, or by a duly authorized officer of the corporation in whose behalf it is filed. If the pleading is a complaint, at least one complainant must sign and verify the pleading.

§ 1104.5 Affirmation or declarations under penalty of perjury in accordance with 18 U.S.C. 1621 in lieu of oath.

(a) An affirmation will be accepted in lieu of an oath.

(b) Whenever any rule of this Commission requires or permits matter to be supported, evidenced, established, or proved by sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, oath of office, or an oath required to be taken before a special official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proven by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury and dated, in the following form:

I _____, declare (certify, verify, or state) under penalty of perjury ("under the laws of the United States," if executed outside of the United States) that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this (specify type of document). Executed on (*date*).

Signature

(c) Knowing and willful misstatements or omissions of material facts constitute federal criminal violations punishable under 18 U.S.C. 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense. Additionally, these misstatements are punishable as perjury under 18 U.S.C. 1621 which provides for fines up to $2,000 or imprisonment up to 5 years for each offense.

§ 1104.6 Timely filing required.

Documents must be received for filing at the Commission's offices in Washington, DC within the time limits set for filing. The date of receipt at the Commission, and not the date of deposit in the mail, determines the timeliness of filing. However, if a document is mailed by United States express mail, postmarked at least one day prior to the due date, it will be accepted as timely. Other express mail, received by the private express mail carrier at least one day prior to the due date, also will be accepted as timely filed. The term express mail means that the carrier or delivery service offers next day delivery to Washington, D.C.

§ 1104.7 Computation and extension of time.

(a) *Computation.* In computing any period of time, the day of the act, event, or default upon which the designated period of time begins to run is not included. The last day of the period is included unless it is Saturday, Sunday, or a legal holiday in the District of Columbia, in which event the period runs until the end of the next day which is not a Saturday, Sunday or holiday. This rule applies to forward and backward measurement of time.

(b) *Extensions.* Any time period, except those provided by law or specified in these rules respecting informal complaints seeking damage may be extended by the Commission in its discretion, upon request and for good cause. Requests for extensions must be served on all parties of record at the same time and by the same means as service is made on the Commission, except if service is made on the Commission in person and personal service on other parties is not feasible, service on other parties should be made by first class or express mail. A request for an extension must be filed not less than 10 days before the due date. Only the original of the request and certificate of service need be filed with the Commission. If granted, the party making the request should promptly notify all parties to the proceeding of the extension and so certify to the Commission, except that this notification is not required in rulemaking proceedings.

(c) *Exception to time computation rules.* See 49 CFR Part 1152 for special abandonment rules.

§ 1104.8 Objectionable matter.

The Commission may order that any redundant, irrelevant, immaterial, impertinent, or scandalous matter be stricken from any document.

§ 1104.9 [Reserved].

§ 1104.10 Rejection of a deficient document.

(a) The Commission may reject a document, submitted for filing if the Commission finds that the document does not comply with the rules.

(b) The Commission may either return the material unfiled or tentatively accept the material for filing and advise the person tendering it of the deficiency and require that the deficiency be corrected.

§ 1104.11 Amendments.

Leave to amend any document is a matter of the Commission's discretion.

§ 1104.12 Service of pleading and papers.

(a) *Generally.* Every document filed with the Commission should include a certificate showing simultaneous service upon all parties to the proceeding. Service on the parties should be by the same method and class of service used in serving the Commission, with charges, if any, prepaid. One copy should be served on each party. If service on other parties is not feasible, service should be made by first-class or express mail. When a party is represented by a practitioner or attorney, service upon the practitioner is deemed to be service upon the party.

(b) *Exceptions.* Copies of letters to the Commission relating to oral argument under Part 1116, and subpoenas under § 1113.2, need not be served on other parties of the proceeding. Service of comments in rulemaking proceedings is

not required, unless specifically directed by the Commission.

(c) *Sample Certificate of Service.*

I certify that I have this day served copies of document upon all parties of record in this proceeding, by (here state the method of making service which must be consistent with this part).

Signature Date

§ 1104.13 Replies and motions.

(a) *Time.* A party may file a reply or motion addressed to any pleading within 20 days after the pleading is filed with the Commission, unless otherwise provided.

(b) *Number of copies.* The original of a reply or motion should be accompanied by the same number of copies required to be filed with the pleading to which the reply or motion is addressed.

(c) *Reply to a Reply.* A reply to a reply is not permitted.

PART 1105—GUIDELINES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969

PART 1108—[REDESIGNATED]

(12) Former Part 1108 is redesignated as Part 1105.

(12A) The authority citation for the newly redesignated Part 1105 is revised to read as follows:

Authority: 49 U.S.C. 10321; 42 U.S.C. 4332; 5 U.S.C. 559.

PART 1106—IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT OF 1975

(13) The part number and heading for Part 1106 remains unchanged.

(13A) The authority citation for Part 1106 is revised to read as follows:

Authority: 49 U.S.C. 10321; 42 U.S.C. 6362(b); 5 U.S.C. 559.

PART 1109—[REDESIGNATED]

(13B) Current Part 1109 is redesignated as Part 1137.

PARTS 1107-1109—[RESERVED].

(14) New parts 1107-1109 are added and reserved.

(15) Former Part 1103 is redesignated as Part 1110 and the newly redesignated Part 1110 is revised to read as follows:

PART 1110—PROCEDURES GOVERNING INFORMAL RULEMAKING PROCEEDINGS

Sec.
1110.1 Applicability.
1110.2 Opening of proceeding.
1110.3 Publication of notices.
1110.4 Participation.
1110.5 Consideration of comments received.
1110.6 Petitions for extension of time to comment.
1110.7 Availability of dockets.
1110.8 Adoption of final rules.
1110.9 Petition for exemptions.
1110.10 Petitions for reconsideration.

Authority: 49 U.S.C. 10321; 5 U.S.C. 552, 553, and 559.

§ 1110.1 Applicability.

This part contains general rulemaking procedures that apply to the issuance, amendment, and repeal of rules, general policy statement, or other interpretation of rules or law of the Interstate Commerce Commission, adopted under the procedures of Section 553 of Title 5 of the United States Code (the Administrative Procedure Act).

§ 1110.2 Opening of proceeding.

(a) The Commission may open a rulemaking proceeding on its own motion. In doing so, it may consider the recommendations of other agencies of the United States and of other persons.

(b) Any person may petition the Commission to issue, amend, or repeal a rule.

(c) Each petition seeking the institution of a proceeding, filed under this section must—

(1) Be submitted, along with 15 copies if possible, to the Secretary, Interstate Commerce Commission, Washington, DC 20423;

(2) Set forth the text or substance of the rule or amendment proposed or specify the rule that the petitioner wants to have repealed or modified;

(3) Explain the interest of the petitioner in the action requested; and

(4) Contain any information and arguments available to the petitioner to support the action sought and may detail any environmental, energy, or small business considerations.

(d) In rail cases, the Commission will grant or deny a petition within 120 days of its receipt.

(e) If the Commission determines that a petition contains adequate justification, it will open a rulemaking proceeding pursuant to § 1110.3 and will notify the petitioner of its action.

(f) If the Commission determines that the petition does not contain adequate justification for opening a rulemaking proceeding, the petition will be denied, with a brief statement of the grounds for denial, and the petitioner will be notified of the Commission's action.

(g) If a petition under this section concerning a common carrier by railroad is granted, the Commission will proceed as soon as it is practicable. If the petition is denied, the Commission will publish a statement of the reasons for the denial in the **Federal Register.**

§ 1110.3 Publication of notices.

(a) Interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice may be issued as final without notice or other public rulemaking proceedings.

(b) General rulemaking proceedings will be opened by the issuance of either a notice of intent to institute a rulemaking proceeding, an advance notice of proposed rulemaking, or a notice of proposed rules. The Commission will publish the notice in the **Federal Register,** and it will invite the public to participate in the rulemaking proceeding. No notice will be issued when the Commission finds for good cause, that notice is impractica or unnecessary or contrary to the publi interest.

(c) Notices of proposed rulemakings will include—

(1) The proposed rules, if prepared;

(2) A discussion of why the rulemakings are needed and what they are intended to accomplish;

(3) Identification of significant dates in the proceedings, such as dates by which comments must be filed or on which the rules are proposed to take effect;

(4) Any relevant addresses;

(5) The name and phone number of a individual within the Commission who can provide further information concerning the proceedings;

(6) Any supplementary information required; and

(7) Reference to the legal authority under which the rules are proposed.

(d) In addition to being published in the **Federal Register,** notices of propos rulemaking and subsequent notices ar decisions in rulemaking proceedings, will be served on the parties and mad available to the public through the Office of the Secretary. To the extent possible, the date of service will be th same as the date of publication in the **Federal Register.** When the service ar publication dates are not the same, th date of publication in the **Federal Register** is controlling for the purpose determining time periods set by these procedures or by notices issued in individual proceedings.

§ 1110.4 Participation.

Any person may participate in rulemaking proceedings by submittin written information or views. In addition, the Commission may invite persons to present oral arguments, participate in informal conferences, appear at informal fact-finding heari or participate in any other proceedin Information contained in written

submissions will be given the same consideration.

§ 1110.5 Consideration of comments received.

All timely comments will be considered before final action is taken on a rulemaking proposal. Comments which are filed late will be considered so far as possible without incurring additional expense, delay, or prejudice to other parties.

§ 1110.6 Petitions for extension of time to comment.

(a) Any person may petition the Commission for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition and one copy must be submitted at least 10 days prior to the deadline for filing comments. The filing of the petition does not automatically extend the time for the filing of petitioner's comments.

(b) The Commission will grant the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, notice of it will be published in the **Federal Register**, and it will apply to all persons.

§ 1110.7 Availability of dockets.

Dockets of pending rulemaking proceedings are maintained in the Office of the Secretary. These dockets are available for inspection by any person, and copies may be obtained upon payment of the prescribed fee.

§ 1110.8 Adoption of final rules.

If, after consideration of all comments received, final rules are adopted, notice will be published in the **Federal Register**.

§ 1110.9 Petition for exemptions.

Any person may petition the Commission for a permanent or temporary exemption from any rule. Petitions should be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, and should identify the rule involved and the arguments in favor of granting the exemption.

§ 1110.10 Petitions for reconsideration.

Any person may file a petition for reconsideration of the Commission's decision in a rulemaking proceeding. Petitions should be filed within 20 days of the date that the final decision is published in the **Federal Register** and should identify the interest of the petitioner, the specific action sought, and the arguments favoring that action.

(16) Former §§ 1100.26, 1100.29, 1100.30–1100.35, 1100.41, and former paragraphs 1100.24(a), 1100.25(a), (b), and (d), and 1100.44(a) are redesignated as Part 1111, and the newly redesignated Part 1111 is revised to read as follows:

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

Sec.
1111.1 Content of formal complaints; joinder.
1111.2 Amended and supplemental complaints.
1111.3 Copies; service.
1111.4 Answers and cross complaints.
1111.5 Motions to dismiss or to make more definite.
1111.6 Satisfaction of complaint.
1111.7 Investigations on the Commission's own motion.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1111.1 Content of formal complaints; joinder.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issue raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Requests for Oral Hearing.* A formal complaint should include a request that the proceeding be handled either under the modified procedure or at oral hearing, and a request for oral hearing should detail why oral hearing is required and should include at least two alternative hearing sites.

(c) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or statement of facts may be included in one complaint, but should be stated and numbered separately.

(d) *Joinder.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violations and like facts.

§ 1111.2 Amended and supplemental complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statutory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5, as if the amended or supplemental complaint was an original complaint.

§ 1111.3 Copies; service.

Formal complaints, amended or supplemental complaints, and cross complaints will be served by the Commission. The original of each formal complaint, or cross complaint must be accompanied by a sufficient number of copies to enable the Commission to serve one upon each defendant and to retain 6 copies in addition to the original.

§ 1111.4 Answers and cross complaints.

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, the issue is joined at the conclusion of the time for filing answers, and the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participation in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and six copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complaint and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by other parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of answer to a cross complaint upon the other parties.

§ 1111.5 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross

complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1111.6 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the complainant must be filed (original only need be filed), setting forth when and how the complaint has been satisfied.

§ 1111.7 Investigations on the Commission's own motion.

(a) *Service of decision.* A decision instituting an investigation on the Commission's own motion will be served by the Commission upon respondents.

(b) *Default.* If within the time period stated in the decision instituting an investigation, a respondent fails to comply with any requirement specified in the decision, the respondent will be deemed in default and to have waived any further proceedings, and the investigation may be decided forthwith.

(17) Former §§ 1100.43, 1100.46, 1100.48, 1100.51, and former paragraphs 1100.44(b) and 1100.47(a) are redesignated as Part 1112, and the newly redesignated Part 1112 is revised to read as follows:

PART 1112—MODIFIED PROCEDURES

Sec.

1112.1 When modified procedure is used.
1112.2 Decisions directing modified procedure.
1112.3 Default for failure to comply with schedule; effect of default.
1112.4 Petitions to intervene.
1112.5 Joint pleadings.
1112.6 Verified statements; contents.
1112.7 Records in other Commission proceedings.
1112.8 Verification.
1112.9 Sample verification for statement of fact under modified procedure.
1112.10 Requests for oral hearings and cross examination.
1112.11 Authority of officers.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1112.1 When modified procedure is used.

The Commission may decide that a proceeding be heard under modified procedure when it appears that substantially all material issues of fact can be resolved through submission of written statements, and efficient disposition of the proceeding can be accomplished without oral testimony. Modified procedure may be ordered on the Commission's initiative, or upon approval of a request by any party.

§ 1112.2 Decisions directing modified procedure.

A decision directing that modified procedure be used will set out the schedule for filing verified statements by all parties and will list the names and addresses of all persons who at that time are on the service list in the proceeding. In this part, a statement responding to an opening statement is referred to as a "reply", and a statement responding to a reply is referred to as a "rebuttal". Replies to rebuttal material are not permitted.

§ 1112.3 Default for failure to comply with schedule; effect of default.

If a party fails to comply with the schedule for submission of verified statements, or any other requirements established by the modified procedure decision, that party will be deemed to be in default and to have waived any further participation in the proceeding. Thereafter, the proceeding may be disposed of without notice to and without participation by parties in default.

§ 1112.4 Petitions to intervene.

(a) The Commission may grant a petition to intervene in a proceeding set for modified procedure if intervention:

(1) Will not unduly disrupt the schedule for filing verified statements, except for good cause shown; and

(2) Would not unduly broaden the issues raised in the proceeding.

(b) The petition to intervene shall set out:

(1) The petitioner's interest in the proceeding;

(2) Whether the petitioner supports or opposes the relief sought or the action proposed or is otherwise concerned with the issues presented in the proceeding; and

(3) The petitioner's request, if any, for relief.

(c) Petitions to intervene are not required in investigation proceedings under the modified procedure involving rate-related matters, provided that the substantive requirements of (a) and (b) are met.

§ 1112.5 Joint pleadings.

Parties with common interests are encouraged to prepare joint pleadings whenever possible.

§ 1112.6 Verified statements; contents.

A verified statement should contain all the facts upon which the witness relies, and to the extent that it contains arguments, they should be based only on those facts. Parties filing reply and rebuttal verified statements will be considered to have admitted the truth of material allegations of fact contained in their opponents' statements unless those allegations are specifically challenged. Rebuttal statements shall be confined to issues raised in the reply statements to which they are directed.

§ 1112.7 Records in other Commission proceedings.

If any portion of the record before the Commission in any proceeding other than the proceeding at issue is offered in evidence, a true copy should be presented for the record.

§ 1112.8 Verification.

The original of any pleading filed must show the signature, capacity, and seal, if any, of the person administering the oath, and the date thereof.

§ 1112.9 Sample verification for statement of fact under modified procedure.

State of _____,
County of _____,
SS:
_____ being duly sworn, deposes and says that he has read the foregoing statement, knows the facts asserted there are true and that the same are true as stated.
Signed _____.
Subscribed and sworn to before me this _____ day of _____.
Notary Public of _____.
My Commission expires _____.

§ 1112.10 Requests for oral hearings and cross examination.

(a) *Requests.* Requests for oral hearings in matters originally assigned for handling under modified procedure should be included in the reply or rebuttal statement. The reasons why the matter cannot be properly resolved under modified procedure must be set out in full. Requests for cross examination of witnesses must include the name of the witness and the subject matter of the desired cross examination.

(b) *Disposition.* Unless material facts are in dispute, oral hearings will not be held. If held, oral hearings will normally be confined to material issues upon which the parties disagree. The decision setting a matter for oral hearing will define the scope of the hearing.

§ 1112.11 Authority of officers.

Except to the extent that they apply only to the conduct of a public hearing,

the officer assigned to handle a proceeding under the modified procedure shall have the same authority as officers assigned to conduct oral hearings as described in 49 CFR § 1113.3 (a) and (b).

(18) Former §§ 1100.12, 1100.17, 1100.54, 1100.66–1100.70, 1100.72, 1100.74, 1100.75, 1100.80, 1100.81, 1100.84–1100.90 and former paragraphs 1100.53 (a) and (b) and 1100.82 (c), (d), and (e) are redesignated as Part 1113, and the newly redesignated Part 1113 is revised to read as follows:

PART 1113—ORAL HEARING

Sec.
1113.1 Scheduling hearings; continued hearings.
1113.2 Subpoenas.
1113.3 Authority of officers.
1113.4 Prehearing conferences.
1113.5 Stipulations.
1113.6 Appearances; withdrawal or absence from hearing.
1113.7 Intervention; petitions.
1113.8 Witness Examination; order of procedure.
1113.9 Prepared statements.
1113.10 Records in other Commission proceedings.
1113.11 Abstracts of documents.
1113.12 Exhibits.
1113.13 Filing evidence subsequent to hearing; copies.
1113.14 Objections to rulings.
1113.15 Interlocutory appeals.
1113.16 Oral argument before the hearing officer.
1113.17 Transcript of record.
1113.18 Briefs.
1113.19 Pleadings: part of the record.
1113.20–1113.30 [Reserved].
1113.31 Joint boards.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1113.1 Scheduling hearings; continued hearings.

(a) *Assignment; service and posting of notice.* In those proceedings in which an oral hearing is to be held, the Commission will assign a time and place for hearing. Notice of hearings will be posted in the Office of the Secretary of the Commission and will be served upon the parties and such other persons as may be entitled to receive notice under the Act.

(b) *Requests for changes in assignment.* Requests for postponements of date of hearing will be granted only in exceptional circumstances.

(c) *Continuances.* (1) A continuance may be granted at the descretion of the presiding officer.

(2) If the presiding officer announces the time and place of a continued hearing on the record, no further notice need be given.

(3) A joint board shall not set a date and place for a continued hearing withour first consulting the Commission. If consultation with the Commission is impractical, the hearing shall be adjourned by the joint board to such time and place as the Commission subsequently shall determine.

§ 1113.2 Subpoenas.

(a) *Issuance.* A subpoena may be issued upon the direction of the Commission on its own motion or upon request. A subpoena may be issued by the Commission or by the officer presiding at a hearing and must be signed by the Secretary or a member of the Commission.

(b) *Requests.* (1) A request for a subpoena to compel the appearance of a person at a hearing to give oral testimony, but not to produce documents, may be made either by letter (only the original need be filed with the Commission) or orally upon the record at the hearing. A showing of general relevance and reasonable scope of the evidence sought to be introduced through the subpoenaed person may be required.

(2) A request for a subpoena to compel a witness to produce documentary evidence should be made in writing by petition. The petition should specify with particularity the books, papers, or documents desired and facts expected to be proved, and should show the general relevance and reasonable scope of the evidence sought. The officer presiding at a hearing may grant a request for such a subpoena made orally upon the record.

(c) *Service.* The original subpoena should be exhibited to the person served, should be read to him if he is unable to read, and a copy should be delivered to him by the officer or person making service.

(d) *Return.* If service of subpoena is made by a United States marshal or his deputy, service should be evidenced by his return on the subpoena. If made by any other person, such person shall make an affidavit stating the date, time and manner of service; and return such affidavit on, or with, the original subpoena in accordance with the form thereon. In case of failure to make service the reasons for the failure should be stated on the original subpoena. The written acceptance of service of a subpoena by the person subpoenaed will be sufficient without other evidence of return. The original subpoena bearing or accompanied by the required return, affidavit, statement, or acceptance of service, should be returned forthwith to the Secretary of the Commission, unless otherwise directed.

(e) *Witness fees.* A witness who is summoned and responds to the summons is entitled to the same fee as is paid for like service in the courts of the United States. Such fee is to be paid by the party at whose instance the testimony is taken at the time the subpoena is served, except that when the subpoena is issued on behalf of the United States or an officer or agency thereof, fees and mileage need not be tendered at the time of service.

§ 1113.3 Authority of officers.

(a) *General.* (1) The presiding officer has the authority to regulate the procedure in the hearing before him, and has authority to take all measures necessary or proper for the efficient performance of the duties assigned him. These include authority: (i) to hold hearings; (ii) to administer oaths and affirmations; (iii) to grant intervention; (iv) to accept any pleading; (v) to establish special rules of procedure appropriate to the effective handling of the particular proceeding; (vi) to examine witnesses; (vii) to issue subpoenas at the hearing; (viii) to dispose of requests for discovery; (ix) to hold conferences for the settlement and simplification of issues; (x) to rule on motions and dispose of procedural requests; (xi) to make initial decisions; (xii) to exclude any person from the hearing for contemptuous conduct; and (xiii) to take any other action authorized by this part, by the Administrative Procedure Act, or by the Interstate Commerce Act and related acts.

(2) The presiding officer has the authority: (i) to terminate examination or cross-examination of repetitious or cumulative nature; (ii) to limit direct examination to material matters; (iii) to limit cross-examination to disputed material facts; (iv) to require that principal examination or cross-examination be conducted by one or more counsel representing similar interests in proceedings where several parties are involved; (v) to set reasonable schedules for the presentation of witnesses; (vi) and to set reasonable time limits for the examination or cross-examination of witnesses. In order to enforce this paragraph, the officer may require a clear statement on the record of the nature of the testimony to be given by any witness.

(b) *Motions to dismiss; amendments.* (1) The presiding officer shall have power to decide any motion to dismiss the proceeding or other motion which involves final determination of the merits of the proceeding.

(2) The presiding officer may grant leave to amend any application or complaint except where the tendered

amendment would result in such a change in the geographical scope of the proceeding that it would have to be reassigned from an administrative law judge to a joint board, or vice versa.

(c) *Preparation of the decision by the prevailing party.* Any proceeding in which an oral hearing is held and in which the officer is able to announce his decision either:

(1) On the record after the close of the taking of testimony and the hearing of arguments by the officer, or

(2) By appropriate notification to the parties after the close of hearing, may be made the subject of an initial decision prepared by a party or parties in whose favor the officer decides, within a period specified by the officer, and subject to such changes as the officer considers appropriate in the draft prepared for him.

(d) *Recording; media coverage.* The presiding officer shall have authority to permit or to refuse to permit the recording of the hearing by means of live or delayed television or radio broadcast, or the use of a tape recorder or other electronic or photographic equipment by any person other than the official reporter.

§ 1113.4 Prehearing conferences.

(a) *Purposes.* Upon written notice by the Commission in any proceeding, or upon written or oral instruction of an officer, parties or their representatives may be directed to appear before an officer at a specified time and place for a conference, prior to or during the course of a hearing, or in lieu of personally appearing, to submit suggestions in writing, for the purpose of formulating issues and considering:

(1) The simplification of issues;

(2) The necessity or desirability of amending the pleadings either for the purpose of clarification, amplification, or limitation;

(3) The possibility of making admissions of certain averments of fact or stipulations concerning the use by any or all parties of matters of public record, such as annual reports and the like, to avoid the unnecessary introduction of proof;

(4) The procedure at the hearing;

(5) The limitation of the number of witnesses;

(6) The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and

(7) Such other matters, including disposition of requests for discovery, as may aid in the simplification of the evidence and disposition of the proceeding. Parties may request a prehearing conference.

(b) *Facts disclosed privileged.* Facts disclosed in the course of the prehearing conference are privileged and, except by agreement, will not be used against participating parties either before the Commission or elsewhere unless fully corroborated by other evidence.

(c) *Recordation and decision.* Action taken at the conference, including a recitation of the amendments allowed to the pleadings, the agreements made by the parties as to any of the matters considered, and defining the issues, will be recorded in an appropriate decision unless the parties enter into a written stipulation as to such matters, or agree to a statement thereof made on the record by the officer.

(d) *Objection to the decision; subsequent proceedings.* If a decision is entered, the parties may, within 20 days of the date of service, or within such lesser time as is set by the officer, present objections on the grounds that the decision does not fully or correctly embody the agreements reached at the conference. Thereafter the terms of the written stipulation or statement of the officer, as the case may be, will determine the subsequent course of the proceedings, unless modified to prevent manifest injustice.

§ 1113.5 Stipulations.

Apart from the procedure contemplated by the prehearing provisions, the parties may, by stipulation in writing filed with the Commission at any stage of the proceeding, or orally made at the hearing, agree upon any pertinent facts in the proceeding. The parties should agree to facts in this manner whenever practicable.

§ 1113.6 Appearances; withdrawal or absence from hearing.

(a) *Who may appear.* Any individual may appear for himself. Any member of a partnership which is a party to any proceeding may appear for such partnerships upon adequate identification. A bona fide officer or a full-time employee of a corporation, association, or of an individual may appear for such corporation, association, or individual by permission of the officer presiding at the hearing. A party also may be represented by a practitioner.

(b) *Withdrawal or absence from hearing.* A practitioner who has entered his appearance at the hearing shall not be permitted to withdraw from the hearing, or willfully be absent therefrom, except for good cause and, wherever practicable, only with the permission of the presiding officer. If a person who has entered an appearance withdraws from the hearing in a manner other than that specified, the Commission or the Officer may take such action as, in the interest of justice and the protection of the lawful rights of all parties to the proceeding, the circumstances of the case may warrant, including the striking out of all or any part of any pleading of the offending party, and including the possible dismissal of the action or proceeding, or any part thereof, the entry of an order of default against that party, or if the withdrawal is without the permission of the presiding officer, disciplining of the practitioner concerned.

§ 1113.7 Intervention; petitions.

(a) *How requested.* Intervention will normally be granted only upon petition. In exceptional circumstances, where the issues would not be broadened or the proceeding delayed, an officer may, at his or her discretion, allow intervention upon motion made orally at the hearing.

(b) *Content generally.* A petition for leave to intervene must set forth the grounds for the proposed intervention, the position and interest of the petitioner in the proceeding, and whether petitioner's position is in support of or in opposition to the relief sought. If the proceeding is by formal complaint and affirmative relief is sought by petitioner, the petition should conform to the requirements for a formal complaint.

(c) *When filed.* A petition for leave to intervene in any proceeding should be filed prior to or at the time the proceeding is called for hearing, but not after, except for good cause shown.

(d) *Broadening issues; filing.* If the petition seeks a broadening of the issues and shows that they would not thereby be unduly broadened, and in respect thereof seeks affirmative relief, the petition should be filed in time to permit service upon and answer by the parties in advance of the hearing.

(e) *Copies; service; replies.* When a petition for leave to intervene is tendered at the hearing, sufficient copies of the petition must be provided for distribution to the parties represented at the hearing. If leave is granted at the hearing, one additional copy of the petition must be furnished for the use of the Commission. When a petition for leave to intervene is not tendered at the hearing, the original and three copies of the petition should be submitted to the Commission together with a certificate that service has been made by petitioner. Any reply in opposition to a petition for leave to intervene not tendered at the hearing must be filed within 20 days after service of the petition to intervene. At the discretion of

the Commission leave to intervene may be granted or denied before the expiration of the time allowed for replies.

(f) *Disposition.* Leave to intervene will be granted only when the petitioner addresses issues reasonably pertinent to the issues already presented and which do not unduly broaden them. If leave is granted the petitioner becomes an intervener and a party to the proceeding.

§ 1113.8 Witness examination; order of procedure.

Witnesses will be orally examined under oath before the officer unless the facts are presented to the Commission in the manner provided under modified procedure. In formal complaint, application, and investigation proceedings, complainant, applicant, and respondent, respectively, shall open and close at the hearing. In the event of further hearings granted on petition, the petitioners requesting further hearing shall open and close the proceeding. Instances exist in which parties other than the respondent may open and close in investigations were the burden of proof is not upon the respondent. Interveners shall follow the party in whose behalf the intervention is made. The foregoing order of presentation may be varied by the officer.

§ 1113.9 Prepared statements.

With the approval of the officer, a witness may read into the record, as his testimony, statements of fact or expressions of opinion prepared by the witness, or written answers to interrogatories of counsel. A prepared statement of a witness who is present at the hearing may be received as an exhibit, provided that the statement does not include argument. Before any such statement is read or admitted in evidence, the witness shall deliver to the officer, the reporter, and to opposing counsel, as may be directed by the officer, a copy of such statement or of such interrogatories and the written answers thereto. The admissibility of the evidence contained in such statement will be subject to the same rules as if such testimony was produced orally, including the right of cross-examination of the witness. The officer may require that the witness testify orally if, in the officer's opinion, the memory or demeanor of the witness may be of importance.

§ 1113.10 Records in other Commission proceedings.

A portion of the record before the Commission in another proceeding may be offered in evidence at an oral hearing. A party making such an offer must provide, as an exhibit, a certified copy of the material sought to be introduced. A hearing officer may waive the requirement that a copy be provided, subject to such conditions as he or she may impose to assure that a copy will be available later, if needed, at no expense to the Commission and to assure that the interests of other parties are not prejudiced. An offer of evidence under this section will be subject to objection by other parties.

§ 1113.11 Abstracts of documents.

When documents, such as freight bills or bills of lading, are numerous, the officer may refuse to receive all the documents and in evidence instead admit only a limited number of representative documents. He may instruct, if the proffer be for the purpose of proving damage, that introduction be deferred until there is opportunity to comply with § 1133.2. If the proffer be for another purpose the officer may require the party in orderly fashion to abstract the relevant data from the documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer such abstract in evidence in exhibit form.

§ 1113.12 Exhibits.

(a) *Copies.* Unless the officer otherwise directs, the original and one copy of each exhibit of a documentary character should be furnished for the use of the Commission. The original will be delivered to the reporter, and the copy to the officer. If the hearing is before a board, a copy of the exhibit should be furnished to each member of the board, unless the board otherwise directs. Unless the officer for cause directs otherwise, a reasonable number of copies should be furnished to counsel in attendance at the hearing.

(b) *Interchange prior to hearing.* Whenever practicable, the parties should interchange copies of exhibits or other pertinent material or matter before or at the commencement of the hearing; and the Commission or presiding officer may so direct.

(c) *When excluded how treated.* When exhibit has been identified, objected to, and excluded, the officer will develop whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it should be given an exhibit number for identification and be incorporated in the record. Exhibit numbers once used for identification will not be duplicated thereafter.

§ 1113.13 Filing evidence subsequent to hearing; copies.

Except as provided in this section or as expressly may be permitted in a particular instance, the Commission will not receive in evidence or consider as part of the record any documents, letters, or other writings submitted for consideration in connection with any proceeding after close of the hearing, and may return any such documents to the sender. Before the close of a hearing the officer may, at the request of a party or upon his own motion, or upon agreement of the parties, require that a party furnish additional documentary evidence that supplements the existing record, within a stated period of time. Documentary evidence to be furnished in this way will be given an exhibit number at the time of filing and the parties advised accordingly. Unless otherwise directed by the officer, the original and one copy of such submission should be filed with the Commission.

§ 1113.14 Objections to rulings.

It is sufficient that a party, at the time the ruling is made or sought, make known to the officer on the record the action which he desires the officer to take or his objection to the action of the officer and his grounds for that objection. An objection not pressed in brief will be considered as waived. Where no brief is filed an objection will be considered as waived if not pressed in an appeal or reply to an appeal, if filed, or in a separate petition dealing only with that objection.

§ 1113.15 Interlocutory appeals.

Rulings of the presiding officer may be appealed prior to service of the initial decision only if:

(a) The ruling denies or terminates any person's participation,

(b) The ruling grants a request for the inspection of documents not ordinarily available for public inspection,

(c) The ruling overrules an objection based on privilege, the result of which ruling is to require the presentation of testimony or documents, or

(d) The presiding officer finds that the ruling may result in substantial irreparable harm, substantial detriment to the public interest, or undue prejudice to a party.

§ 1113.16 Oral argument before the hearing officer.

At the discretion of the hearing officer and upon reasonable notice to the parties, oral argument may be made at the close of testimony before him as an alternative to the filing of written briefs.

Such argument, which should include requested findings and conclusions, will be recorded and made a part of the transcript of testimony, and will be available to the Commission for consideration in deciding the case. The making of such argument will not preclude oral argument before the Commission.

§ 1113.17 Transcript of record.

(a) *Filing.* After the close of the hearing, the complete transcript of the testimony taken and the exhibits shall be part of the record in the proceeding.

(b) *Corrections.* A suggested correction in a transcript ordinarily will be considered only if offered not later than 20 days after the date each transcript is filed with the Commission. A copy of the letter (original only need be filed with the Commission) requesting the suggested corrections should be served upon all parties of record and with 2 copies to the official reporter.

(c) *Objections to corrections.* Parties disagreeing with corrections suggested pursuant to paragraph (b) of this section should file written objections in the same manner as suggested corrections are to be filed. Objections to suggested corrections should be filed not later than 15 days after the filing with the Commission of suggested corrections. If no objections are timely filed, the Secretary of the Commission shall make the suggested corrections to the transcript. If objections are timely filed, the officer who presided at the hearing shall determine the merits of the suggested correction and enter an appropriate decision in the proceeding.

(d) *No free copies.* The Commission will not furnish free copies of the transcript to any party to any proceeding.

§ 1113.18 Briefs.

(a) *When filed.* In a proceeding which has been the subject of oral hearing, and in which briefs are to be filed, that fact will be stated by the officer on the record. The officer shall fix the time for filing briefs. Simultaneous filing will normally be required, and reply briefs will not normally be permitted.

(b) *Evidence abstract.* A brief filed after a hearing may contain an abstract of the evidence relied upon by the party filing it, preferably assembled by subjects, with reference to the pages of the record, if written, or exhibit where the evidence appears. In the event the party elects not to include a separate abstract in his brief, he should give specific reference to the portions of the record, whether transcript or otherwise, relied upon in support of the respective statements of fact made throughout the brief.

(c) *Requested findings.* Each brief should include such requests for specific findings, separately stated and numbered, as the party desires the Commission to make.

(d) *Exhibit reproduction.* Exhibits should not be reproduced in the brief, but may be shown, within reasonable limits, in an appendix to the brief. Analysis of such exhibits should be included in the brief where pertinent.

§ 1113.19 Pleadings: part of the record.

Matters of fact that are verified and filed prior to oral hearing and that are not specifically denied constitute evidence and are part of the record. A witness, who would present such evidence, must be made available for cross-examination if a request is reasonably made. This rule does not apply to protest against tariffs or schedules.

§ 1113.20–1113.30 [Reserved].

§ 1113.31 Joint boards.

(a) *Organization.* After a joint board has been established according to 49 U.S.C. 10342 et seq., it will select one of its members to act as chairman. If the person selected as chairman is absent from a meeting, the members attending shall select a temporary substitute chairman for that meeting.

(b) *Waiver of action by absence of a joint board.* If a joint board member fails to participate in a hearing after notice of the hearing, the failure to participate acts as a waiver of action on the part of the State from which the member was appointed.

(c) *Procedural ruling by chairman in case of disagreement.* If the members of a joint board or a majority of the board attending a hearing cannot agree upon the disposition of a procedural question arising at the hearing, the chairman, or acting chairman, shall decide the question.

(d) *Form of joint board's decision; service.* The board's decision will conform as nearly as possible to the form of decisions issued by the Commission. The board's decision will be served by the Commission.

(e) *Termination of joint board jurisdiction and subsequent procedure.* The jurisdiction of a joint board over a referred matter will terminate when the decision of the joint board is served by the Commission. Joint board jurisdiction also may be terminated by Commission decision, and it will terminate if—

(1) The board's conclusions are submitted without a written decision;

(2) Each state entitled to appoint a member waives action in writing from the appropriate state authority;

(3) All of the members of the board fail to appear at the hearing;

(4) A majority of the board fails to agree on substantive matters; or

(5) The board fails to act in accordance with 49 U.S.C. 10343(d)(2).

When jurisdiction of the joint board has been terminated without a decision by the board due to the reasons stated in paragraphs (e)(1)–(4) of this section, the Commission or a designated officer will enter a decision based upon the record, if any, made before the board or after further hearings, if required.

(19) Former §§ 1100.55–1100.65, 1100.73, 1100.76, 1100.77, 1100.79, 1100.80, and former paragraphs 1100.82(a) and (b) are redesignated as Part 1114, and the newly redesignated Part 1114 is revised to read as follows:

PART 1114—EVIDENCE; DISCOVERY

Subpart A—General Rules of Evidence

Sec.
1114.1 Admissibility.
1114.2 Official records.
1114.3 Admissibility of business records.
1114.4 Documents in Commission's files.
1114.5 Records in other Commission proceedings.
1114.6 Official notice of corroborative material.
1114.7 Exhibits.

Subpart B—Discovery

1114.21 Applicability; general provisions.
1114.22 Deposition.
1114.23 Depositions; location, officer, time, fees, absence, disqualification.
1114.24 Depositions; procedures.
1114.25 Effect of errors and irregularities in dispositions.
1114.26 Written interrogatories to parties.
1114.27 Request for admission.
1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.
1114.29 Supplementation of responses.
1114.30 Production of documents and records and entry upon land for inspection and other purposes.
1114.31 Failure to respond to discovery.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

Subpart A—General Rules of Evidence

§ 1114.1 Admissibility.

Any evidence which is sufficiently reliable and probative to support a decision under the provisions of the Administrative Procedure Act, or which would be admissible under the general statutes of the United States, or under the rules of evidence governing proceedings in matters not involving trial by jury in the courts of the United

States, will be admissible in hearings before the Commission. The rules of evidence will be applied in any proceeding to the end that necessary and proper evidence will be conveniently, inexpensively, and speedily produced, while preserving the substantial rights of the parties.

§ 1114.2 Official records.

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by a deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties 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 a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by 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 the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of this office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.

§ 1114.3 Admissibility of business records.

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 appears that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was made, or within a reasonable time thereafter.

§ 1114.4 Documents in Commission's files.

If a party offers in evidence any matter contained in a report or other document open to public inspection in the files of the Commission, such report or other document need not be made available at the hearing.

§ 1114.5 Records in other Commission proceedings.

If any portion of the record before the Commission in any proceeding other than the proceeding at issue is offered in evidence, a true copy will be presented for the record.

§ 1114.6 Official notice of corroborative material.

The Commission or a hearing officer may take notice of official records, records in other Commission proceedings, or other materials which are otherwise subject to specific rules governing admissibility regardless of compliance with the full technical provisions of such rules, where the admissibility of the evidence is for purposes of corroboration of testimony presented or to evaluate the credibility of testimony or allegations made in proceedings where the public interest is not otherwise adequately represented by counsel capable of fully complying with such rules.

§ 1114.7 Exhibits.

(a) *Generally.* Whenever practical the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets, the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is desirable that, whenever practicable, evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of facts, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

(b) *Reference to tariff authority, routes, and distances.* All exhibits showing rates, fares, charges, or other tariff or schedule provisions must, by appropriate Interstate Commerce Commission number reference, indicate the tariff or schedule authority therefor. If distances are shown, they must also show the authority therefor, and, by lines, highways, or waterways, and junction points, the routes over which the distances are computed. The routes over which the distances are computed need not be shown when such distances are specifically published in a tariff or schedule lawfully on file with the Commission, or definitely ascertainable from a tariff or schedule on file with the Commission showing rates prescribed by the Commission and based on short line distances, or short-highway distances, provided the exhibit makes specific reference to such tariff or schedules as provided by this section.

Subpart B—Discovery

§ 1114.21 Applicability; general provisions.

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding. For the purpose of this subchapter, informal proceedings are those not required to be determined on the record after hearing and include informal complaints and all proceedings assigned for initial disposition to employee boards (except the review boards) under 49 CFR 1011.6.

(2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *How discovery is obtained.* (1) In non-rail licensing proceedings governed by 49 CFR Part 1160, no discovery procedures may be used unless the Commission, upon its own motion or upon verified petition of a party, shall have entered a decision approving discovery.

(2) In other proceedings other than those governed by 49 CFR Part 1160, those discovery procedures providing for the service of written interrogatories and requests for admissions (49 CFR 1114.26 and 1114.27) may be used by parties without filing a petition and obtaining prior Commission approval. The other discovery procedures may be used only when the Commission, upon its own motion or upon verified petition of a party, has entered a decision approving discovery.

(3) Whenever possible a petition for discovery must be filed in sufficient time to allow for the filing of replies and for consideration by the Commission without requiring the postponement of

any hearing or the submission of initial statements under modified procedure. Use of discovery in those circumstances where no petition is required must also be accomplished whenever possible without requiring any such postponement.

(c) *Protective conditions.* Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered 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. Relief through a protective order may include one or more of the following:

(1) That the discovery not be had;

(2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;

(3) That the discovery may be had only upon such terms and conditions as the Commission may impose to insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred;

(4) That the discovery may be had only by a method other than that selected by the party seeking discovery;

(5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;

(6) That discovery be conducted with no one present except persons designated in the protective order;

(7) That a deposition after being sealed be opened only by order of the Commission;

(8) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way; and

(9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Commission.

If the motion for a protective order is denied in whole or in part, the Commission may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under 49 CFR 1114.24(a), 1114.26(a), or 1114.31.

(d) *Sequence and timing of discovery.* Unless the Commission upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written stipulation entered into by all the parties and filed with the Commission may:

(1) Provide that depositions be taken before any person, at any time or place, upon sufficient notice, and in any manner and when so taken may be used like other depositions; and

(2) Modify the procedures provided by these rules for other methods of discovery.

§ 1114.22 Deposition.

(a) *Purpose.* The testimony of any person, including a party, may be taken by deposition upon oral examination.

(b) *Petition.* The petition requesting an order to take a deposition and perpetuate testimony or to produce documents and materials:

(1) Should set forth the facts it desires to establish and the substance it expects to elicit;

(2) Should be served upon all parties to the proceeding and upon the person sought to be deposed and/or the custodian of the documents or materials sought to be produced;

(3) Should set forth the name and address of the witness, the place where, the time when, the name and office of the officer before whom, and the cause or reason why such deposition should be taken; and

(4) Should specify with particularity the documents and materials which the deponent is requested to produce.

(c) *Order.* If the Commission is convinced on its own initiative or by the petition requesting an order to take a deposition that the deposition will prevent a failure or delay of justice, it will serve an order upon the parties and the witness, naming the witness whose deposition is to be taken, specifying the time when, the place where, and the officer before whom the deposition is to be taken, and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The provisions for the taking of the deposition specified in the Commission's order may or may not be the same as requested in the petition. The deposition may then be taken in accordance with these rules, and the Commission may make orders of the character provided by 49 CFR 1114.31.

§ 1114.23 Depositions; location, officer, time, fees, absence, disqualification.

(a) *Where deposition should be taken.* Unless otherwise ordered or agreed to be stipulation, depositions should be taken in the city or municipality where the deponent is located.

(b) *Officer before whom taken.* Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions should be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held. Within a foreign country, depositions may be taken before an officer or person designated by the Commission or agreed upon by the parties by stipulation in writing to be filed with the Commission.

(c) *Fees.* A witness whose deposition is taken pursuant to these rules and the officer taking same, unless he be employed by the Commission, shall be entitled to the same fee paid for like service in the courts of the United States, which fee should be paid by the party at whose instance the deposition is taken.

(d) *Failure to attend or to serve subpoena; expenses.* (1) If the party who filed a petition for discovery fails to attend and proceed with the taking of the deposition and another party attends in person or by representative pursuant to an order of the Commission granting discovery the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(2) If the party who filed a petition for discovery fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by representative because he expects the deposition of the witness to be taken, the Commission may order the party who filed the petition to pay to such other party the reasonable expenses incurred by him and his representative in so attending, including reasonable attorney's fees.

(e) *Disqualification for interest.* No deposition should be taken before a person who is a relative or employee or representative or counsel of any of the parties, or is a relative or employee of such representative or counsel or is financially interested in the proceeding.

§ 1114.24 Depositions; procedures.

(a) *Examination.* Examination and cross-examination of witnesses should proceed as permitted at a hearing and should be limited to the subject matter

specified in the order granting discovery. All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, should be noted by the officer upon the deposition. Evidence objected to should be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition, and shall transmit them to the officer, who shall open the sealed envelope, propound the questions to the witness, and record the answers verbatim.

(b) *Use of depositions.* At the hearings, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership, association or governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding) which is a party, may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the presiding officer or Commission finds:

(i) That the witness is dead; or

(ii) That the witness is at a greater distance than 100 miles from the place of hearing or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(iii) That the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(iv) That the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(v) Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witness orally at public hearing, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts. Substitution of parties does not affect the right to use depositions previously taken.

(c) *Effect of taking or using depositions.* A party should not be deemed to make a person his own witness for any purpose by taking his deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this should not apply to the use of an adverse party of a deposition under paragraph (b)(2) of this section. At the hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party.

(d) *Motions to protect.* At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the Commission may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in 49 CFR § 1114.21(c). If the order made terminates the examination, it should be resumed thereafter only if so ordered. Upon demand of the objecting party or deponent, the taking of the deposition should be suspended for the time necessary to make a motion for an order.

(e) *Recordation.* The officer before whom the deposition is to be taken shall observe the provisions of 49 CFR § 1113.6 respecting appearances and typographical specifications, shall put the witness under oath, and shall personally, or by someone acting under his direction and in his presence, record and transcribe the testimony of the witness as required by these rules.

(f) *Signing.* When the testimony is fully transcribed or otherwise recorded, the deposition should be submitted to the witness for examination and should be read to or by him unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make should be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The witness shall then sign the deposition, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 15 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used fully as though signed, unless, on a motion to suppress, it is found that the reasons given for refusal to sign require rejection of the deposition in whole or in part.

(g) *Attestation.* The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness, and that the officer is: (1) not a relative, employee, representative or counsel of any of the parties, (2) not a relative or employee of such representative or counsel, and (3) not financially interested in the proceeding.

(h) *Return.* The officer shall securely seal the deposition in an envelope endorsed with sufficient information to identify the proceeding and marked "Deposition of (here insert name of witness)" and shall either personally deliver or promptly send the original and one copy of all exhibits by registered mail to the Secretary of the Commission. A deposition to be offered in evidence must reach the Commission not later than 5 days before the date it is to be so offered.

(i) *Notice.* The party taking the deposition shall give prompt notice of its filing to all other parties.

(j) *Copies.* Upon payment of reasonable charges, the officer before whom the deposition is taken shall furnish a copy of it to any interested party or to the deponent.

§ 1114.25 Effect of errors and irregularities in depositions.

(a) *As to disqualification of officer.* Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(b) *As to taking of deposition.* (1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one

which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(c) *As to completion and return of deposition.* Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under 49 CFR 1114.23 and 1114.24 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

§ 1114.26 Written interrogatories to parties.

(a) *Availability; procedures for use.* Subject to the provisions of 49 CFR 1114.21(b)(2), any party may serve upon any other party written interrogatories to be answered by the party served, or if the party served is a public or private corporation, partnership, association, or Governmental agency (other than this Commission, except in those instances where the Commission itself is a party to the proceeding), by any officer or agent, who shall furnish such information as is available to the party. Copies of any interrogatories served, and answers thereto, should also be filed with the Commission. Each interrogatory should be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection should be stated in lieu of an answer. The answers are to be signed by the person making them and subscribed by an appropriate verification generally in the form prescribed in 49 CFR 1112.9. Objections are to be signed by the representative or counsel making them. The person upon whom the 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 15 days after the service thereof.

(b) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies thereof, or compilation, abstracts, or summaries therefrom. If information sought is contained in computer runs, punchcards, or tapes which also contain privileged or proprietary information or information the disclosure of which is proscribed by the act, it will be sufficient response under these rules that the person upon whom the interrogatory has been served is willing to make available to and permit an independent professional organization not interested in the proceeding and paid by the party serving the interrogatory to extract from such runs, punchcards, or tapes the information sought in the interrogatory that is not privileged or proprietary information or information the disclosure of which is proscribed by the act.

(c) *Service of interrogatories in those proceedings not requiring a petition.* In those proceedings not requiring a petition for interrogatories, and unless under special circumstances and for good cause, no written interrogatories shall be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when the written interrogatories are to be served in a foreign country, they shall not be served within 40 days prior to such date.

§ 1114.27 Request for admission.

(a) *Availability; procedures for use.* Subject to the provisions of 49 CFR 1114.21(b)(2), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of 49 CFR 1114.21 set forth in the request, including the genuineness of any documents described in the request for admission. Copies of documents should be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Copies of any requests for admission served, and answers thereto, should also be filed with the Commission. Each matter of which an admission is requested should be separately set forth. The matter is admitted unless, within a period designated in the request, not less than 15 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or his representative or counsel. If objection is made, the reasons therefor should be stated. The answer should specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial should fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or 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 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 readily obtainable by 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 hearing may not, on that ground alone, object to the request; he may, subject to the provisions of 49 CFR 1114.31, deny the matter or set forth reasons why he cannot admit or deny it. Copies of any answers or objections should be filed with the Commission.

(b) *Effect of admission.* Any matter admitted under this rule is conclusively established unless upon petition and a showing of good cause the Commission enters an order permitting withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending proceeding only and is not an admission by him for any other purpose nor may it be used against him in any other proceeding.

(c) *Service of written requests for admission in those proceedings not requiring a petition.* In those proceedings not requiring a petition for requests for admission, and unless under special circumstances and for good cause shown, no requests for admission should be served within 20 days prior to the date assigned for commencement of hearing or the filing of opening statements of fact and argument under the modified procedure, and when requests for admission are to be served in a foreign country they should not be served within 40 days prior to such date.

§ 1114.28 Depositions, requests for admission, written interrogatories, and responses thereto: inclusion in record.

At the oral hearing, or upon the submission of statements under the modified procedure, depositions, requests for admission and written interrogatories, and respective responses may be offered in evidence by the party at whose instance they were taken. If not offered by such party, they may be offered in whole or in part by any other party. If only part of a deposition, request for admission or written interrogatory, or response thereto is offered in evidence by a party, any other party (where the matter is being heard orally) may require him to introduce all of it which is relevant to the part introduced, and any party may introduce any other parts. Such depositions, requests for admission and written interrogatories, and responses thereto should be admissible in evidence subject to such objections as to competency of the witness, or competency, relevancy, or materiality of the testimony as were noted at the time of their taking or are made at the time they are offered in evidence.

§ 1114.29 Supplementation of responses.

A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement his response to include information thereafter acquired in the following instances:

(a) A party is under a duty seasonably to supplement his response with respect to any question directly addressed to:

(1) The identity and locations of persons having knowledge of discoverable matters, and

(2) The identity of each person expected to be called as an expert witness at the hearing, the subject matter on which he is expected to testify, and the substance of his testimony.

(b) A party who knows or later learns that his response is incorrect is under a duty seasonably to correct his response.

(c) A duty to supplement responses may be imposed by order, agreement of the parties, or at any time prior to the hearing or the submission of verified statements under the modified procedure through new requests for supplementation of prior responses.

§ 1114.30 Production of documents and records and entry upon land for inspection and other purposes.

(a) *Scope.* Any party may be ordered and directed:

(1) To produce and permit the petitioning party to inspect any designated documents (including writings, drawings, graphs, charts, photographs, phonograph records, tapes, and other data compilations from which information can be obtained, translated, if necessary, with or without the use of detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which are in the possession, custody, or control of the party upon whom the order is served, but if the writings or data compilations (including computer runs, punchcards, and tapes) include privileged or proprietary information or information the disclosure of which is proscribed by the act, such writings or data compilations need not be produced under this rule but may be provided pursuant to 49 CFR 1114.26(b); or

(2) To permit, subject to appropriate liability releases and safety and operating considerations, entry upon designated land or other property in the possession or control of the party upon whom the order is served for the purpose of inspecting and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) *Procedure.* Any petition filed pursuant to this rule should set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity. The petition should specify a reasonable time, place, and manner of making the inspection and performing the related acts.

§ 1114.31 Failure to respond to discovery.

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under 49 CFR 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to 49 CFR 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Commission and served on all parties and deponents. Such motion to compel an answer must be filed with the Commission and served on all parties and deponents. Such motion to compel an answer must be filed with the Commission within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(b) *Failure to comply with order.* (1) If a party or other witness refuses to be sworn or refuses to answer any question after being directed to do so by the Commission, such refusal may subject the refusing party or person to action by the Commission under 49 U.S.C. 10321(c)(3) and (d)(4) to compel appearance and compliance with the Commission's order.

(2) If any party or an officer, director, managing agent, or employee of a party or person refuses to obey an order made under paragraph (a) of this section requiring him to answer designated questions, or an order made under 49 CFR 1114.30 requiring him to produce any document or other thing for inspection, copying, testing, sampling, or photographing or to permit it to be done, or to permit entry upon land or other property, the Commission may make such orders in regard to the refusal as are just, and among others the following:

(i) An order that the matters regarding which questions were asked, or the character or description of the thing or land, or the contents of the paper, or any other designated facts should be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order:

(ii) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing in evidence designated documents or things or items of testimony:

(iii) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceedings or any party thereof.

(c) *Expenses on refusal to admit.* If a party, after being served with a request under 49 CFR 1114.27 to admit the genuineness of any document or the truth of any matter of fact, serves a sworn denial thereof, and if the party requesting the admission thereafter proves the genuineness of any such document or the truth of any such matter of fact the Commission may order the party making such denial to pay to such other party the reasonable expenses incurred in making that proof, including reasonable attorney's fees.

(d) *Failure of party to attend or serve answers.* If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under 49 CFR 1114.26, after proper service of such interrogatories, the Commission on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof.

(e) *Expenses against United States.* Expenses and attorney's fees are not to be imposed upon the United States under this rule.

(20) Former § 1100.98 is redesignated as Part 1115, and the newly redesignated Part 1115 is revised to read as follows:

PART 1115—APPELLATE PROCEDURES

Sec.
1115.1 Scope of rule.
1115.2 Initial decisions.
1115.3 Commission actions other than initial decisions.
1115.4 Petitions to reopen administratively final actions.
1115.5 Petitions for other relief.
1115.6 Exhaustion of remedies and judicial review.

Authority: 49 U.S.C. 10321, 10322, and 10377; 5 U.S.C. 559.

§ 1115.1 Scope of rule.

(a) These appellate procedures apply in cases where a hearing is required by law or Commission action. They do not apply to informal matters such as car service, temporary authority, suspension, special permission actions, or to other matters of an interlocutory nature except as specifically provided below. Except as provided in paragraph (c) of this section, these procedures do not apply to appeals from decisions of individual Commission employees in purely procedural matters made pursuant to authority delegated to them by the Chairman of the Commission. (See 49 CFR Part 1152) Abandonment and discontinuance proceedings instituted under 49 USC 10903 are governed by separate appellate procedures exclusive to those proceedings. (See 49 CFR Part 1152)

(b) Requests for appellate relief may relate either to initial decisions or to Commission actions other than initial decisions. For each category, this rule describes the types of appeal permitted, the requirements to be observed in filing an appeal, provisions for stay of the action, and the status of the action in the absence of a stay.

(c) Appeals from the decisions of employees acting under authority delegated to them by the Chairman of the Commission pursuant to 49 CFR 1011.7 will be acted upon by the Chairman of the Commission. Appeals must be filed within 10 days of the date of the action taken by the employee, and responses to appeals must be filed within 10 days thereafter. Such appeals are not favored; they will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

§ 1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Commissioner, employee board, joint board, division, or panel of the Commission.

(a) An appeal of right is permitted.

(b) Appeals must be based on one or more of the following grounds:

(1) That a necessary finding of fact is omitted, erroneous, or unsupported by substantial evidence of record;

(2) That a necessary legal conclusion, or finding is contrary to law, Commission precedent, or policy;

(3) That an important question of law, policy, or discretion is involved which is without governing precedent;

(4) That prejudicial procedural error has occurred.

(c) Appeals must detail the assailed findings with supporting citations to the record and authorities.

(d) Appeals and replies shall not exceed 30 pages in length, including argument, and appendices or other attachments, but excluding a table of cases and an index of subject matter.

(e) Appeals must be filed within 20 days after the service date of the decision or within any further period (not to exceed 20 days) the Commission may authorize. In proceedings seeking motor carrier operating authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(f) The timely filing of an appeal to an initial decision will stay the effect of the action pending determination of the appeal.

(g) If an appeal of an initial decision is not timely filed or the Commission does not stay the effectiveness on its own motion, the order set forth in the initial decision shall become the action of the Commission and be effective at the expiration of the time for filing, unless otherwise provided.

§ 1115.3 Commission actions other than initial decisions.

This category includes: a decision of a division in the first instance, where the requirement for an initial decision was voided (for rail proceedings pursuant to 49 U.S.C. 10327(c)) or waive (for nonrail proceedings pursuant to 49 U.S.C. 10322(c)); an action of the entire Commission in the first instance; and an action taken by a review board or division on an appeal filed under § 1115.2.

(a) A discretionary appeal is permitted. It will be designated a "petition for administrative review," except that, when it is related to an action of the entire Commission in the first instance, it must be designated a "petition to reopen."

(b) The petition will be granted only upon a showing of one or more of the following points:

(1) The prior action (all categories) will be affected materially because of new evidence or changed circumstances.

(2) The prior action was taken by a division in the first instance or by a review board or division in an appellant capacity, and involves a matter of general transportation importance.

(3) The prior action was taken by the entire Commission in the first instance, and involves material error.

(c) To the extent the petition requests further hearing, rehearing, reargument, or reconsideration, the petition must state in detail the nature of and reasons for the relief requested. When in a petition filed under this section, a party seeks an opportunity to introduce evidence, the evidence must be stated briefly, must not appear to be cumulative, and explanation must be given why it was not previously adduced.

(d) The petition and any reply must not exceed 20 pages in length. A separate preface and summary of argument, not exceeding 3 pages, may accompany petitions and replies and must accompany those that exceed 10 pages in length.

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as a division or the Commission may authorize. In proceedings seeking motor carrier authority replies must be filed within 15 days of the date the appeal is due. In all other proceedings covered by these rules, replies must be filed within 20 days of the date the appeal is due.

(f) The filing of a petition will not automatically stay the effect of a prior action, but the Commission may stay the effect of the action on its own motion or on petition. A petition to stay may be filed in advance of the petition for administrative review or petition to reopen and shall be filed within 10 days of service of the action. No reply need be filed. However, if a party elects to file a reply, it must reach the Commission no later than 16 days after service of the action.

(1) In a rail proceeding, the action, if not stayed, will become effective 30 days after it is served, unless the acting body provides for the action to become effective at an earlier date. On the day the action is served parties may initiate judicial review.

(2) In a nonrail proceeding, the action, if not stayed, will be effective on the date it is served, and parties may initiate judicial review.

(3) In all final actions, the provisions of the action will take effect on the date of service, unless otherwise provided. On this date parties must comply with the terms, conditions, or orders of the effective decision.

§ 1115.4 Petitions to reopen administratively final actions.

A person at any time may file a petition to reopen any administratively final action of the Commission pursuant to the requirements of § 1115.3 (c) and (d) of this part. A petition to reopen an operating rights application proceeding must state in detail information sufficient to establish either fraud or ministerial mistake in the earlier decision. A petition to reopen all other proceedings must state in detail the respects in which the proceeding involves material error, new evidence, or substantially changed circumstances and must include a request that the Commission make such a determination.

§ 1115.5 Petitions for other relief.

(a) A party may petition for a stay of an action pending a request for judicial review, for extention of the compliance date, or for modification of the date the terms of the decision take effect. The reasons for the desired relief must be stated in the petition, and the petition must be filed not less than 10 days prior to the date the terms of the action take effect. No reply need be filed. If a party elects to file a reply, the reply must reach the Commission no later than 5 days after the petition is filed.

(b) When the terms of a Commission action take effect on less than 15 days' notice, a petition for stay pending a request for judicial review must be filed prior to the institution of court action and as close to the service date as practicable. No reply need be filed. Where time permits, a party may elect to file a reply.

(c) A petition or reply must not exceed 10 pages in length.

§ 1115.6 Exhaustion of remedies and judicial review.

These rules do not relieve the requirement that a party exhaust its administrative remedies before going to court. Any action appealable as of right must be timely appealed. If an appeal, discretionary appeal, or petition seeking reopening is filed under § 1115.2 or § 1115.3 of this part, before or after a petition seeking judicial review is filed with the courts, the Commission will act upon the appeal or petition after advising the court of its pendency unless action might interfere with the court's jurisdiction.

(21) Former § 1100.93 is redesignated as Part 1116, and the newly redesignated Part 1116 is revised to read as follows.

PART 1116—ORAL ARGUMENT BEFORE THE COMMISSION

Sec.
1116.1 Requests.
1116.2 Manner or presentation.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1116.1 Requests.

(a) *Addressee.* Requests for oral argument should be addressed to the Secretary, Interstate Commerce Commission, Washington, DC 20423.

(b) *Who may request?* Any party may submit a written request for oral argument and state the reasons for the request. No replies from other parties to the request shall be made.

(c) *When to file a request.* Requests for oral argument should be filed within 20 days after the date of service of the decision, order, or requirement being appealed, unless the Commission by order prescribes a different time period.

(d) *Granting of request.* The Commission will rule upon requests by decision, and the granting of requests is entirely at the discretion of the Commission.

§ 1116.2 Manner of presentation.

Proponents of a rule or order will be heard first, and opponents will be heard second. One counsel only will usually be heard for each of the opposing interests, unless additional presentations are specifically authorized.

(22) Former § 1100.99 is redesignated as Part 1117, and the newly redesignated Part 1117 is revised to read as follows:

PART 1117—PETITIONS (FOR RELIEF) NOT OTHERWISE COVERED

§ 1117.1 Petitions.

A party seeking relief not provided for in any other rule may file a petition for such relief. The petition should contain (a) a short, plain statement of the grounds upon which the Commission's jurisdiction is based; (b) a short plain statement of the claim showing that the petitioner is entitled to relief; and (c) a demand for the relief the petitioner believes is appropriate.

(49 U.S.C. 10321; 5 U.S.C. 559)

(23) Former § 1100.39 and former paragraphs 1100.225 (a) and (b), (c), (e), (f), and (h) are redesignated as Part 1118 and the newly redesignated Part 1118 is revised to read as follows:

PART 1118—PROCEDURES IN INFORMAL PROCEEDINGS BEFORE CERTAIN EMPLOYEE BOARDS

Sec.
1118.1 Scope.
1118.2 Proceedings to be informal.
1118.3 Service of special permission applications.
1118.4 Appeals.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1118.1 Scope.

The rules in this part govern proceedings before the Finance Board, the Operations Boards, the Special Permission Board, the Released Rates Board, the Accounting and Valuation Board, the Tariff Rules Board, the Special Docket Board, the Tariff Integrity Board, and the Regional Motor Carrier Boards. Special rules, located elsewhere in this Part, should be consulted.

§ 1118.2 Proceedings to be informal.

The proceedings in all matters governed by this part will be informal. No transcript of these proceedings will be made. Subpoenas will not be issued and, except when applications, petitions, or statements are required to be attested, oaths will not be administered.

§ 1118.3 Service of special permission applications.

A special permission application requesting authority to change, cancel, or reissue tariff matter under suspension or continued in effect as a result of suspension should be simultaneously served on all parties to the investigation and suspension proceeding, and should include a certificate of service to that effect.

§ 1118.4 Appeals.

(a) *Standing to appeal.* Appeals of decisions of the Finance Board and replies to appeals may be filed only by a party to the proceeding. Appeals of the decisions of the other employee boards subject to this part and replies to appeals may be filed by any person.

(b) *Number of copies.* The original and six copies of each pleading or paper permitted or required to be filed under this section should be furnished for the use of the Commission.

(c) *Time for filing.* Except as provided in paragraph (e) of this section with respect to matters involving emergency temporary authority, appeals in proceedings governed by this part must be filed within 20 days after the date of service of the decision.

(d) *Where filed.* Appeals of decisions of a Regional Motor Carrier Board and replies to appeals should be filed with the regional office issuing the decision. All other appeals and replies to appeals should be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

(e) *Appeals in emergency temporary authority proceedings.* An applicant seeking reconsideration of a decision concerning emergency temporary authority must file a petition within 20 days after it is notified of the decision on the application. Any other interested person seeking reconsideration of a decision granting emergency temporary authority may file a petition at any time during the life of the authority. Replies may be filed within 15 days after the filing of the petition. Pleadings must be served on all parties of record.

(f) *Appeals in valuation proceedings.* An appeal of a tentative valuation must contain precise references to the matters objected to and must include a statement of the changes in the valuation desired by the appellant. When practicable, each object of appeal should be set up as a separately numbered item. An appeal against land values or areas must state the valuation section and zone on the Commission's maps in which the land is located. When appellant claims that property owned or used has been omitted, a full description of the property and its location must be included.

(g) *Decisions on appeal.* An appeal from an employee board's decision in a matter subject to this part will be reviewed by the board which may elect to modify its decision in the light of new facts or arguments presented on appeal. If the board elects not to modify its prior decision, the appeal will be forwarded to the appropriate appellate body for determination. If a modified decision is issued by the board, a further appeal lies under this part. A decision on appeal by an appellate body is administratively final, except for decisions of review boards in temporary authority or emergency temporary authority proceedings under 49 U.S.C. 10928.

(24) Former § 1100.94 is redesignated as Part 1119 and the newly redesignated Part 1119 is revised to read as follows:

PART 1119—COMPLIANCE WITH COMMISSION DECISIONS

§ 1119.1 Compliance.

A defendant or respondent directed by the Commission to do or desist from doing a particular thing must notify the Commission on or before the compliance date specified in the decision of the manner of compliance. Notification should be by verified affidavit showing simultaneous service upon all parties to the proceeding. Where a change in rates or schedules is directed, notification specifying the Interstate Commerce Commission tariff or schedule numbers must be given in addition to the filing of proper tariffs or schedules.

(49 U.S.C. 10321; 5 U.S.C. 559)

PART 1120—USE OF 1977-1978 STUDY OF MOTOR CARRIER PLATFORM HANDLING FACTORS

(25) Former Part 1104A is redesignated as Part 1120.

PARTS 1121, 1122, 1123, 1125, 1126, 1127 and 1129 [REDESIGNATED]

(26) Current Parts 1121, 1122, 1123, 1125, 1126, 1127 and 1129 are redesignated as Parts 1152, 1153, 1154, 1155, 1156, 1157, and 1140, respectively.

PARTS 1121-1129—[RESERVED]

(27) New Parts 1121-1129 are added and reserved.

PARTS 1130-1149—RATE PROCEDURES

PART 1130—INFORMAL COMPLAINTS

(28) Former §§ 1100.22, 1100.22a and 1100.23 are redesignated as Part 1130, and a center heading is added to precede the newly redesignated Part 1130 to read as set forth above.

(28A) The newly redesignated Part 1130 is revised to read as follows:

Sec.
1130.1 When no damages sought.
1130.2 When damages sought.
1130.3 Special procedures for dealing with unlawfully established tariffs or rates.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1130.1 When no damages sought.

(a) *Form and content; copies.* Informal complaint may be by letter or other writing and will be serially numbered as filed. The complaint must contain the essential elements of a formal complaint as specified at 49 CFR 1131.3 and 49 CFR 113.15 and may embrace supporting papers. The original and one copy must be filed with the Commission.

(b) *Correspondence handling.* When an informal complaint appears susceptible of informal adjustment, the Commission will send a copy or statement of the complaint to each subject of the complaint in an attempt to have it satisfied by correspondence, thereby avoiding the filing of a formal complaint.

(c) *Discontinuance of informal proceeding.* The filing of an informal complaint does not preclude complainant from filing a formal complaint. If a formal complaint is filed, the informal proceeding will be discontinued.

§ 1130.2 When damages sought.

(a) *Actual filing required.* Notification to the Commission that an informal complaint may or will be filed later seeking damages is not a filing within the meaning of the statute except as provided in paragraph (e) of this section.

(b) *Content.* An informal complaint seeking damages must be filed within the statutory period, and should identify with reasonable definiteness the involved shipments or transportation services. The complaint should include:

(1) A statement that complainant seeks to recover damages;

(2) The names of each individual seeking damages;

(3) The names and addresses of defendants against which claim is made;

(4) The commodities, the rate applied, the date on which the charges were paid, the names of the parties paying the charges, and, if different, the names of the parties bearing the charges;

(5) The period of time within which or the specific dates upon which the shipments were made, and the dates when they were delivered or tendered for delivery;

(6) The specific origin and destination points or, where they are numerous, the territorial or rate group of the origin and destination points and, if known, the routes of movement; and

(7) The nature and amount of the injury sustained by each claimant.

(c) *Statement of prior claim.* A complaint filed under paragraph (b) or (e) of this section containing a claim which has been the subject of a previous informal or formal complaint must specifically refer to the previous complaint.

(d) *Copies.* The original of an informal complaint seeking damages must be accompanied by a sufficient number of copies to enable the Commission to send one to each defendant named.

(e) *Special-docket proceedings.*—(1) *Petitions based on damages.* Where the Act provides for an award of damages for a violation, and a carrier is willing to pay them, or to waive collection of undercharges, petitions for appropriate authority should be filed by the carrier on the special docket by submitting either a Letter of Intent to Pay Reparations, a Letter of Intent to Pay Reparations and Waive Undercharges, or a Letter of Intent to Waive Undercharges. Such petitions, when not filed in connection with an Informal Complaint pending before the

Commission, must be filed within the statutory period and will be deemed the equivalent of an informal complaint and an answer admitting the matters stated in the petition. These petitions shall contain, as a minimum, the following information:

(i) The names and addresses of the complainants seeking damages.

(ii) The names of the defendants against which the claim is filed.

(iii) The amount of the claim.

(iv) The tariff authority for both the assailed and the sought rate.

(v) The dates on which, or within which, the shipments moved and, when necessary to show compliance with the statute of limitations, the dates when the shipments were delivered or tendered for delivery.

(vi) The points of origin and destination of the shipments and the routes of movement.

(vii) The commodity.

(viii) An admission by the carrier that the assailed rate was unreasonable, and a showing, where appropriate, that it has been removed from the tariff.

(ix) A statement certifying that all defendants against which the claim is lodged concur in the intent to pay reparations or waive undercharges.

(x) Evidence to show compliance with the statute of limitations.

(xi) A brief explanation of the circumstances causing the claim for damages and the precedent relied upon by the carrier in agreeing to honor it.

If a carrier is unable to file such petition within the statutory period and the claim is not already protected from the operation of the statute by informal complaint, a Letter of Registration setting forth the facts may be submitted by the carrier within the statutory period. This letter will also be deemed the equivalent of an informal complaint filed on behalf of the shipper or consignee and sufficient to stay the operation of the statute. However, an appropriate Letter of Intent must be filed within one year following receipt by the Commission of the Letter of Registration.

(2) *Petitions to waive collection of insignificant amounts.* If a rail carrier wishes to waive the collection of amounts due under 49 U.S.C. 10707(d)(2), when such amounts are more than $2,000.00, a petition for appropriate authority should be filed by the carrier on the special docket by submitting a Letter of Intent to Waive Insignificant Amounts. These petitions should contain the following information:

(i) The name and address of the customer for whom the carrier wishes to waive collection.

(ii) The name and addresses of the carriers involved in the intended waiver and a statement certifying that all carriers concur in the action.

(iii) The amount intended to be waived.

(iv) The number of the investigation and suspension case involved, the beginning and ending dates of the suspension period, and any other pertinent tariff information.

(v) The points of origin and destination of the shipments and the routes of movement, if relevant.

(vi) A brief statement of justification for the intended waiver, including the anticipated costs of billing, collecting and/or litigating if the waiver is not permitted.

If the amount to be waived is $2,000.00 or less, no petition need be filed prior to waiver, provided that this exemption may be invoked by a carrier only once for any person (as defined at 49 U.S.C. 10102(16)) who uses the suspended rate during the suspension period. However, a Letter of Disposition informing the Commission of the action taken, the date of the action, and the amount waived shall be submitted to the Special Docket Board, Interstate Commerce Commission, Washington, D.C. 20423, within 30 days of the waiver.

(3) *Public Notice and Protest.* Petitions on the Special Docket to pay reparations, waive the collection of undercharges or waive the collection of insignificant amounts shall be made available by the Commission for public inspection five (5) days after receipt, in the Board of Suspension Public File Room, Room 4339, 12th & Constitution Avenue, NW., Washington, D.C. 20423 and remain available for 25 days. Any interested person may protest the granting of a petition by filing a Letter of Objection with the Special Docket Board within 30 days of Commission receipt of the petition. Letters of Objection shall identify the Special Docket number, shall clearly state the reasons for the objection, and shall certify that a copy of the Letter of Objection has been served on all parties named in the petition. A period of 15 days will be allowed for reply.

(4) *Uncontested petitions.* A petition which is not contested will be considered an order of the Commission authorizing the action contemplated in the petition 45 days after Commission receipt of the petition. Within 30 days after the expiration of the 45-day period the carrier filing the petition shall file a Letter of Disposition informing the Special Docket Board of the action taken, the date of the action, and the amount paid or waived.

(f) *Notification to the parties; six month's rule.* If an informal complaint seeking damages (other than a contested Special-docket petition) cannot be disposed of informally or is denied or withdrawn by complainant, the parties affected will be so notified in writing by the Commission. Contested Special-docket petitions either will be granted or denied by the entry of a decision. Unless within six months after the date on which a notice is mailed or a decision is served, a party either files a formal complaint or resubmits its informal complaint on an additional-fact basis, the matter in the complaint or petition will not be reconsidered. The claim will be considered abandoned and no complaint seeking damages on the same cause of action will be accepted unless filed within the statutory period. Any filing or resubmission satisfying the six months' requirement will be considered filed as of the date of the original filing and must specifically refer to that date and to the Commission's file number. An original and six copies of a petition for reconsideration should be filed.

§ 1130.3 Special procedures for dealing with unlawfully established tariffs or rates.

(a) *Scope of special rules.* (1) These special rules govern the filing and processing of complaints that allege that a tariff has been unlawfully established in violation of a provision of the Interstate Commerce Act, the Commission's tariff regulation (49 CFR 1300 et seq.), or decisions of the Commission or a court.

(2) These rules apply only to an unlawfully established tariff that would have been subject to rejection had the violation been detected before the tariff became effective.

(3) These rules do not apply to complaints alleging substantive violations, such as unreasonableness or discrimination.

(b) Definition of unlawfully established tariff. For the purposes of these rules a tariff is unlawfully established if it does any of the following:

(1) Fails to give proper statutory notice;

(2) Omits or uses symbols improperly;

(3) Contains typographical errors that prevent proper tariff application;

(4) Contains erroneous cancellation(s);

(5) Violates the Commission's tariff regulations, statutory provisions of the Interstate Commerce Act, or decisions of the Commission or a court;

(6) Purports to change non-rail carrier rate schedules in effect less than 30 days; and

(7) Contains duplicating rate schedules.

(c) *Form and content of complaint.* (1) While no special form of complaint is required, the complaint must specifically identify the tariff in issue by name, number, publishing official, effective date and item number.

(2) The complaint must set out all the facts that the complainant believes demonstrate that the tariff has been unlawfully established.

(d) *Answer and reply.* (1) The issuing carrier or publishing agent may file an answer not later than 10 days after the complaint is filed.

(2) The complainant may file a reply not later than 10 days after the answer is filed.

(e) *Processing of complaints.* (1) Complaints will be serially numbered as filed.

(2) After reviewing the challenged tariff and the pleading, the Tariff Integrity Board will make necessary findings and determine whether the tariff has been unlawfully established in violation of the Interstate Commerce Act, the Commission's tariff regulations, or a Commission or court decision.

(3) If the Tariff Integrity Board finds that a tariff has been unlawfully established, it may issue a decision striking the tariff from the files. Unlawfully established tariff matter is invalid and may not be applied for services performed prior to, on, or after the date of service of the Tariff Integrity Board's decision.

(4) An administrative appeal of the Tariff Integrity Board's decision may be filed. The Board's decision will be stayed automatically pending the Commission's action on appeal.

(5) If there is a disputed issue of material fact, the Tariff Integrity Board will refer the matter to the Commission for handling under the formal complaint procedure (49 CFR 1131 et seq.).

(f) *Time limits.* (1) A complaint must be filed within 60 days of the tariff's effective date in order to be considered under these special rules.

(2) Complaints filed more than 60 days after a tariff's effective date will be handled under, and must comply with the Commission's formal complaint procedures.

(3) Requests for extensions of time to file answers or replies will be granted only in extraordinary circumstances.

(g) *Miscellaneous provisions.* (1) All pleadings (complaint, answer, reply) must comply with the attestation and verification procedures set forth at 49 CFR 1112.9.

(2) All pleadings should be addressed to the Secretary, Interstate Commerce Commission, Attention: Tariff Integrity Board, Washington, DC 20423.

(3) The complainant shall serve a copy of its complaint and reply, if any, on the issuing carrier or publishing agent.

(4) The issuing carrier or agent shall serve a copy of its answer on the complainant.

(5) All pleadings shall include a statement certifying that a copy of the pleading has been served on other parties.

(29) Former §§ 1100.25–1100.27, 1100.29, 1100.31, 1100.33–1100.35, and former paragraphs 1100.30(a) and 1100.44(a) are redesignated as Part 1131, and the newly redesignated Part 1131 is revised to read as follows:

PART 1131—FORMAL RATE COMPLAINTS, RAIL INTRASTATE PETITIONS AND INVESTIGATIONS

Sec.

1131.1 Content.
1131.2 When damages sought.
1131.3 [Reserved]
1131.4 Railroad allegations of unlawful intrastate rates.
1131.5 Other specifications.
1131.6 Multiple causes of action; joinder.
1131.7 Amended and supplemental formal complaints.
1131.8 Copies; service.
1131.9 Answers and cross complaints.
1131.10 Motions to dismiss or to make more definite.
1131.11 Satisfaction of complaint.

Authority: 49 U.S.C. 10321 and 11701; 5 U.S.C. 559.

§ 1131.1 Content.

(a) *General.* A formal complaint must contain the correct, unabbreviated names and addresses of each complainant and defendant. It should set forth briefly and in plain language the facts upon which it is based. It should include specific reference to pertinent statutory provisions and Commission regulations, and should advise the Commission and the defendant fully in what respects these provisions or regulations have been or are violated or will be violated. The complaint should contain a detailed statement of the relief requested. Relief in the alternative or of several different types may be demanded, but the issues raised in the formal complaint should not be broader than those to which complainant's evidence is to be directed at the hearing.

(b) *Requests for oral hearing.* A formal complaint should include a request that the proceeding be handled either under the modified procedure or at oral hearing, and a request for oral hearing should include at least two alternative hearing sites.

§ 1131.2 When damages sought.

(a) *Content.* A formal complaint that includes a request for an award of damages should set forth the information required to be contained in an informal complaint seeking damages (49 CFR 1130.3 (b) and (c)).

(b) *Specific request for damages.* Except under unusual circumstances, and for good cause shown, damages will not be awarded upon a complaint unless specifically requested or upon a new complaint by or for the same complainant which is based upon any finding in the original proceeding.

§ 1131.3 [Reserved]

§ 1131.4 Railroad allegations of unlawful intrastate rates.

(a) *Actions under 49 U.S.C. 11501(c).* A rail carrier may file a petition with the Commission to review the decision of any certified State authority in any administrative proceeding in which the lawfulness of an intrastate rate, classification, rule, or practice is determined. The petition must show in what way the standards and procedures applied by the State were not in accordance with Subtitle IV of Title 49 of the United States Code, and it must be served on the State authority and all parties to the proceedings before the State authority consistent with § 1104.12. Replies must be filed within 10 days after a carrier petition is filed, and must also be served. The Commission will act on the petition within 30 days.

(b) *Actions under 49 U.S.C. 11501(d).* A rail carrier may file an application with the Commission to prescribe an intrastate rate if the appropriate State authority fails to act within 120 days after the rail carrier filed with it a change in an intrastate rate, or a change in a classification, rule or practice that has the effect of changing an intrastate rate, to the level charged on similar traffic moving in interstate or foreign commerce. The application must include a copy of the change as filed with the State authority, the comparable interstate rate items, and a showing that the State authority failed to act within 120 days. The petition must be served on the State authority and all parties to the proceeding before the State authority consistent with § 1104.12.

§ 1131.5 Other specifications.

(a) *Tariff or schedule references.* A formal complaint that brings in issue any rate, fare, charge, schedule, classification, regulation or practice should specifically identify the pertinent tariff or schedule.

(b) *References to States in which transportation occurs.* A formal

complaint under subchapter II of Chapter 105 of 49 U.S.C. should specifically name the States in and through which the transportation which gives rise to the complaint is performed.

§ 1131.6 Multiple causes of action; joinder.

(a) *Multiple causes of action.* Two or more grounds of complaint concerning the same principle, subject, or facts may be included in one complaint, but should be stated and numbered separately.

(b) *Multiple complainants.* Two or more complainants may join in one complaint against one or more defendants if their respective causes of action concern substantially the same alleged violation of the Act and like facts.

(c) *Defendants.* If complaint is made with respect to through transportation by continuous carriage or shipment, all persons subject to the Act participating therein, and against which a decision is sought, should be made defendants. If complaint is made regarding a classification or any of its provisions, ordinarily it will suffice to make defendants the persons operating one or more through routes between representative points of origin and destination, and serve notice of filing the complaint upon the tariff agent for the railroads which are subscribers to the tariff containing the challenged classification.

§ 1131.7 Amended and supplemental formal complaints.

An amended or supplemental complaint may be tendered for filing by a complainant against a defendant or defendants named in the original complaint, stating a cause of action alleged to have accrued within the statuory period immediately preceding the date of such tender, in favor of complainant and against the defendant or defendants. The time limits for responding to an amended or supplemental complaint are computed pursuant to §§ 1111.4 and 1111.5, as if the amended or supplemental complaint was an original complaint.

§ 1131.8 Copies; service.

Formal complaints amended or supplemental complaints, and cross complaints will be served by the Commission. The original of each complaint or cross complaint must be accompanied by a sufficient number of copies to enable the Commission to serve one upon each defendant and to retain six copies in addition to the original.

§ 1131.9 Answers and cross complaints.

(a) *Generally.* An answer may be filed within the time provided in paragraph (b) of this section. Whether or not an answer is filed and served, issue is joined at the conclusion of the time for filing answers, and the Commission may than proceed to a decision. In the alternative, the Commission may then proceed to a decision. In the alternative, the Commission may provide for the taking of evidence under the modified or oral hearing procedures, and in such a case the failure to answer a complaint will not bar a party from further participating in a proceeding or from the presentation of its evidence. An answer should be responsive to the complaint and should fully advise the Commission and the parties of the nature of the defense.

(b) *Time for filing; copies; service.* An answer must be filed within 20 days after the service of the complaint or within such additional time as the Commission may provide. The original and six copies of an answer must be filed with the Commission. The defendant must serve copies of the answer upon the complainant and any other defendants.

(c) *Cross complaints.* A cross complaint alleging violations by parties to the proceeding or seeking relief against them may be filed with the answer. An answer to a cross complaint may be filed within 20 days after the service date of the cross complaint. The party shall serve copies of answer to a cross complaint upon the other parties.

§ 1131.10 Motions to dismiss or to make more definite.

An answer to a complaint or cross complaint may be accompanied by a motion to dismiss the complaint or cross complaint or a motion to make the complaint or cross complaint more definite. A motion to dismiss can be filed at anytime during a proceeding. A complainant or a cross complainant may, within 10 days after an answer is filed, file a motion to make the answer more definite. Any motion to make more definite must specify the defects in the particular pleading and must describe fully the additional information or details thought to be necessary.

§ 1131.11 Satisfaction of complaint.

If a defendant satisfies a formal complaint, either before or after answering, a statement to that effect signed by the opposing parties must be filed (original only need be filed), setting forth when and how the complaint has been satisfied. This action should be taken as expeditiously as possible.

(30) Former §§ 1100.40 and 1100.200 are redesignated as Part 1132 and the newly redesignated Part 1132 is revised to read as follows:

PART 1132—PROTESTS AGAINST TARIFFS; PROCEDURES IN CERTAIN SUSPENSION AND LONG AND SHORT HAUL RESTRICTION MATTERS

Sec.

1132.1 Protests against tariffs.
1132.2 Protests in certain suspension and long and short haul restriction matters.

Authority: 49 U.S.C. 10321, 10707, 10708 and 10726; 5 U.S.C. 559.

§ 1132.1 Protests against tariffs.

(a) *Content.* The protested tariff or schedule sought to be suspended should be identified by making reference to: the name of the publishing carrier, freight forwarder, or agent; the Interstate Commerce Commission number; the specific items or particular provisions protested; and the effective date of the tariff or schedule. Reference should also be made to the tariff or schedule, and the specific provisions proposed to be superseded. The protest should state the grounds in support thereof, indicate in what respect the protested tariff or schedule is considered to be unlawful. Such protests will be considered as addressed to the discretion of the Commission. Should a protestant desire to proceed further against a tariff or schedule which is not suspended, or which has been suspended and the suspension vacated, a separate later formal complaint or petition should be filed.

(b) *When filed.* Protests against, and requests for suspension of, tariffs, or schedules filed under the Act will not be considered unless made in writing and filed with the Commission at Washington, DC. Protests and requests for suspension shall reach the Commission at least 12 days (except as provided in paragraphs (c) and (g) of this section) before the effective dates of the tariffs, schedules, or parts thereof to which they refer, unless the protested publications were filed on less than 30 days' notice in which event the protests (except as provided in paragraph (g) of this section) must reach the Commission not less than 5 days before the effective dates. Protests or petitions for investigation and suspension of tariffs filed on less than 10 days' notice will be accepted, *provided* that they reach the Suspension Board not later than 9:00 a.m. on the last workday before the tariffs' scheduled effective date. Appeals from decisions by the Suspension Board not to suspend or not to investigate matters in which the

protests reached the Board later than 9 a.m. on the second working day before the protested tariffs' scheduled effective date will not be accepted. In an emergency, telegraphic protests will be acceptable if received within the time limits herein specified, provided they also fully comply with paragraphs (a) and (g) of this section and copies are immediately telegraphed by protestants to the proponent carriers or their publishing agents. However, protests against and requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, must reach the Commission no later than 27 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. Six copies of such telegrams should immediately be mailed by the protestants to the Commission at Washington.

(c) *Motor carrier tariff bureau filings.* When motor common carrier tariff bureaus file schedules of proposed general increases in rates and charges, or of proposed rate restructurings subject to the special procedures adopted in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 340 I.C.C. 1 (1971), and set forth at 49 CFR Part 1139, protests thereto must reach the Commission at least 22 days before the published effective dates of those schedules. All statements should be served by express mail or an equivalent expedited delivery service upon any party undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission.

(d) *Copies; service.* In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR Part 1139, an original and 11 copies of every protest or reply filed under this section should be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and six copies of each protest, except as provided in paragraph (e) of this section, or of each reply filed under this section, must be filed with the Commission, and one copy of the protest simultaneously must be served upon the publishing carrier, freight forwarder, or agent, and upon other persons known by protestants to be interested. If in the publication of an agency tariff, the proponent carrier elects to list itself with its full address on the cover page of the supplement or new tariff, service shall be made on such carrier simultaneously with service upon the Commission. These pleadings should be directed to the attention of the Suspension Board.

(e) *Passenger fare increases.* The original only of each protest or request for investigation and suspension of increased passenger fares need be filed with the Commission. Requests for suspension of charges in rail passenger fares must include a verified (notarized) complaint.

(f) *Reply to protest.* A reply to a protest filed under this section must reach the Commission not later than the fourth working day prior to the scheduled effective date of the protested schedules unless otherwise provided. Replies to protests against motor carrier rate bureau proposals other than proposals affecting tariffs for the transportation of household goods as defined in 49 CFR 1056.1(a) subject to Ex Parte No. MC-82 procedures to be assured of consideration, must reach the Commission no later than 14 days before the scheduled effective date of the protested schedules. Replies to protests against tariffs applicable on household goods (as defined in 49 CFR 1056.1(a)), published for the account of household goods carriers (as defined in 49 CFR 1040.2(b)) on not less than 45 days' notice shall be filed with the Commission not more than 5 days after the protest is filed.

(g) *Special requirements for protests against revisions to rail rates and charges and replies thereto.* (1) Protests against, and requests for suspension of, tariffs or schedules filed by rail carriers, or their publishing agents on 20 days' notice under the provisions of 49 U.S.C. 10762(c)(3) must reach the Commission at least 10 days before the proposed effective date of the protested matter. When the protested matter is filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the protest or requests for suspension must reach the Commission at least 5 days before the proposed effective date of the protested matter.

(2) Protests against and requests for suspension of, tariffs or schedules containing proposed rates, classifications, rules, or practices filed by rail carriers or their publishing agents shall also include a verified statement containing specific facts showing:

(i) It is substantially likely that the protestant will prevail on the merits pursuant to any applicable provisions of the law;

(ii) Without suspension, the proposed rate change will cause substantial injury to the protestants or the party represented by the protestants; and

(iii) Because of the peculiar economic circumstances of the protestant, investigation of the rate (subject to a refund by the carrier should the rate subsequently be found unlawful) will not protect the protestant. The burden is on the protestant to prove the matters described in paragraphs (g)(2), (i), (ii) and (iii) of this section.

(3) Where protestants allege that a rate is unreasonably high in violation of 49 U.S.C. 10701, they must submit evidence relating to market dominance pursuant to guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 I.C.C. 118.

(4) Replies to verified statements filed under this section shall be verified.

(h) Except in extraordinary circumstances, the Suspension Board will act on protests against or requests for suspension of tariffs applicable on household goods as defined in 49 CFR 1056.1(a), when published for the account of household goods carriers as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, no later than 18 days before the effective dates of the tariffs, schedules, or parts thereof to which they refer. When the Commission acts initially on questions of investigation and suspension of tariffs applicable on household goods published for the account of household goods carriers and filed on not less than 45 days' notice, the Commission will act not later than 12 days before the tariffs' scheduled effective date. If the Commission concludes: not to investigate and suspend; to investigate, but not to suspend; or not to investigate (without suspension), its decision will not be subject to petitions for reconsideration, except at the Commission's discretion. (A petition to discontinue an investigation will be accepted if filed within 20 days of the service date of the decision ordering the investigation.) No petition other than a petition for discontinuance of an investigation will be accepted that does not reach the Commission by 4:00 p.m. as provided in paragraph (i) of this section.

(i) Except in extraordinary circumstances, the Commission will act on protests or requests for suspension of tariffs filed under paragraph (c) of this section no later than 5 days before the effective date of the tariffs, schedules, or parts thereof to which the protests refer. A decision at the suspension level by the entire Commission on the protests will not be subject to petitions for reconsideration, except at the Commission's discretion. No petition will be accepted that does not reach the

Commission by 4:00 p.m. (United States Standard Time or local Daylight Saving Time, whichever is in effect in Washington, DC) on the work-day following the Commission's action.

§ 1132.2 Procedures in certain suspension and long and short haul restriction matters.

(a) The proceedings of the Suspension Board will be informal. No transcriptions of such proceedings will be made. Subpoenas will not be issued and, except when applications or petitions are required to be attested, oaths will not be administered.

(b) Petitions for reconsideration of the following may be filed by any interested person within 20 days after the date of service:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, withholding, or denying relief from the long and short haul restriction provisions of 49 USC 10726;

(2) Decisions by an Appellate Division reversing, changing or modifying previous determinations by the Suspension Board and which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, withholding, or rescinding relief from the long and short haul restriction provisions of 49 USC 10726;

(3) Decisions by the Commission or a Division which result in orders for:

(i) Investigation and suspension of tariff schedules;

(ii) Investigation (without suspension) of tariff schedules;

(iii) Granting, modifying, or rescinding relief from the long and short haul restriction provisions of 49 USC 10726; See also § 1115.5. In connection with proceedings involving proposals subject to the special procedures in Ex Parte No. MC-82, *New Procedures in Motor Carrier Rev. Proc.* 339 I.C.C. 324, and set forth at 49 CFR Part 1139, and original and 15 copies of every protest or reply filed under this section should be furnished for the use of the Commission. Except as provided for proposals subject to the special procedures in Ex Parte No. MC-82, the original and six copies of every pleading, document or paper filed under this section must be furnished for the use of the Commission. Any interested person may file and serve a reply to any petition for reconsideration permitted under this paragraph within 20 days after the filing of such petition with the Commission but if the facts stated in any such petition discloses a need for accelerated action, such action may be taken before expiration of the time allowed for reply. In all other respects, such petitions and replies thereto will be governed by the rules of general applicability of the Rules of Practice.

(c) When the Suspension Board has declined to suspend a proposed tariff or schedule, or any part thereof, a petition in writing by any protestant or protestants may be filed with the Commission for reconsideration by the designated appellate division provided it reaches the Commission at least two work-days prior to the effective date of the tariff or schedule in question. However, when the Suspension Board has declined to suspend a protested change in rail rates filed on 10 days' notice under the provisions of 49 U.S.C. 10762(c)(3), the petition must be in the hands of the Suspension Board not later than 9 a.m., United States Standard or local Daylight Saving, whichever is in effect in Washington, D.C., on the work-day before the proposed effective date of the protested matter. Further, when the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the petition must be filed within 2 work-days after the Suspension Board has acted. For the purpose of this section, a work day shall be considered as any day except Saturday, Sunday or a legal holiday in the District of Columbia. (A legal holiday of less than one day shall be considered a work-day within the meaning of this section). Petitions submitted under this section shall (except as provided in the case of a protested change in rail rates filed under the provisions of 49 U.S.C. 10762(c)(3) be filed with the Secretary of the Commission by 4 p.m. United States Standard Time or local Daylight Saving Time whichever is in effect in Washington, D.C. Telegraphic notice or the equivalent thereof must be given by the petitioners to the respondent or respondents. As no replies to the petitions for reconsideration are contemplated under this rule, petitioners will be expected, except in unusual circumstances, to rely wholly on the information previously filed with the Suspension Board. Written or telegraphic communication in intelligible form requesting reconsideration will be sufficient. Such request should contain the following prefatory statement: "This matter requires expedited handling under 49 CFR 1132.2". A petition not timely filed may be rejected by the Secretary.

(d) When the Suspension Board has declined to suspend a proposed tariff or schedule applicable on household goods as defined in 49 CFR 1056.1(a) published for the account of a household goods carrier as defined in 49 CFR 1040.2(b) on not less than 45 days' notice, the designated appellate division will, except in extraordinary circumstances, act on petitions for reconsideration no later than 2 work-days after the petition is filed.

(31) Former § 1100.95 and former paragraph 1100.47(c) are redesignated as Part 1133, and the newly redesignated Part 1133 is revised to read as follows:

PART 1133—RECOVERY OF DAMAGES

Sec.

1133.1 Freight bill filing requirement under modified procedure.

1133.2 Statement of claimed damages based on Commission findings.

Authority: 49 U.S.C. 10321; 5 U.S.C. 559.

§ 1133.1 Freight bill filing requirement under modified procedure.

If, under modified procedure (for general rules governing modified procedure, see Part 1112), an award of damages is sought, complainant should submit the paid freight bills or properly certified copies with its statement when there are not more than 10 shipments; if more than 10 shipments are involved, complainant should retain the documents.

§ 1133.2 Statement of claimed damages based on Commission findings.

(a) When the Commission finds that damages are due, but that the amount connot be ascertained upon the record before it, the complainant should immediately prepare a statement showing details of the shipments on which damages are claimed, in accordance with the following form:

Claim of ——— under decision of the Interstate Commerce Commission in Docket No. ———.

——— Date of shipment.

——— Date of delivery or tender of delivery.

——— Date charges were paid.

——— Car (or vessel) initials.

——— Car (or voyage) number.

——— Origin.

——— Destination.

——— Route.

——— Commodity.

——— Weight.

——— Rate.

——— Amount.

——— Rate.

——— Amount.

——— Reparation on basis of Commission's decision.

——— Charges paid by.[1]

Claimant hereby certifies that this statement includes claims only on shipments covered by the findings in the docket above described and contains no claim for reparation previously filed with the Commission by or on behalf of claimant or, so far as claimant knows, by or on behalf of any person, in any other proceedings, except as follows: (here indicate any exceptions,and explanation thereof).

_____
(Claimant)

By _____
(Practitioner)

_____
(Address)

_____
(Date)

Total amount of reparation $———. The undersigned hereby certifies that this statement has been checked against the records of this company and found correct.

Date ——— Concurred[2] in: ———
Company ——— Company, Defendant
Collecting Carrier, Defendant[3]. ———
By ———, Auditor. By ———, Auditor.

(b) The statement should not include any shipment not covered by the Commission's findings, or any shipment on which complaint was not filed with the Commission within the statutory period. The filing of a statement will not stop the running of the statute of limitations as to shipments not covered by complaint or supplemental complaint. If the shipments moved over more than one route, a separate statement should be prepared for each route, and separately numbered, except that shipments as to which the collecting carrier is in each instance the same may be listed in a single statement if grouped according to routes. The statement, together with the paid freight bills on the shipments, or true copies thereof, should then be forwarded to the carrier which collected the charges, for verification and certification as to its accuracy. If the statement is not forwarded immediately to the collecting carrier for certification, a letter request from defendants that forwarding be expedited will be considered to the end that steps be taken to have the statement forwarded immediately. All discrepancies, duplications, or other errors in the statements should be adjusted by the parties and corrected agreed statements submitted to the Commission. The certificate must be signed in ink by a general accounting officer of the carrier and should cover all of the information shown in the statement. If the carrier which collected the charges is not a defendant in the case, its certificate must be concurred in by like signature on behalf of a carrier defendant. Statements so prepared and certified shall be filed with the Commission whereupon it will consider entry of a decision awarding damages.

[1] Here insert name of person paying charges in the first instance, and state whether as consignor, consignee, or in what other capacity.

[2] For concurring certificate in case collecting carrier is not a defendant.

[3] If not a defendant, strike out the word "defendant."

PART 1134—PROCEDURES FOR THE ELIMINATION OF DISCRIMINATION AGAINST RECYCLABLES

(32) Former § 1100.250 is redesignated as new Part 1134 as follows:

§ 1100.250(a) redesignated as § 1134.1
§ 1100.250(b) redesignated as § 1134.2
§ 1100.250(c) redesignated as § 1134.3
§ 1100.250(d) redesignated as § 1134.4
§ 1100.250(e) redesignated as § 1134.5
§ 1100.250(f) redesignated as § 1134.6
§ 1100.250(g) redesignated as § 1134.7

(33) A part heading is added to the newly redesignated Part 1134 to read as set forth above.

(34) The authority citation to the newly redesignated Part 1134 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10710; 5 U.S.C. 559.

§§ 1134.1–1134.7 [Amended]

(35) In the newly redesignated Part 1134, the italicized paragraph headings of former paragraphs 1100.250 (a) through (g) become the section headings of the newly redesignated §§ 1134.1–1134.7.

§ 1134.2 [Amended]

(36) In the newly redesignated § 1134.2, "section 2 of the Interstate Commerce Act" in the second sentence, is revised to read "49 U.S.C. 10741."

§ 1134.6 [Amended]

(37) In the newly redesignated § 1134.6, former paragraphs (1) and (2) are redesignated as paragraphs (a) and (b).

(38) In the newly redesignated § 1134.6, "rule 70 of the rules of practice, 49 CFR 1100.70" in paragraph (b) is revised to read "49 CFR 1113.7."

(39) The newly redesignated § 1134.7 is revised to read as follows:

§ 1134.7 Other procedures.

In all other particulars, the proceeding shall be governed by the Rules of General Applicability of the Commission.

PART 1135—RAILROAD COST RECOVERY PROCEDURES

(40) Former Part 1102 is redesignated as Part 1135, and the part heading of the newly redesignated Part 1135 is revised to read as set forth above.

(41) The authority citation to the newly redesignated Part 1135 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10707; 5 U.S.C. 559.

§ 1135.1 [Amended]

(42) In the newly redesignated § 1135.1, the section heading is revised to read as follows:

"§ 1135.1 Quarterly adjustment of rates."

(43) In the newly redesignated § 1135.1, the italicized heading is removed from paragraph (f).

PART 1136—RAIL AND MOTOR CARRIER COMMUTATION OF SUBURBAN PASSENGER FARE INCREASE PROCEEDINGS

(44) Former Part 1105 is redesignated as Part 1136, and the part heading of the newly redesignated Part 1136 is revised to read as set forth above.

(45) The authority citation to the newly redesignated Part 1136 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10707, and 10708; 5 U.S.C. 559.

§ 1136.4 [Amended]

(46) In the newly redesignated § 1136.4, the word "part" is removed, and "49 CFR" is added in its place.

§ 1136.5 [Amended]

(47) In the newly redesignated § 1136.5, "Rule 50 and Form No. 6 of the Commission's General Rules of Practice" is revised to read "49 CFR 1112.9."

(48) In the newly redesignated § 1136.5, "provisions of the General Rules of Practice, Part 1100 of this chapter" in the third sentence is revised to read "Rules of General Applicability of the Rules of Practice."

PART 1137—PROCEDURES RELATING TO RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

(49) Former Part 1109 is redesignated as Part 1137 as follows: § 1109.5 redesignated as § 1137.1 and § 1109.15 redesignated as § 1137.2, and the part heading of the newly redesignated Part 1137 is revised to read as set forth above.

(50) The authority citation to the newly redesignated Part 1137 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10705, and 10728; 5 U.S.C. 559.

§ 1137.1 [Amended]

(51) In paragraph (p) and the first sentence of paragraph (t) of the newly redesignated § 1137.1, the words "order of the" are removed, and the word "decision" is added to follow "Commission."

(52) The authority citation which follows the newly redesignated § 1137.1 is removed.

(53) The newly redesignated § 1137.1 is further amended by revising paragraph (b) to read as follows:

§ 1137.1 Divisions of revenue proceedings.

* * * * *

(b) The Commission will serve notices of intent to file formal complaints and amended notices thereof. The original of each notice of intent or amendment thereto must be accompanied by copies in sufficient number to enable the Commission to serve one upon each party, including, when bankrupt lines are involved each receiver or trustee, and retain six copies in addition to the original.

§ 1137.2 [Amended]

(54) In the newly redesignated § 1137.2, "section 15 (18) of the Act" in paragraph (b)(2) is revised to read "49 U.S.C. 10728."

(55) In the newly redesignated § 1137.2, "(49 CFR 1100.45 to 1100.54)" in paragraph (f) is revised to read "(49 CFR Part 1112)."

(56) In the newly redesignated § 1137.2, the words "must be verified and" are added to follow "under this section" in the first sentence of paragraph (g).

(57) In the newly redesignated § 1137.2, "information of the type specified in § 1100.1 (regulation proposed in Ex Parte No. 320)" in the first sentence of paragraph (h)(3) is revised to read "evidence prepared in accordance with the guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 ICC 118."

(58) The authority citation which follows the newly redesignated § 1137.2 is removed.

PART 1138—PROCEDURES FOR REQUESTING SURCHARGE COST AND REVENUES FROM RAIL CARRIERS APPLYING A COMMODITY ORIENTED SURCHARGE OR CANCELLING THE APPLICATION OF A JOINT RATE PURSUANT TO 49 U.S.C. 10705(a)

(59) Former Part 1031a is redesignated as Part 1138.

(60) The authority citation to the newly redesignated Part 1138 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10701a; 5 U.S.C. 559.

(61) The authority citation which follows Appendix C in the newly redesignated Appendix C is removed.

PART 1139—MOTOR CARRIER COST RECOVERY PROCEDURES

(62) Former Part 1104 is redesignated as Part 1139 and the heading of the newly redesignated Part 1139 is revised to read as set forth above.

(63) The authority citation to the newly redesignated Part 1139 is revised to read as follows:

Authority: 49 U.S.C. 10321 AND 10708; 5 U.S.C. 559.

(64) Subpart A of the newly redesignated Part 1139 is revised to read as follows:

Subpart A—Common Carriers of General Commodities

Sec.
1139.1 Application.
1139.2 Traffic study.
1139.3 Cost study.
1139.4 Revenue need.
1139.5 Affiliate data.
1139.6 Official notice.
1139.7 Service.
1139.8 Availability of underlying data.
Appendix I to Subpart A
Appendix II to Subpart A

Subpart A—Common Carriers of General Commodities

§ 1139.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Commission may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight where such proposal would result in an increase of $1 million or more in the annual operating revenues on the tariff affected by the proposal, or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of $1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§ 1139.2–1139.5 of this part represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight whcih are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc.
Central States Motor Freight Bureau, Inc.
The Eastern Central Motor Carriers Association, Inc.
Middle Atlantic Conference
Middlewest Motor Freight Bureau
The New England Motor Rate Bureau, Inc.
Pacific Inland Tariff Bureau, Inc.
Rocky Mountain Motor Tariff Bureau, Inc.
Southern Motor Carriers Rate Conference

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Commission may direct in the event an investigation is instituted. In any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than $1 million the carriers will be required to submit only the data sought in §§ 1139.2 and 1139.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§ 1139.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base-calendar year—actual." This year shall be the calendar year that has ended at least 7 months prior to the published effective date of the tariff schedules. If the effective date is less than 7 months following the end of the preceding calendar year, than the second preceding calendar year shall be considered at the "base-calendar year—

actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in part 1207 of this chapter, Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive either $1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the freight rates or charges would be affected by the rate proposal.

(c) Respondents shall take a sample of the traffic handled by the study carriers according to acceptable standards of probability sampling principles and practices, and shall explain and evaluate the probability sample from the standpoint of: purpose, sample design (including explanation of estimation procedure and disclosure of sampling errors for derived characteristics), quality control aspects involved in processing and tabulating data and any statistical analysis performed on the sampled data.[4]

(d) For cost and revenue purposes, the "carried" tariff basis shall be used. "Carried" tariff means the issue traffic handled solely by the study carriers, either single-line or interline. Estimates of current revenues applicable to the issue traffic should reflect all rates and charges in effect no later than 45 days prior to the date of tariff filing.

§ 1139.3 Cost study.

(a) The respondents shall submit a cost study. Highway Form B may be used for this purpose. Service unit-costs shall be developed for each individual study carrier, adjusted by size of shipment and length of haul, and shall be applied to respective individual carrier's traffic service units as developed from its traffic study. Operating ratios shall be determined for the issue traffic handled by the study carriers on the "carried" basis by individual weight brackets included within the rate proposal, for: (1) the traffic study year, that is, the "base-calendar year—actual," as hereinbefore defined, (2) a "present proforma year" reflecting conditions prevailing on a date no later than 45 days prior to the date of the tariff filing, and (3) a "restated proforma year" based on conditions anticipated on the effective date of the proposed rates, with a separation indicating projected operating ratios on two bases, namely, "based on current revenues," and "based on proposed revenues". Operating ratios shall also be shown for all other traffic not affected by the rate proposal for the same weight brackets as shown for the issue traffic, but only for the period indicated in paragraph (a)(1) of this section.

(b) In addition to the operating ratios, the cost study shall also be used to develop and provide the revenue-to-cost comparisons required in Appendix I hereto for the same time periods indicated for the operating ratios plus a "restated proforma year" based on constructed revenue need.

(c) For both the operating ratios and the revenue-to-cost comparisons in Appendix I, the "each-to-each" costing method, ie., the application of each individual study carrier's unit-cost to its traffic service units, applies only to the "base calendar year—actual." The application of possible labor and nonlabor cost increases for the purpose of updating the "base calendar year—actual" cost data may be accomplished by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenue from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." The sample values for expenses and revenues shall be expanded to full year values without adjustments to known annual report figures of any carrier.

(d) Where cost studies are developed through the use of computer processing techniques, there shall be submitted a manual application of the costing procedures used for one traffic and cost study carrier (study carrier) in order to demonstrate the procedures by which the computer program distributes the annual report statistics, and applies service unit-costs to each shipment. An illustration of the application of service unit-costs to the applicable traffic service units generated by one single-line sample shipment and by one interline sample shipment shall also be submitted. These sample shipments shall be on the "Carried" basis.

§ 1139.4 Revenue need.

Traffic and cost study carrier, i.e., the study carriers, shall submit evidence of the sum of money, in addition to operating expenses, including that needed to attract debt and equity capital, which they require to insure financial stability and the capacity to render service. This evidence shall include data required by Appendix I, parts I and II, and Appendix II.

§ 1139.5 Affiliate data.

Each individual traffic and cost study carrier having transactions with affiliates, subject to the reporting requirements of schedules 9009–A and 9009–B in the annual report for class I motor carriers, shall submit appropriate data and analyses reflecting the effect on the parent carrier's profits of transactions with affiliates. Such data and analyses shall be adequately supported, and there shall be submitted such underlying will permit a reconciliation of these data to the data supplied in the appropriate schedules of each carrier's annual report.

§ 1139.6 Official notice.

The Commission will take official notice of all of the proponent carriers' annual and quarterly reports on file with the Commission.

§ 1139.7 Service.

The detailed information called for herein shall be in writing and shall be verified by a person or persons having knowledge thereof. The original and 16 copies of each verified statement for the use of the Commission shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. One copy of each statement shall be sent by first-class mail to each of the regional offices of the Commission in the area affected by the proposed increase, where it will be open to public inspection. A copy of each statement shall be mailed by first-class mail to each party of record in the last formal proceeding concerning a general rate increase in the affected area or territory. However, one copy of each statement shall be sent by express mail to any person undertaking to bear the cost. Written request for this expedited service must be made no less than 5 days before the statement is due to be filed with the Commission. Otherwise, the service requirements of 49 CFR 1104.12 should be observed. Information with respect to carrier affiliates may be served on the parties in summary form, if so desired. A copy of each statement shall be furnished to any interested person on request.

§ 1139.8 Availability of underlying data.

All underlying data used in preparation of the material outlined

[4] Although not adopted by the Commission, attention is called to a staff report, "Guidelines for the Presentation of the Results of Sample Studies," February 1, 1971, available from the Superintendent of Documents.

above shall be made available in the office of the party serving such verified matter during usual office hours for inspection by any party of record desiring to do so, and shall be made available to the Commission upon request therefor. The underlying data shall be made available also at the hearing, but only if and to the extent specifically requested in writing and required by any party for the purpose of cross-examination. Since Appendix I data are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete Appendix I should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases.

APPENDIX I.—REVENUE NEED AND ALLOCATION TO TRAFFIC AT ISSUE

[Cost allocation—see part II, line 13, ☐ Method A, ☐ Method B; check one; provide both]

Line No.	Item	Source [1]	Base calendar year—actual [2]	Present proforma year [3]	Restated proforma year [4]		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need [5]
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
		Part I. Revenue Need					
1	Operating revenue	A.R. Sch. 2998, L. 3	$	$	$	$	$
2	Operating expenses	A.R. Sch. 2998, L. 10					
3	Lease of distinct operating unit (net)	A.R. Sch. 2998, Net of Ls. 12 and 13					
4	Miscellaneous deductions less other income	A.R. Sch. 2998 (L. 27 minus L. 20)					
5	Interest included in miscellaneous deductions	A.R. Sch. 2998, L. 23					
6	Income taxes on ordinary income [6]	A.R. Sch. 2998, L. 29					
7	Extraordinary and prior period items	A.R. Sch. 2998, L. 34					
8	Net income or loss [7]	A.R. Sch. 2998, L. 35					
9	Sum of money above operating expenses	Sum of Ls. 4, 6 and 8					
10	Percent owned and leased property to net tangible property (3 decimals).	A.R. Sch. 100, Col. (c) (L. 21+L. 23)÷L. 26	%	%	%	%	%
11	Sum of money related to transportation	(L. 9×—% in L. 10) plus L. 3					
12	System revenue need items and projected revenue need	L. 2 plus L. 11					
		Part II. Allocation to Traffic at Issue					
13	Constant costs and sum of money allocated to issue traffic	See Method A ( ) and Method B ( ), check one; provide both.					
14	Variable expenses from traffic at issue (90% variable excluding return on investment). [8]	From traffic and cost study					
15	Operating revenues from traffic at issue [9]	From traffic study					
16	Constant costs and sum of money allocated to issue traffic plus variable expenses.	L. 13 plus L. 14	$	$	$	$	$
17	Revenue to cost comparison (1 decimal)	L. 15÷L. 16	%	%	%	%	%

See Methods A and B and footnotes on following pages.

METHOD A.—CONSTANT COSTS AND SUM OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON TON AND TON-MILE METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Base calendar year—actual	Present proforma year	Restated proforma year		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a)	System constant costs	L. (b)+L. (c)	$	$	$	$	$
(b)	Not related to distance	(See Note B)					
(c)	Related to distance	(See Note B)	$	$	$	$	$
(d)	Percent not related to distance (3 decimals)	L. (b)÷L. (a)	%	%	%	%	%
(e)	Percent related to distance (3 decimals)	L. (c)÷L. (a)	%	%	%	%	%
(f)	System sum of money	Appendix A, part I, L. 11	$	$	$	$	$
(g)	Not related to distance	L. (f)×L. (d)					
(h)	Related to distance	L. (f)×L. (e)					
(i)	Total system constant costs plus sum of money	L. (a)+L. (f)					
(j)	Not related to distance	L. (b)+L. (g)					
(k)	Related to distance	L. (c)+L. (h)	$	$	$	$	$
(l)	Tons carried on issue and nonissue traffic combined	From traffic study (see Note C)					
(m)	Ton-miles	do					
(n)	Issue traffic tons carried	do					
(o)	Issue traffic ton-miles	do					
(p)	Percent of issue traffic tons to system tons (3 decimals)	L. (n)÷L. (l)	%	%	%	%	%
(q)	Percent of issue traffic ton-miles to system ton-miles (3 decimals).	L. (o)÷L. (m)	%	%	%	%	%
		Constant Costs and Sum of Money Allocated To Issue Traffic					
(r)	Not related to distance	L. (p)×L. (j)	$	$	$	$	$
(s)	Related to distance	L. (q)×L. (k)					
(t)	Total (enter amount in appendix A, part II, line 13)	L. (r)+L. (s)	$	$	$	$	$

NOTE A.—This procedure allocates constant costs and the sum of money based on the ton and ton-mile method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rest on (1) considerations including value of service, demand, and ability to pay, and (2) considerations which involve matters relating to regulatory policy.

NOTE B.—Separate the amount of constant costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, Line III. Assign the dollars in columns (6), (7), (8), and (9) times 10 percent to line (b), and the dollars in columns (4) and (5) times 10 percent to line (c).

NOTE C.—Show tons and ton-miles on issue and nonissue traffic based on an expansion of the sample to a full year.

METHOD B—CONSTANT COSTS AND SUN OF MONEY ALLOCATED TO ISSUE TRAFFIC BASED ON DOLLAR (EXPENSE) METHOD (SEE NOTE A)

Line No.	Item	Source for columns 3 and 4	Base calendar year—actual	Present proforma year	Restated proforma year		
					Based on current revenues	Based on proposed revenues	Based on constructed revenue need
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
(a)	System constant cost (excluding	Note B	$	$	$	$	$
(b)	System sum of money	Appendix A, part I, line II					
(c)	Total system constant costs plus sum of money	Line (a) plus line (b)					
(d)	Variable expenses on issue traffic	From traffic and cost study; Note C					
(e)	Variable expenses on issue and nonissue traffic combined	From traffic and cost study; Note D					
(f)	Percent relationship (3 decimals)	Line (d) ÷ line (e)	%	%	%	%	%
(g)	Constant costs and sum of money allocated to issue traffic (enter amount in appendix A, part II, line 13).	Line (c) × line (f)	$	$	$	$	$

NOTE A.—This procedure allocates constant costs and the sum of money based on the dollar (expense) method and should be submitted for the information of the Commission. How much of the constant and sum of money costs may or should be recovered by any specific segment of traffic rests on (1) considerations including value of service, demand, and ability to pay, and (2) consideration which involve matters relating to regulatory policy.

NOTE B.—Determine the amount of constant costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, Line 111, column (3) multiplied by 10 percent; insert this amount on line (a).

NOTE C.—Determine the amount of variable costs, including unrelated, by using Statement No. 6-68, Highway Form B, Schedule A, line 111, column (3) multiplied b y 90 percent to obtain the variable portion.

NOTE D.—Show variable expenses allocated to the issue traffic based on an expansion of a sample to a full year.

Footnotes to Appendix I:

Explanatory: The Purpose of appendix A is twofold, namely: (1) to obtain, through part 1, *Revenue Need,* an indication of the past actual, present, and restated system revenue needs of the traffic and cost study carriers, which, along with the financial data required in appendix B, will facilitate an analysis of the financial stability of these carriers, and (2) to allocate a part of these system revenue needs to the traffic at issue as provided for in part II, line 13. It is that portion of constant and sum of money costs resulting from this allocation plus the related variable expenses (line 14) which produces the total costs assigned to the issue traffic (line 16) which is then compared to the issue traffic revenues in the revenue-to-cost comparison shown on line 17. This comparison provides some indication of how much the total issue traffic is contributing to the carriers' overall revenue needs; and serves as a reference point for the consideration of ratemaking factors, other than costs, which may influence the appropriateness of the issue traffic's contribution.

Appendix A data should be completed and submitted for all traffic and cost study carriers combined. However, data for the "base calendar year—actual," column (3), should be developed and completed for each traffic and cost study carrier and the results combined for all such carriers. The data in part I, columns (4) through (7), which reflect an updating of revenue need data for the "base calendar year—actual" to present and restated levels, should be developed on either an individual carrier basis, or on a composite carrier basis comprised of all traffic and cost study carriers. Data in part II, line 14 columns (4) through (7), which reflect an updating of the cost and traffic study data for the "base calendar year—actual" to present and restated levels, should be developed by the use of either individual carrier data for each of the study carriers, or the composite carrier data for those study carriers whose revenues from the issue traffic amount to 50 percent or more of their total system revenues for the "base calendar year—actual." However, for line 14, the method selected should be the same as that used to update the operating ratios to present and restated levels as required in .3 *Cost study.* As indicated above, appendix A data should be completed and submitted only for all traffic and cost study carriers combined. Since appendix A are to be submitted on a combined carrier basis, any underlying individual carrier data used to complete this appendix should be furnished to the Commission for its use as well as for the use of parties opposing the sought increases. Data in columns (4) through (7) must be appropriately explained and supported. Each of the dollar figures called for in these columns shall be accompanied by an explanation of the bases or methods of restatement, including explicit identification of all projected or assumed changes in revenues, in wage rates, in price levels of other expenses and property items, and in productivity, as compared with the preceeding (actual) year results. Note that the time periods referred to in appendix A, that is, "Base calendar year—actual," "Present proforma year" and "Restated proforma year" are the same time periods indicated in § 1104.3, *Cost study.*

[1] Sources in this column apply to column (3) "Base calendar year—actual." Data for columns (4) through (7) should rely on column (3) as a base in order to reflect data for the "Present proforma year" and the "Restated proforma year." Annual report sources apply to class I motor carriers for class II carriers use comparable sources.

[2] The data in column (3) should reflect the revenue need data (part 1), and the traffic and cost study data (part II), for the traffic study year. That is, the "Base calendar year—actual," which should coincide with the "Base calendar year—actual" referred to in the *Cost study* (§ 1104.3). Parts I and II should be completed for each individual study carrier—the purpose being to allocate a portion of each carrier's system revenue need to the traffic at issue as provided for in part II. The results for all study carriers should then be aggregated and submitted on a combined carrier basis.

[3] The data in column (4) should be based on present wage, price and productivity levels and reflect conditions prevailing on a date no later than the 45 days prior to the date of the tariff filing.

[4] The data in columns (5), (6), and (7) should be based on wage, price, and productivity levels anticipated on the effective date of the proposed rates.

[5] The purpose of this column is to obtain data on what system revenue needs of the study carriers *should* be at a given time. Part I should consider the sum of money in addition to operating expenses (including that needed to attract debt and equity capital) which the carriers feel they require to insure financial stability and the capacity to render service.

[6] In columns (4) through (7), show income taxes based on estimated taxable income reduced by the taxes applicable to other income such as, for example, capital gains transactions.

[7] In columns (4) through (7), determine the net income based on data shown for lines 1 though 7. In column (7), the estimate of the net income needed should be supported by evidence that it is a just and reasonable amount.

[8] Show expenses and revenues allocated to the total issue traffic based on an expansion of the sample to a full year. The amount shown on line 14 for variable expenses should agree with that shown in Method B, line (d).

APPENDIX II.—FINANCIAL RATIOS (TRAFFIC AND COST STUDY CARRIER ————)

[Complete appendix B for each traffic and cost study carrier and for all such carriers combined]

Line No.	Item	Source [1]	Third preceding calendar year (actual)	Second preceding calendar year (actual)	First preceding calendar year (actual or estimated)
	(1)	(2)	(3)	(4)	(5)
1	Current assets [2]	A.R. Sch. 100, L. 18	$	$	$
2	Net carrier operating property (owned) [2]	A.R. Sch. 100, L. 21			
3	Net carrier operating property (owned plus leased to others) [2]	A.R. Sch. 100, L. 21 + L. 23			
4	Net tangible property [2]	A.R. Sch. 100, L. 26			
5	Intangibles [2]	A.R. Sch. 100, L. 32			
6	Current liabilities [2]	A.R. Sch. 101, L. 13			
7	Long-term debt [2]	A.R. Sch. 101, L. 15 + L. 25			
8	Shareholders' equity [2]	A.R. Sch. 101, L. 35			
9	Operating revenues	A.R. Sch. 2998, L. 3			
10	Depreciation plus or minus depreciation adjustment	A.R. Sch. 2998, L. 6+ or − L. 7			
11	Operating expenses	A.R. Sch. 2998, L. 10			
12	Net carrier operating income	A.R. Sch. 2998, L. 14			
13	Ordinary income before income taxes	A.R. Sch. 2998, L. 28			
14	Net income or loss	A.R. Sch. 2998, L. 35			
15	Net income or loss plus or minus depreciation [3]	L. 10 Plus L. 14	$	$	$
16	Percent owned and leased property to net tangible property (3 decimals)	L. 3 ÷ L. 4	%	%	%
17	Investment in owned and leased property plus working capital [4]		$	$	$
18	Shareholders' equity less intangibles	L. 8 − L. 5	$	$	$
19	Long-term debt plus shareholders' equity less intangibles	L. 7 + L. 18	$	$	$
20	Operating ratio (2 decimals)	L. 11 ÷ L. 9	%	%	%
21	Current ratio (2 decimals)	L. 1 ÷ L. 6			
22	Ratio net income or loss to operating revenue (2 decimals)	L. 14 ÷ L. 9	%	%	%
23	Rate of return on owned and leased operating property plus working capital (2 decimals).	L. 12 ÷ L. 17	%	%	%
24	Rate of return on shareholders' equity less intangibles (2 decimals)	L. 14 ÷ L. 18	%	%	%
25	Capital structure ratio (2 decimals)	L. 7 ÷ L. 19	%	%	%

APPENDIX II.—FINANCIAL RATIOS (TRAFFIC AND COST STUDY CARRIER ————)—Continued

[Complete appendix B for each traffic and cost study carrier and for all such carriers combined]

Line No.	Item	Source [1]	Third preceding calendar year (actual)	Second preceding calendar year (actual)	First preceding calendar year (actual or estimated)
	(1)	(2)	(3)	(4)	(5)
26	Throwoff to debt ratio (2 decimals)	L. 15 ÷ L. 7	%	%	%
27	Ratio long-term debt to shareholders' equity less intangibles (2 decimals)	L. 7 ÷ L. 18	%	%	%

[1] Annual report sources refer to 1970 Motor Carrier Annual Report Form A for Class I Motor Carriers of Property. For class II carriers use the comparable sources. For years prior to 1970 use the comparable annual report sources.
[2] Show average of beginning and end of year figures.
[3] If carrier shows a net income, the amount shown for depreciation should be added to it; If a net loss, then the net loss and the amount for depreciation should be netted and the appropriate figure shown.
[4] Multiply the percent on line 16 by the difference between line 1 and line 6. Add the resulting amount to line 3.

Schedule B [Amended]

(65) In Schedule B to the newly redesignated Part 1139, "Section 22 of the Interstate Commerce Act," under the explanatory notes for column (e) is revised to read "49 U.S.C. 10721, 10722, 10723 and 10724.

Appendix I to Subpart B [Amended]

(66) The authority citation which follows "Appendix I to Subpart B" of the newly redesignated Part 1139 is removed.

PART 1140—REASONABLY EXPECTED COSTS UNDER 49 U.S.C. 10705a

(67) Former Part 1129 is redesignated as Part 1140.

(68) A new Part 1141 is added to read as follows:

PART 1141—PROCEDURES TO CALCULATE INTEREST RATES

§ 1141.1 Procedures to calculate interest rates.

Interest rates to be computed following a Commission decision shall be the average yield (on the date the statement is filed) of marketable securities of the United States Government having a duration of 90 days.

(49 U.S.C. 10707(d)(1))

PARTS 1142—1149—[RESERVED]

(6) New parts 1142–1149 are added and reserved.

PARTS 1150–1169—LICENSING PROCEDURES

PARTS 1150–1159—RAIL LICENSING PROCEDURES

PART 1151—CERTIFICATE TO CONSTRUCT, ACQUIRE, OR OPERATE RAILROAD LINES

(70) Former Part 1120 is redesignated as Part 1150 and two center headings are added to precede the newly redesignated Part 1150 as set forth above.

(71) The authority citation to the newly redesignated Part 1150 is revised to read as follows:

Authority: 49 U.S.C. 10321, 10505, and 10951; 5 U.S.C. 559.

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

(72) Former Part 1128 is redesignated as Part 1151.

(73) The authority citation to the newly redesignated Part 1151 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10910; 5 U.S.C. 559.

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

(74) Former Part 1121 is redesignated as Part 1152 as follows:

(a) §§1121.10–1121.11 redesignated as §§1152.1–1152.2 respectively;
(b) §§1121.20–1121.25 redesignated as §§1152.10–1152.15 respectively;
(c) §§1121.30–1121.34 redesignated as §§1152.20–1152.24 respectively;
(d) §§1121.36–1121.39 redesignated as §§1152.25–1152.28 respectively;
(e) §§1121.40–1121.47 redesignated as §§1152.30–1152.37 respectively;
(f) §§1121.60–1121.63 redesignated as §§1152.40–1152.43 respectively.

(75) The authority citation to the newly redesignated Part 1152 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10903—10905; 5 U.S.C. 559; 45 U.S.C. 904 and 915.

§ 1152.1 [Amended]

(76) In the newly redesignated § 1152.1, the statutory references are revised as follows:

(a) In paragraph (a), "Section 1 (18) of the Interstate Commerce Act " (Act)" in the first sentence is revised to read "49 U.S.C. 10903".

(b) In paragraph (a), "Section 1a of the Act" in the third sentence, is revised to read "49 U.S.C. 10903".

(c) In paragraph (a), "Section 1a" in the fourth sentence is revised to read "Section 10903(a)".

(d) In paragraph (b), "Part I of the Act" in the fourth sentence is revised to read "Title 49, subtitle IV, chapter 105".

§ 1152.2 [Amended]

(77) In the newly redesignated § 1152.2, the statutory references are revised as follows:

(a) In paragraph (b), "(49 U.S.C. 1 et seq.)" is revised to read "(49 U.S.C. 10101 et seq.)".

(b) In paragraph (d), "section 1a of the Act" is revised to read "49 U.S.C. 10903".

(c) In paragraph (e), "Part I of the Act" is revised to read "49 U.S.C., Subtitle IV, chapter 105".

(d) In paragraph (h), "section 20 of the Act" is revised to read "49 U.S.C. 11145".

(e) In paragraph (i), "section 1a(6)(a) of the Act" is revised to read "49 U.S.C. 10905".

§ 1152.10 [Amended]

(78) In the newly redesignated § 1152.10, "section 1a(6)(a) of the Act", which appears in paragraph (b)(4), is revised to read "49 U.S.C. 10905".

§ 1152.13 [Amended]

(79) In the newly redesignated § 1152.13, the statutory references in paragraph (d) are revised as follows:

(a) In the first sentence, "section 1a(5)(b) of the Act" is revised to read "49 U.S.C. 10904(e)(3)".

(b) In the second sentence, "section 1a(5)(b)" is revised to read "section 10904(e)(3)".

§ 1152.15 [Amended]

(80) In the newly redesignated § 1152.15, "Section 1a(5)(a) of the Act" is revised to read "49 U.S.C. 10904(e)(1)".

§ 1152.25 [Amended]

(81) In the newly designated § 1152.25, "49 U.S.C. 1121.138(c)" which appears in paragraph (d)(4) is revised to read "49 CFR 1157.27(c)".

§ 1152.28 [Amended]

(82) In the newly redesignated § 1152.28, the statutory references in paragraph (d) are revised as follows:

(a) "Section 1a(4) of the act" is revised to read "49 U.S.C. 10903".

(b) "Section 1a(6) of the act" is revised to read "49 U.S.C. 10906".

§ 1152.30 [Amended]

(83) In the newly redesignated § 1152.30, the statutory references are revised as follows:

(a) In paragraph (a)(1), "section 1a(7) and section 1a(11)(b) of the act direct" in the first sentence is revised to read "49 U.S.C. 10905 directs".

(b) In paragraph (a)(1), "section 1a(6)(ii)(A) of the act" in the second sentence is revised to read "section 10905".

(c) In paragraph (a)(2), "section 1a(6)(a)(i) of the act" is revised to read "49 U.S.C. 10905".

(84) In the newly redesignated Part 1152, subpart E is removed, subpart F is redesignated as subpart E, and the authority citation which precedes the newly redesignated Subpart E is removed.

(85) In the newly redesignated Part 1152, Appendices A and B are redesignated as Appendices I and II.

PART 1153—DISCONTINUANCE OR CHANGE OF RAIL OR FERRY OPERATIONS UNDER 49 U.S.C. 10908 OR 10909

(86) Former Part 1122 and § 1100.246 are redesignated as Part 1153 as follows: §§ 1122.1–1122.8 redesignated as §§ 1152.1–1153.8; respectively; § 1100.246 redesignated as § 1153.9.

(87) The authority citation to the newly redesignated Part 1153 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10908; 5 U.S.C. 559.

(88) In the newly redesignated Part 1153, the part heading is revised to read as set forth above.

(89) The newly redesignated § 1153.1 is revised to read as follows:

§ 1153.1 Scope of rules in this part.

The rules in this part govern the procedure to be followed by carriers subject to 49 U.S.C. chapter 105 which file a notice under 49 U.S.C. 10908, or a petition under 49 U.S.C. 10909, with respect to a proposed discontinuance or change, in whole or in part, of the operation or service of any train or ferry.

§ 1153.2 [Amended]

(90) In the newly redesignated § 1153.2, the statutory references are revised as follows:

(a) In paragraph (b), "paragraph (1) of section 13a" is revised to read "49 U.S.C. 10909".

(b) In paragraph (c), "paragraph (2) of section 13a" is revised to read "49 U.S.C. 10909".

§ 1153.9 [Amended]

(91) In the newly redesignated § 1153.9, paragraphs (a), (b), and (c) are removed and paragraphs (d) through (i) are redesignated as (a) through (f).

(92) In this newly redesignated § 1153.9, the cross references are revised to read as follows:

(a) In the first sentence of the newly redesignated paragraph (b), "section 13a(1)" is revised to read "49 U.S.C. 10908", and "section 13a(2)" is revised to read "49 U.S.C. 10909".

(b) In the newly redesignated paragraph (c), "section 13a(1)" in the first sentence is revised to read "49 U.S.C. 10908".

(c) In the newly redesignated paragraph (e), "section 13a(1) of the act" in the third sentence is revised to read "49 U.S.C. 10908".

(d) In the newly redesignated paragraph (e), "Rule 246 of the Commission's Rules of Practice" in the eighth sentence is revised to read "49 CFR 1153.9".

(e) In the newly redesignated paragraph (f), "Section 13a(2)" in the first sentence is revised to read "49 U.S.C. 10109".

(f) In the newly redesignated paragraph (i), the reference to "paragraph (e)" in the last sentence is revised to read "paragraph (b)".

(93) In the newly redesignated § 1153.9(f), "complying with Rule 38" is removed from the second sentence and the following language is added in its place:

"setting forth specifically the grounds on which it is made and the interest of protestant in the proceeding, either promptly after the petition is filed or, if the Commission issues a notice, within the time specified in the notice, and by filing the original and 6 copies with the Commission and simultaneously serving one copy on the applicant;"

PART 1154—DETERMINATION OF AVOIDABLE LOSSES

(94) Former Part 1123 is redesignated as Part 1154.

(95) The authority citation to the newly redesignated Part 1154 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559

§ 1154.1 [Amended]

(96) In the newly redesignated § 1154.1, "part 1 of the Interstate Commerce Act," in the first sentence, is revised to read "Title 49, subtitle IV, chapter 105."

§ 1154.5 [Amended]

(97) In the newly redesignated § 1154.5, "rule 15 of the general rules of practice (§ 1100.15 of this chapter)" is revised to read "49 CFR 1104.4".

PART 1155—STANDARDS FOR DETERMINING RAIL SERVICE CONTINUATION SUBSIDIES

(98) Former Part 1125 is redesignated as Part 1155.

(99) The authority to the newly redesignated Part 1155 is revised as follows:

Authority: 49 U.S.C 10321 and 10905; 5 U.S.C. 559.

§ 1155.2 [Amended]

(100) In the newly redesignated § 1155.2, "section 20 of the Interstate Commerce Act" which appears in the seventh and eighth paragraphs is revised to read "49 U.S.C. 11145".

PART 1156—SUBMISSION OF COST DATA TO JUSTIFY REIMBURSEMENT FOR DIRECTED SERVICE

(101) Former Part 1126 redesignated as Part 1156.

(102) The authority citation to the newly redesignated Part 1156 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10905; 5 U.S.C. 559.

PART 1157—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

(103) Former Part 1127 is redesignated as Part 1157.

(104) The authority citation to the newly redesignated Part 1157 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10362; 5 U.S.C. 559.

PARTS 1158–1159—[RESERVED]

(105) New parts 1158–1159 are added and reserved.

PARTS 1160-1169—NONRAIL LICENSING PROCEDURES

(106) Sections 1100.251, 1100.252 and 1100.253 are redesignated as Part 1160, Subparts A, B, and C respectively, and a center heading is added to precede the newly redesignated Part 1160 as set forth above.

(107) The newly redesignated Part 1160 is revised to read as follows:

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

Subpart A—How To Apply for Operating Authority

Sec.
1160.1 Applications governed by these rules.
1160.2 Applications for operating authority which require only fitness proof ("fitness only" applications).
1160.3 Procedures used generally.
1160.4 Starting the application process: Form OP-1.
1160.5 Information to be submitted by applicants (except fitness only applications).
1160.6 Applicant's verified statements (except fitness only applications).
1160.7 Information to be submitted in fitness only applications.
1160.8 The applicant's verified statement in fitness only applications.
1160.9 Where to send the application.
1160.10 Commission review of the application.
1160.11 Changing the request for authority or filing supplementary evidence after the application is filed.
1160.12 After publication in the Federal Register.
1160.13 Furnishing a copy of the application package to interested persons.
1160.14 Opposed applications.
1160.15 Filing a reply statement.
1160.16 After all statements are submitted.
1160.17 Applicant withdrawal.
1160.18 Caption summary.
1160.19 Compliance.
1160.20 Appeals to rejections of the application.
1160.21 Tacking or rejoinder of authority.
1160.22 Freight forwarder applicants only.
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Subpart B—How To Oppose Requests for Authority

1160.40 Definitions.
1160.41 Time for filing.
1160.42 Contents of the protest.
1160.43 Qualifications format.
1160.44 Factual evidence format (except fitness only applications).
1160.45 Factual evidence format for fitness only applications: Scope.
1160.46 Requests for oral hearing by a protestant.
1160.47 To whom the protest is sent.
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1160.49 Withdrawal.

Subpart C—General Rules Governing the Application Process

1160.60 Contacting another party.
1160.61 Serving copies of pleadings, letters; the certificate of service.
1160.62 Copies.
1160.63 Requests for extension of time.
1160.64 Petition to clarify or interpret formally an operating authority.
1160.65 Replies to motions.
1160.66 Consolidation of applications.
1160.67 Marking contents on envelopes, and submission of pleadings.
1160.68 Requesting oral hearing.

Authority: 49 U.S.C. 10321 and 10921; 5 U.S.C. 559.

Subpart A—How To Apply for Operating Authority

§ 1160.1 Applications governed by these rules.

These rules govern the handling of applications for permanent operating authority of the following type:

(a) Applications for certificates and permits to operate as a motor common or contract carrier of passengers or property.

(b) Applications for permits to operate as a freight forwarder.

(c) Applications for certificates, permits, and exemptions for water carrier transportation of property and passengers.

(d) Applications for licenses to operate as a broker of motor vehicle transportation.

§ 1160.2 Applications for operating authority which require only fitness proof ("fitness only" applications).

There are certain types of authority which can be obtained by an applicant showing only that it is fit, willing and able to perform the service and to comply with the law and Commission regulations. These are listed below. The applicant does not provide any supporting witness testimony. The application can be opposed only on the grounds that applicant is not fit or does not fall within the statutory definition. These applicants shall skip §§ 1160.5 and 1160.6 and substitute the information called for in §§ 1160.7 and 1160.8.

(a) Motor common carrier of property transportation to serve any community not regularly served by a certificated motor common carrier.

(b) Motor common carrier of property transportation to provide service as a direct substitute for complete abandonment of all rail service in a community.

(c) Motor common carrier transportation for the United States Government of property (except used household goods, hazardous or secret materials, and sensitive weapons and munitions).

(d) Motor common carrier property transportation of shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds.

(e) Motor common or contract carrier of property transportation of food and other edible products (including edible byproducts but excluding alcoholic beverages and drugs) intended for human consumption, agriculture limestone and other soil conditioners, and agricultural fertilizers, when the transportation is provided with the owner of the motor vehicle in the vehicle (except in emergency situations). After issuance of the authority, such transportation (measured by tonnage) shall not exceed, on an annual basis, the transportation provided by the motor vehicle (measured by tonnage) which is exempt from the Commission's jurisdiction under 49 US.C. 10526(a)(6).

(f) Transportation for the U.S. Government of used household goods which transportation is incidental to a pack-and-crate service on behalf of the Department of Defense.

(g) Motor carrier brokerage of general commodities (except household goods).

§ 1160.3 Procedures used generally.

(a) *Modified procedure.* Most cases are handled under the modified procedure. The applicant and protestants send statements made under oath (verified statements) to each other and to the ICC. There are no personal appearances or formal hearings.

(b) *Oral hearings.* Oral hearings are used infrequently. Either an applicant or a protestant may request oral hearing at any time during the proceeding. The rules governing requests for oral hearing are set forth at § 1160.68 of this part.

§ 1160.4 Starting the application process: Form OP-1.

(a) All applicants shall use form OP-1.

(b) Obtain the form at Commission regional and field offices, or call the Office of the Secretary at (202) 275-7833.

§ 1160.5 Information to be submitted by applicants (except fitness only applications).

(a) A completed application form, OP-1.

(b) A caption summary which describes the authority sought.

(c) A separate verified statement from the applicant, as described in § 1160.6 of this part.

(d) Verified certifications of witness or shipper support (see the appendix to the OP-1 form).

(1) *Motor common carriers of property.* Applicants for this authority normally file verified certifications of witness or shipper support. Alternatively, an applicant may elect to

file other evidence showing that the service proposed will serve a useful public purpose, responsible to a public demand or need. This evidence shall be submitted in part (10) of applicant's verified statement, as shown in § 1160.6 of this part.

(2) *Water carrier exemption applications.* No shipper or witness support evidence is required.

§ 1160.6 Applicant's verified statement (except fitness only applications).

Applicant shall file the information described in this paragraph according to the type of application being filed (see KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A."

KEY FOR REGULAR APPLICATIONS

(1) Motor common carrier of property application.
(2) Motor common carrier of passengers application.
(3) Motor contract carrier of property application.
(4) Motor contract carrier of passengers application.
(5) Passenger broker application.
(6) Freight forwarder application.
(7) Water common carrier application.
(8) Water contract carrier application.
(9) Water carrier exemption application.

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of applicant. (All.)

(2) Name of witness presenting evidence of applicant and why this person is qualified to speak for applicant (as, position with applicant and experience). (All.)

(3) Authority requested in this application. (All.)

(4) Brief description of present ICC regulated operations, or, any other transportation experience. Do not submit copies of existing authority unless they are an issue in the application. (All.)

(5) *Description of equipment.* It is not necessary to list separately all pieces. A summary is preferred. If applicant has no equipment, it shall specify its plan to obtain equipment (e.g., owner-operators under lease). (All except 5.)

(6) *Safety evidence.* Motor carriers holding ICC authority should indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:

I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicles and the safe transportation of hazardous materials, and I will comply with these regulations.

Note applicants.—These regulations are found in Title 49, Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: (800) 424-9158.

(7) Service now provided to supporting shipper or witness, if any or, service provided within area sought by application. (All.)

(8) Description of service that will be provided if this application is granted. State whether services of this type are not now available. (All.)

(9) Name and address of persons or shippers now served under contract (Four only.)

(10) Any other evidence in support of the application. *Motor common carrier of property applicants:* If no shipper support statements are being provided, applicant shall submit other evidence under this paragraph.

(11) Legal argument supporting the application. (Optional for all.)

(12) Any oral hearing request (Optional for all). *Verification:* Separate verification of this statement is not necessary. Applicant understands that the oath in the application form applies to this statement.

§ 1160.7 Information to be submitted in fitness only applications.

(a) A completed OP-1 form, except for the appendix.

(b) A caption summary describing the authority sought.

(c) A separate verified statement from the applicant, as described in § 1160.8 of this part.

§ 1160.8 The applicant's verified statement in fitness only applications.

Applicant shall file the information described in this paragraph according to the type of application being filed (see following KEY). The information shall be provided in separately numbered paragraphs. If a particular item seems inapplicable, write "N/A."

KEY FOR FITNESS ONLY APPLICATIONS

(1) Motor carrier applications.
(2) Property broker applications.

INFORMATION TO BE SUBMITTED

(1) Legal name and domicile of applicant. (Both.)

(2) Name of witness presenting evidence and why this person is qualified to speak for applicant (as, position with applicant and experience). (All.)

(3) Authority requested in this application. (Both.)

(4) Description of equipment. It is not necessary to list separately each piece. A summary is preferred. If applicant has no equipment, it shall specify its plans to obtain equipment (e.g., owner-operators under lease). (1 only.)

(5) *Safety evidence:* Motor carriers holding ICC authority shall indicate that they are in compliance with DOT safety regulations. New entrants shall state the following:

I certify that I have access to and am familiar with all applicable regulations of the U.S. Department of Transportation relating to the safe operation of commercial vehicle and the safe transportation of hazardous materials, and I will comply with these regulations.

Note to applicants.—These regulations are found in Title 49 of the Code of Federal Regulations, Parts 171 to 179 and Parts 390 to 399. Information concerning safety and hazardous materials regulations may be obtained by calling this toll free number: (800) 424-9158. (1 only.)

(6) *Application under § 1160.2(a).* If the application is to serve a "community not regularly served", describe the location of the community and the highways which serve the community. If known, state the last known date of service from other carriers and their identity, and the date when service was requested from these carriers. (1 only.)

(7) *Application under § 1160.2(b):* Motor carrier applicants for transportation service as a direct substitute for complete abandonment of all rail service to a community shall file the following information:

(i) Docket number, approval date and effective date of the Commission's decision approving the abandonment; or, date of the Commission's recommendation or pronouncement in a noncertificate abandonment.

(ii) Description of the location of the points sought to be served, indicating to what portion of the rail line they are adjacent (submit maps where obscure rural points are involved), and cross-referencing each specific community to the pertinent abandonment proceeding relied on.

(iii) Certification that rail service was offered at the points for which authority is sought.

(iv) Certification that all rail service has been terminated (give date if known), or

(v) If rail service has not yet terminated, state that fact and submit certification that, after rail service does cease on the line to be abandoned, no rail service by any carrier will remain to the involved community.

(vi) When the certification in paragraph (g)(5) of this section is made, and applicant has otherwise established its right to a certificate, the Commission will issue a certificate subject to the filing, when rail service is terminated, of another certification that *all* service has ceased at the granted points.

(vii) *Filing period:* Applications under this subsection must be filed no later than 120 days (plus extensions) after the effective date of the Certificate of Abandonment issued by the Commission, or, in a non-certificate abandonment, 120 days after the issuance of a recommendation or other pronouncement by the Commission regarding the abandonment.

(8) *Verification:* Separate verification of any statement made under § 1160.8 is not necessary. Applicant understands that the oath in the application form applies to these statements.

§ 1160.9 Where to send the application.

(a) The original and one copy shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, with the proper application fee. Make checks payable to the Interstate Commerce Commission.

(b) One copy of the application shall be sent to the ICC regional office in which applicant is domiciled. A copy of the caption summary only is sent to the State transportation regulatory body of applicant's domicile.

§ 1160.10 Commission review of the application.

(a) ICC staff will review the application for correctness, completeness, and for adequacy of the evidence (the prima facie case).

(1) Minor errors will be corrected without notification to the applicant.

(2) Materially incomplete applications will be rejected. Applications that are in substantial compliance with these rules may be accepted.

(3) A review board will decide whether there is adequate evidence so that the full scope of the authority applicant seeks may be published in the **Federal Register**. If there is not, the application will be rejected in a letter. An applicant may appeal rejections under paragraphs (a) (2) and (3) of this section. See § 1160.20. If an applicant chooses to resubmit the application, it shall refer to its prior application by docket number and give the ICC fee number stamped on the canceled check so as to avoid a second fee being assessed. If no appeal or resubmittal is made, the fee will not be refunded. The date of refiling will be considered the filed date of the application.

(b) The caption summary will be published in the **Federal Register** to give notice to the public in case anyone wishes to oppose the application. The application will be published in the form of a grant of authority.

(c) If the **Federal Register** publication does not properly describe the authority being sought because of ministerial error, applicant shall inform the ICC's Section of Operating Rights as soon as possible. Where notification is received within 10 days of the publication, ministerial errors will be corrected and the notice will be republished. Notifications after 10 days will result in republication only at the Commission's discretion and may result in an application being rejected without prejudice to refiling.

§ 1160.11 Changing the request for authority or filing supplementary evidence after the application is filed.

(a) An applicant may not supplement evidence once the application is filed (unless directed to do so by the Commission).

(b) Amendments to the application are not permissible.

§ 1160.12 After publication in the Federal Register.

(a) Interested persons have 45 days to file protests. See Subpart B of this part.

(b) If no one opposes the application, the grant published in the **Federal Register** will become effective.

(c) If no one opposes the application for an extension of authority, the grant published in the **Federal Register** will be made effective by issuance of a certificate, permit, or license. If no one opposes an application for initial authority, the grant published in the **Federal Register** will be made effective by a Commission notice outlining compliance requirements which must be met before applicant commences the proposed service.

§ 1160.13 Furnishing a copy of the application package to interested persons.

(a) Applicant's representative is required to furnish a copy of the application package to interested persons after publication. The request must be made in writing to applicant's representative and must contain a check or money order for $10, payable to applicant's representative. Applicant's representative need not supply copies to any person not sending the appropriate payment. Applicant's representative is required to mail the copy within 3 days of the receipt of the request being received. Noncompliance with this rule may result in dismissal of the application.

(b) Representative of applicants and potential protestants are urged to communicate by telephone if problems occur in the furnishing of the application. Requests for extension of time where no attempt has been made to correct matters informally are looked upon with disfavor.

§ 1160.14 Opposed applications.

If the application is opposed, opposing parties are required to send a copy of their protest to the applicant.

§ 1160.15 Filing a reply statement.

(a) If the application is opposed, applicant may file a reply statement. This statement is due at the Commission within 60 days of the **Federal Register** publication.

(b) The reply statement may not contain new evidence. It shall only rebut or further explain matters previously raised.

(c) The reply statement need not be notarized or verified. Applicant understands that the oath in the application form applies to all evidence submitted in the application. Separate legal arguments by counsel need not be notarized or verified.

§ 1160.16 After all statements are submitted.

(a) When the proceeding is to be handled under the modified procedure, the next notification to the parties will be the service of the initial decision.

(b) If the proceeding is to be handled by oral hearing, parties will receive a notice to this effect.

§ 1160.17 Applicant withdrawal.

If the applicant wishes to withdraw an application, it shall request dismissal in writing.

§ 1160.18 Caption summary.

The caption summary, which shall accompany all applications, shall be in the form prescribed by the Commission. Commission field and regional offices offer assistance in preparing correct caption summaries, or examples may be found in the daily **Federal Register**.

§ 1160.19 Compliance.

Prior to beginning operations under a certificate, permit, or license, compliance must be made with the following statutory and regulatory requirements for obtaining insurance or bonding, filing tariffs or schedules, and designating agents to receive service of process.

(a) For Motor Common Carriers of Property: 49 CFR Parts 1043, 1044, and 1310.

(b) For Motor Contract Carriers of Property: 49 CFR Parts 1043, 1044, and 1307.

(c) For Motor Common and Contract Carriers of Passengers: 49 CFR Parts 1043, 1044, and 1306.

(d) For Motor Brokers of Motor Vehicle Transportation: 49 CFR Parts 1043 and 1044.

(e) For Water Carriers: 49 CFR Parts 1308; 49 U.S.C. 10329.

(f) For Freight Forwarders: 49 CFR Parts 1084 and 1309; 49 U.S.C. 10329.

§ 1160.201 Appeals to rejections of the application.

(a) Where a review board or other decisional body rejects an application, applicant has a right of appeal. The appeal must be filed at the Commission within 10 days of the date of the letter of rejection.

(b) If the appeal is successful and the filing is found to be proper, the application shall be deemed to have been properly filed as of the decision date of the appeal.

§ 1160.21 Tacking or joinder of authority.

An applicant for irregular-route motor common carrier authority which holds regular-route motor carrier authority shall indicate this in its caption

summary. The caption summary shall indicate the subnumbers of this regular-route authority. The purpose of this requirement is to inform the public that direct operations are able to be performed after combining the irregular- and regular-route authorities.

§ 1160.22 Freight forwarders applicants only.

An applicant for freight forwarder authority shall submit the following additional information: Applicant shall state whether it is a person engaged principally in the business of manufacturing, buying, or selling articles and commodities, and whether it controls, is controlled by, or is under common control with any such person. If yes, applicant shall describe such persons and advise to what extent such persons use the services of freight forwarders; or if applicant is such a person, whether it performs its own similar operations of assembling, consolidating, and shipping in connection with the transportation of such articles or commodities.

§ 1160.23 Water carrier applicants only.

(a) If an exemption is being claimed, applicant shall describe the operations proposed to be exempted and in each instance refer to the statutory provisions under which the exemption is claimed.

(b) If an applicant for exemption under 49 U.S.C. 10544(f) is engaged solely in transporting the property of the parent company, it shall list persons owning all or substantially all of the voting stock of the applicant.

(c) If an applicant seeks approval of dual operations under 49 U.S.C. 10930, it shall specify those that would result from a grant of the application.

(d) An applicant for exemption under 49 U.S.C. 10544(e) shall furnish a copy of the charter, lease, or other agreement under which it proposes to operate.

(e) If applicant is a water common carrier seeking a revised certificate covering extension of service pursuant to 49 U.S.C. 10922(e)(3)(B), the following shall be furnished: (1) Describe the portion of the waterway project newly opened for navigation, including the U.S. Engineer District, project number, description of project, and date opened for navigation; (2) Describe operation performed thus far on uncompleted portion of waterway newly opened for navigation, including date service was extended and points served; see § 1166.3; (3) Describe operations performed under present certificate authorizing service on previously completed portion of waterway, naming points served, indicating when service commenced, and if operation has been continuous.

Subpart B—How To Oppose Requests for Authority

§ 1160.40 Definitions.

A person wishing to oppose a request for permanent authority files a protest. A person filing a valid protest becomes a protestant.

§ 1160.41 Time for filing.

A protest shall be filed (received at the Commission) within 45 days after notice of the application appears in the **Federal Register**. A copy of the protest shall be sent to applicant's representative at the same time. Failure timely to file a protest waives further participation in the proceeding.

§ 1160.42 Contents of the protest.

(a) All information upon which the protestant plans to rely is put into the protest.

(b) A protest must be verified, as follows:

I, _____, verify under penalty of perjury under laws of the United States of America, that the information above is true and correct. Further, I certify that I am qualified and authorized to file this protest. (See 18 U.S.C. 1001 and 18 U.S.C. 1621 for penalties.)

_____

(Signature and date)

(c) A protest not in substantial compliance with these rules may be rejected.

(d) A protestant files two separate types of evidence. The first is its qualifications evidence, see § 1160.43. All protestants shall submit qualifications evidence under the format in § 1160.43. Protestants shall also file factual evidence, according to the guidelines in § 1160.44 or 1160.45.

§ 1160.43 Qualifications format.

This information shall be submitted in separately numbered paragraphs:

(a) Docket number of application being opposed.

(b) Name and domicile of protestant, including lead docket number, if any.

(c) Name and address of protestant's representative.

(d) Name and address of witness presenting the evidence, and why qualified to speak for protesting party.

(e) Description of the extent to which the person seeking to protest possesses authority to handle the traffic for which authority is applied, is willing and able to provide service that meets the reasonable needs of the shippers or public involved, and has either performed service within the scope of the application during the 12-month period before the application was filed or has actively in good faith solicited service within the scope of the application during that period; or

(f) Description of any application which the prospective protestant has pending before the Commission which was filed before applicant's application and which is substantially for the same traffic; or

(g) Description of any other legitimate interest not contrary to the transportation policy set forth in 49 U.S.C. 10101(a), or of any right to intervene under a statute. A person seeking to qualify under this paragraph shall describe in detail the circumstances which warrant its participation and how they are consistent with 49 U.S.C. 10101(a). The Commission shall normally permit such person to intervene when it shows that a proceeding is novel or of first impression, is of industrywide importance, or has significant economic impact.

Note.—A motor contract carrier of property may not protest an application to provide transportation as a motor common carrier of property.

§ 1160.44 Factual evidence format (except fitness only applications).

(a) A summary, description or copy of the specific authorities in conflict with that sought in the application. Protests containing copies of authority or authority abstracts which are more than 5 pages in length may be rejected.

(b) A description of the type and amount of equipment and facilities available to meet the avowed purpose of the application.

(c) A description of present operations that pertain to the application, including a description of the specific services provided to those supporting the application or within the same territory.

(d) Adverse impacts on its business generally and on the public, such as: (1) need to close terminals or other facilities; (2) number of employees that would be furloughed or dismissed; (3) resulting imbalance or inefficiencies caused to its operations; (4) effects on fuel efficiency; or (5) inability to continue its existing service to the public due to a reduction in total business, or loss of essential services that would not be replaced, or other factors.

(e) Evidence that applicant is not fit, willing or able to comply with the appropriate statutes or regulations governing its activities.

(f) Legal or other argument (optional).

(g) Verification.

(h) Certificate of service.

(i) Any request for oral hearing.

§ 1160.45 Factual evidence format for fitness only applications: Scope.

The types of applications listed in section 1160.2 may be protested on the grounds listed here. Factual evidence in opposition shall consist of the following, where applicable:

(a) A description of the specific grounds upon which it is alleged that applicant cannot meet the statutory fitness criteria.

(b) Alternatively, evidence that the application does not properly fall within the scope of one of the statutorily described categories.

Note.—If the Commission finds that the application does not properly fall within the scope of one of the categories, the application shall be dismissed without prejudice to the filing of an application for authority under other criteria.

(c) Legal argument (optional).

(d) Verification.

(e) Certificate of service.

(f) Any request for oral hearing.

§ 1160.46 Requests for oral hearing by a protestant.

It is the policy of the Commission to handle application proceedings under Subpart A of this part using the modified procedure if at all possible. See § 1160.68. Protestants shall file any request at the end of their protest.

§ 1160.47 To whom the protest is sent.

(a) An original and one copy of the protest shall be sent to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423. The docket number of the proceeding shall be placed conspicuously on the top of the first page of the protest.

(b) Concurrently with the filing in paragraph (a) of this section, a copy shall be sent to applicant's representative.

§ 1160.48 Obtaining a copy of the application.

A copy of the application is available for inspection at the Commission's offices in Washington, DC, or the regional office of applicant's domicile. In addition, applicant is required to send a copy to interested persons upon payment of a $10 charge. See § 1160.13.

§ 1160.49 Withdrawal.

A protestant wishing to withdraw from a proceeding shall inform the Commission and the applicant in writing.

Subpart C—General Rules Governing the Application Process

§ 1160.60 Contacting another party.

When a person wishes to contact a party or serve a pleading or letter on that party, it shall do so through its representative. The phone number and address of applicant's representative shall be listed in the **Federal Register**.

§ 1160.61 Serving copies of pleadings, letters; the certificate of service.

(a) When the rules require service of a pleading or letter on another party, that material shall be mailed or delivered by hand to the party concurrently with its service on the Commission. See, in addition, 49 CFR 1105.8.

(b) All pleadings other than the application shall contain a statement (certificate of service) that the pleading has been served in accordance with paragraph (a) of this section.

(c) An applicant must serve all pleadings and letters on the Commission and all known participants in the proceeding, except that a reply to a motion need only be served on the moving party.

(d) A protestant need serve only the Commission and applicant with pleadings or letters.

(e) All pleadings or letters, unless otherwise specified, shall be sent to the Office of the Secretary.

§ 1160.62 Copies.

All material forwarded to the Commission in Washington, DC, except for telegraphic material, shall consist of an original and one copy.

§ 1160.63 Requests for extension of time.

(a) Requests for extensions of time are granted only in extraordinary circumstances. Parties' or their representatives' workload, personnel changes, or scheduling problems are not sufficient cause.

(b) No extensions will be granted for more than 3 working days.

(c) Requests shall be made in documentary form (letter or telegraph) addressed to the Section of Operating Rights, with a notice of the request sent to known parties. The Commission will notify the requesting party as soon as possible of the decision. The requesting party shall immediately notify all known parties of the action taken on the request.

(d) If the time for filing a protest is extended, the time for submitting applicant's reply is automatically extended.

(e) Oral communications with Commission personnel pertaining to the merits of an extension request are a violation of the Commission's Code of Ethics for Practitioners.

§ 1160.64 Petition to clarify or interpret formally an operating authority.

(a) A person seeking to clarify or interpret its operating authority shall file a petition under these rules.

(b) No application form need be used. Petitioner shall file its entire argument with the petition, with the fee of $100. The petition shall be sent to the Office of the Secretary.

(c) Notice of the petition will be published in the **Federal Register**. Interested persons may obtain copies of the petition from petitioner's representative in the same manner as provided in § 1160.13. Petitioner may file a rebuttal to any opposing argument.

§ 1160.65 Replies to motions.

Replies to motions filed under these rules are due within 10 days of the date the motion is filed at the Commission.

§ 1160.66 Consolidation of applications.

(a) Applicants may request consolidation of applications. The request shall be made when the applications to be consolidated are filed. Requests for consolidation shall be made in writing to the Section of Operating Rights.

(b) Requests to consolidate applications not currently filed shall only be considered to the extent that the applications are filed within 5 days of each other.

(c) Representatives of the consolidating applicants shall indicate their agreement with the consolidating either in the initial request or in their individual submissions. If mutual agreement has been reached in advance, one representative may indicate representatives' assent to the consolidation.

(d) The application will be published in the **Federal Register** and their consolidation will be indicated. Protestants my file a single protest which will apply to all the proceedings.

§ 1160.67 Marking contents on envelopes, and submission of pleadings.

(a) Send all documents to the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423, unless the rules specify otherwise.

(b) The Commission requests that persons participating in proceedings under these rules mark the lower left-hand corner of the envelope with the docket number, where known, (not the full title) and the pleading type. To assist the Commission further, use these designations where appropriate:

APPLICATION
PROTEST
REPLY TO PROTEST
EXTENSION OF TIME REQUEST
MOTION
REPLY TO MOTION
APPEAL
REPLY TO APPEAL
DISMISSAL BY APPLICANT
PROTESTANT WITHDRAWAL
PETITION TO CLARIFY

§ 1160.68 Requesting oral hearing.

(a) If a protestant (or applicant) believes that a proceeding should be orally heard the person may request an oral hearing. It is the policy of the Commission to handle applications proceedings under Subpart A of this part using the modified procedure if at all possible.

(b) The request shall specifically state the evidence that would be presented, the reason why evidence is material to determine the merits of the proceeding, why an oral hearing with cross-examination is necessary to bring it out, and what evidence already in the record would be contravened (with specific page reference).

(c) The Commission intends to assign matters for oral hearing only where use of modified procedures would prejudice a party, material issues of decisional fact cannot adequately be resolved without an oral hearing, or assignment of an application for oral hearing is otherwise required by the public interest.

(d) Denial of an oral hearing request will not be made in writing where the denial is made prior to issuance of the initial decision. The request will be deemed denied when the proceeding is handled under the modified procedure.

(108) Former paragraphs 1100.245 (a) through (e) and former Form 7 in Appendix B to Part 1100 are redesignated as Part 1161, and the newly redesignated Part 1161 is revised to read as follows:

PART 1161—PROCEDURES FOR ISSUANCE OF CERTIFICATES OF REGISTRATION

Sec.

1161.1 Scope of rules.
1161.2 Notice.
1161.3 Conduct of, and participation in, State Commission proceedings.
1161.4 Applications to the Interstate Commerce Commission for Certificates of Registration.
1161.5 Appeals of State Commission decisions.
Appendix—Form of Notice of Filing State Applications

Authority: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

§ 1161.1 Scope of rules.

These rules govern applications for Certificates of Registration which are based upon intrastate certificates of public convenience and necessity issued by a State Commission that contain a concurrent finding that the public convenience and necessity require operations in interstate and foreign commerce. They implement 49 U.S.C. 10931.

§ 1161.2 Notice.

In accordance with rules prescribed by the State Commissions, a person seeking a Certificate of Registration shall notify the State Commission with which the intrastate application is filed of its intent to apply for a Certificate of Registration, at the time of filing the intrastate application. Notice of interested persons will be given by publication in the **Federal Register** of a summary of the authority sought as prepared by the State Commission and transmitted to the Interstate Commerce Commission at Washington, DC in the format described in the Appendix to this part. In order to afford interested persons a reasonable opportunity to be heard, the summary must be forwarded to the Interstate Commerce Commission sufficiently in advance of any hearings that may be scheduled on the application. No other notice by applicant to interested persons is necessary, unless the State Commission requires it.

§ 1161.3 Conduct of, and participation in, State Commission application proceedings.

The rules of the State Commission will govern the conduct of State Commission proceedings that may be held. Protests and requests for information will be directed to the State Commission. The record made in the State Commission proceeding will be made available to the parties upon payment of costs prescribed by the State Commission.

§ 1161.4 Applications to the Interstate Commerce Commission for Certificates of Registration.

(a) *Time for filing.* Within 30 days after service by the State Commission of a certificate authorizing intrastate operations and containing the recitations required by 49 U.S.C. 10931, the holder of the State certificate shall file with the Interstate Commerce Commission at Washington, DC, an Application for Motor Certificate of Registration, Form OP-OR-100. Except for cause shown, failure to file an application for a Certificate of Registration within the 30-day time period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* Notice of the date of filing of the application and the docket number assigned will be sent by the Interstate Commerce Commission to the applicant and those persons upon whom copies of the application were served by the applicant as specified in the application form.

(c) *Parties.* Any party, which opposed the authorization of operations in interstate or foreign commerce, in the State Commission proceeding will be deemed to be a party in the Certificate of Registration proceeding. No other person will be permitted to participate except upon a showing of substantial reasons.

§ 1161.5 Appeals of State Commission decisions.

Any party which opposed the authorization of operations in interstate or foreign commerce, in the State Commission proceeding may file with the Interstate Commerce Commission at Washington, DC, an appeal of the State Commission decision. Appeals should be filed within 30 days after the date of the filing of an application with the Interstate Commerce Commission for a Certificate of Registration. The appeal (and six copies) should be accompanied by a certified copy of the complete record made before the State Commission, including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing (unless the record has already been filed by another party). A reply (and six copies) to an appeal may be filed and served within 20 days after the final date for filing appeals. Copies of each appeal and reply shall be served on the State Commission and on all other parties to the State Commission proceeding. The filing of an appeal will not affect the institution of the motor carrier operations in intrastate commerce authorized by the State certificate. Failure to file an appeal waives opposition and further participation in the application proceeding for a Certificate of Registration. Applications for Certificates of Registration and related appeals will be handled in a single proceeding by an appellate division of the Interstate Commerce Commission. A decision issued by an appellate division is final.

Appendix—Form of Notice of Filing State Applications

Part I

(To be completed by applicant)

Notice is hereby given that the below named applicant has filed with ———

———
(Name of State Commission)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

1. _____

(Name and business address of applicant)

_____

_____

(Street) (City) (State)

2. _____

(Name and address of applicant's representative, if any)

_____

(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce.

_____

(Signature)

_____

(Title)

Date _____ 19——.

Part II

(To be completed by State Commission)

Date of filing application _____

Docket number assigned _____

Date and time and place application has been assigned for hearing, if known _____

_____

(Signature)

_____

(Title)

(Name of State Commission)

Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, _____, 19——.

Instructions

This form is for use in giving notice to interested persons regarding the filing of intrastate motor carrier applications in connection with which the applicant also desires authority to engage in interstate and foreign commerce pursuant to 49 U.S.C. 10931. It should be filed in duplicate (along with the intrastate application) with the State Commission, which will forward it to the Secretary, Interstate Commerce Commission, Washington, DC 20423.

The description in Part I, item 3 should include the commodities (or passengers) sought to be transported, the points to be served, and the routes over which, or territories within which, such transportation is to be performed. Care should be taken to insure that the description, which will be published in the **Federal Register**, fully informs interested persons of the type and scope of the proposed intrastate operations, and the exent to which applicant desires authority to engage in transportation in interstate or foreign commerce in connection with such intrastate operations.

PART 1162—TEMPORARY AUTHORITY PROCEDURES UNDER 49 U.S.C. 10928

(109) Former Part 1131 is redesignated as Part 1162.

(110) In the newly redesignated Part 1162, the part heading is revised to read as set forth above.

(111) In the newly redesignated Part 1162, the authority citation is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 559.

(112) The newly redesignated §§ 1162.1–1162.7 are designated as Subpart A in Part 1162, the heading of which is added to read as follows:

Subpart A—Motor Carrier Procedures

§ 1162.1 [Amended]

(113) In the newly redesignated § 1162.1, the statutory references are revised as follows:

(a) In paragraph (a), "section 210a(a) of the Interstate Commerce Act, as amended, 49 U.S.C. 310a(a)" is revised to read "49 U.S.C. 10928".

(b) In paragraph (b)(1), "section 210a(a)" is revised to read "49 U.S.C. 10928".

(c) In paragraph (b)(2), "section 203(a)(14) of the Interstate Commerce Act (49 U.S.C. 303(a)(14))" is revised to read "49 U.S.C. 10102(12)".

(d) In paragraph (b)(3), "section 203(a)(15) of the Interstate Commerce Act (49 U.S.C. 303(a)(15))" is revised to read "49 U.S.C. 10102(13)".

(e) In paragraph (b)(5), "section 203(a)(1) of the Interstate Commerce Act (49 U.S.C. 303(a)(1)" is revised to read "49 U.S.C. 10102".

§ 1162.3 [Amended]

(114) In the newly redesignated § 1162.3, "section 217 of the Interstate Commerce Act in the case of common carriers and of section 218 of the act in the case of contract carriers" is revised to read "49 U.S.C. 10761 and 10762".

§ 1162.4 [Amended]

(115) In the newly redesignated § 1162.4 "section 203(a)(15) of the Interstate Commerce Act" is revised to read "49 U.S.C. 10102(12)".

(116) In the newly redesignated § 1162.4, the word "transportation" is added to the end of paragraph (a)(4).

(117) In the newly redesignated § 1162.4, "Commission's Rules of Practice" in paragraph (c)(1)(iv) is revised to read "applicable rules'".

§ 1162.5 [Amended]

(118) In the newly redesignated § 1162.5, the statutory references are revised as follows:

(a) In paragraph (a)(2), "section 217 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10761 and 10762".

(b) In paragraph (a)(3), "section 218 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10761 and 10762".

(119) In the newly redesignated § 1162.5, "Bureau of Operations" in paragraph (a)(2) is revised to read "Commission".

(120) In the newly redesignated § 1162.5, the work "of" which precedes "points of origin" in the fourth sentence of paragraph (a)(3) is removed.

§ 1162.6 [Amended]

(121) In the newly redesignated § 1162.6, "in the Commission's General and Special Rules of Practice." in paragraph (d) is revised to read "at".

(122) Former Part 1131a is redesignated as §§ 1162.10–1162.14 as follows:

§1131a.1 redesignated as § 1161.10
§1131a.2 redesignated as § 1162.11
§1131a.3 redesignated as § 1162.12
§1131a.4 redesignated as § 1162.13
§1131a.5 redesignated as § 1162.14

(123) The newly redesignated §§ 1162.10–1162.14 are designated as Subpart B in Part 1162, the heading of which is added to read as follows:

Subpart B—Water Carrier Procedures

§ 1162.10 [Amended]

(124) In the newly redesignated § 1162.10, the statutory references are revised as follows:

(a) In paragraph (a), "section 311(a) of the Interstate Commerce Act, as amended, 49 U.S.C. 911(a)" is revised to read "49 U.S.C. 10928".

(b) In paragraph (b), "section 302 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10102".

§ 1162.11 [Amended]

(125) In the newly redesignated § 1162.11, "Office of Consumer Protection" in paragraph (a) is revised to read "Office of Compliance and Consumer Assistance".

§ 1162.12 [Amended]

(126) In the newly redesignated § 1162.12, the statutory references are revised as follows:

(a) In paragraph (c), "section 311(a) of the Interstate Commerce Act" is revised to read "49 U.S.C. 10928".

(b) In paragraph (d), "section 306 of the Interstate Commerce Act" is revised to read "49 U.S.C. 10761 and 10762".

§ 1162.13 [Amended]

(127) In the newly redesignated § 1162.13, "section 302(e) of the Interstate Commerce Act" in paragraph (a)(2) is revised to read "49 U.S.C. 10102(29)".

(128) In the newly redesignated § 1162.13, the word "water" is added to precede the words "contract carrier" in the second sentence of paragraph (a)(2), and the words "by water carrier" which follow, are removed.

(129) In the newly redesignated § 1162.13, the word "regulated" in the first sentence of paragraph (a)(3) is revised to read "related".

PART 1163—TEMPORARY OPERATING AUTHORITIES AND APPROVALS

(130) Former Part 1101 is redesignated as Part 1163.

(131) The authority citation for the newly redesignated Part 1163 is revised to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 558 and 559.

§ 1163.1 [Amended]

(132) In the newly redesignated § 1163.1, the statutory references are revised as follows:

(a) In paragraph (a), "210a(a) or 311(a) of the Interstate Commerce Act (49 U.S.C. 310a(a), 911(a))" is revised to read "49 U.S.C. 11349".

(b) In paragraph (b), "section 210a(a) or 311(b) of the Interstate Commerce Act (49 U.S.C. 310a(b), 911(b))" is revised to read "49 U.S.C. 11349".

(133) The newly redesignated § 1163.1 is further amended by adding a new paragraph (c) to read as follows:

§ 1163.1 Extension of temporary operating authority on approval.

* * * * *

(c) When an applicant has not made a timely and sufficient application for renewal, or new, authority or approval in accordance with applicable Commission rules, the Commission will determine upon written request of any interested party, or upon its own initiative, whether any temporary authority granted under 49 U.S.C. 10928 may be continued in force beyond the expiration date of such temporary authority for an extended term as defined in paragraph (a) of this section. A written request for such a determination must be filed with the Regional Motor Carrier Board with which the temporary authority application was filed not later than 30 days prior to expiration of the temporary authority.

§ 1163.2 [Amended]

(134) In the newly redesignated § 1163.2, "section 210a(a) of the Interstate Commerce Act (49 U.S.C. 310a(a))" in the introductory paragraph is revised to read "49 U.S.C. 10928".

PART 1164—OWNER-OPERATOR FOOD TRANSPORTATION

(135) Former Part 1138 is redesignated as Part 1164.

(136) In the newly redesignated Part 1164, the authority citation is revised to read as follows:

Authority: 49 U.S.C. 10321, 10922(b)(4)(E), 10923(b)(5)(A), and 11145 and 5 U.S.C. 559.

PART 1165—RESTRICTION REMOVALS

(137) Former Part 1137 is redesignated as Part 1165.

(138) In the newly redesignated Part 1165, the part heading is revised to read as set forth above.

(139) The authority citation to the newly redesignated Part 1165 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10922(h); 5 U.S.C. 559.

§ 1165.26 [Amended]

(140) In the newly redesignated § 1165.26, revise the word "section", which is the last word in the section to read "part".

(141) Former Part 1140 is redesignated as Part 1166, and the newly redesignated Part 1166 is revised to read as follows:

PART 1166—EXTENSIONS OF OPERATIONS BY WATER COMMON CARRIER

Sec.
1166.1 Applicability.
1166.2 Issuance of a certificate without proof of public convenience and necessity.
1166.3 Conditions and procedures.

Authority: 49 U.S.C. 10321 and 10922; 5 U.S.C. 559.

§ 1166.1 Applicability.

The rules in this part provide special procedures by which water common carriers subject to the Commission's jurisdiction under subchapter III of chapter 105 of title 49 of the United States Code operating over a given waterway may extend their operations over newly completed sections of that waterway as they are opened to navigation. These rules implement 49 U.S.C. 10922(f)(3)(B).

§ 1166.2 Issuance of a certificate without proof of public convenience and necessity.

If a water carrier complies with the conditions and procedures set forth in § 1166.3 of this part, a certificate of public convenience and necessity covering extended operations over a newly opened section of a waterway will be issued without proof of public convenience and necessity.

§ 1166.3 Conditions and procedures.

To obtain a certificate under this part, a water carrier must—

(a) Hold authority to operate over a previously opened portion of the waterway involved;

(b) Institute service over the newly completed portion of the waterway within 120 days after it is opened to navigation; and

(c) File its application, on Commission form OP-1, not later than the date of the filing of tariffs establishing rates and charges for transportation of passengers or property over the portion of the waterway embraced in the application, and in no event later than the date on which the extended operations are instituted.

PART 1167—COMPENSATED INTERCORPORATE HAULING OPERATIONS

(142) Former Part 1136 is redesignated as Part 1167.

(143) The authority citation to the newly redesignated Part 1167 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

PARTS 1168-1174—[RESERVED]

(144) New parts 1168–1174 are added and reserved.

PARTS 1175-1199—FINANCE PROCEDURES

PARTS 1175-1179—SECURITIES, SECURITY INTERESTS AND FINANCIAL STRUCTURE

PART 1175—ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS AND LIABILITIES

(145) Former Part 1115 is redesignated as Part 1175 as follows:

§§ 1115.1–1115.6 redesignated as §§ 1175.2–1175.7 respectively;
§ 1115.25 redesignated as 1175.10;
Appendix remains as Appendix.

(146) Two center headings are added to precede the newly redesignated Part 1175 as set forth above.

(147) The authority citation to the newly redesignated Part 1175 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10301–10302; 5 U.S.C. 559.

(148) In the newly redesignated Part 1175, a new § 1175.1 is added to read as follows:

§ 1175.1 Procedures.

(a) *Execution.* The original application or report shall bear the date of execution and be signed in ink by or on behalf of each applicant or respondent. Execution shall be by the applicant or respondent if an individual, by all partners, if a partnership, unless satisfactory evidence is furnished of a partner's authority to bind the partnership, and, if a corporation, an association or other form of organization, execution shall be by its president or other execution officer. Each signer shall also sign a certificate showing that the signer has knowledge of the matters set forth in the document and is duly authorized to verify and file the document.

(b) *Filing, service, number of copies.* The original and six copies of each application, and two copies of each report shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423. Copies of applications shall be served in the manner and on the persons required in the form or instructions and proof of service shall be part of the original application. No service of copies or reports is required.

(c) *Incorporation by reference.* If any required document has been previously filed with the Commission in connection with another proceeding, it will be sufficient to refer to the docket number under which it was previously filed, provided that any changes in the document occurring in the document after the previous filing shall be shown in an exhibit identified to correspond with the required document. *Exception:* Income statements and balance sheets or supporting detail for items therein may not be incorporated by reference to annual or quarterly reports or to other proceedings unless the form or report specifically permits such incorporation by reference.

(d) *Responses.* Responses on forms or to instructions shall be full and complete. If an item is not applicable, the report or application shall so state. If information required is unknown or unavailable a statement to that effect and the reasons why the material is not set forth shall be made.

(e) *Typographical specifications.* See 49 CFR 1104.2. (149) The newly redesignated §§ 1175.1–1175.7 are designated as Subpart A to Part 1175 and a heading for Subpart A is added to read as follows:

Subpart A—Applications

§ 1175.2 [Amended]

(150) In the newly redesignated § 1175.2, "sections 20a and 214 of the act" in the first sentence is revised to read "49 U.S.C. 11301 and 11302".

§ 1175.3 [Amended]

(151) In newly redesignated § 1175.3, the statutory references are revised as follows:

(a) In paragraph (a), "part I of the Act" is revised to read "subchapter I of chapter 105 of the act".

(b) In paragraph (a), "part II" is revised to read "subchapter II of chapter 105 of the act".

(c) In paragraph (a), "part I" is revised to read "subchapter I of chapter 105 of the Act".

(d) In paragraph (b), "section 5(2) of the Act" is revised to read "49 U.S.C. 11344".

(e) In paragraph (b), "section 5(3)" is revised to read "49 U.S.C. 11348".

(f) In paragraph (b), "sections 20a or 214" is revised to read "49 U.S.C. 11301 and 11302".

(g) In paragraph (c), "section 20a(1) of the Act" is revised to read "49 U.S.C. 11301(a)(2)."

(152) In the newly redesignated § 1175.3, the words "an order" in paragraph (b) are revised to read "decision".

§ 1170.4 [Amended]

(153) In the newly redesignated § 1175.4, the words "Commission's General Rules of Practice" at the end of paragraph (c) are revised to read "Rules of General Applicability, 49 CFR, Parts 1100–1129".

(154) In the newly redesignated § 1175.4, paragraph (e) is removed.

§ 1175.5 [Amended]

(155) In the newly redesignated § 1175.5, the statutory references are revised to read as follows:

(a) In paragraph (a), "paragraph (9) of section 20a of the Act" is revised to read "49 U.S.C. 11301(c)".

(b) In paragraph (c), "paragraph (9) of section 20a and in the proviso of section 214" is revised to read "49 U.S.C. 11301(b)(2) and 11302(b)".

(c) In paragraph (d), "section 214" is revised to read "49 U.S.C. 11302".

§ 1175.7 [Amended]

(156) In the newly redesignated § 1175.7, "sections 20a or 214" in paragraph (a) is revised to read "49 U.S.C. 11301 and 11302".

(157) In the newly redesignated Part 1175, the heading "COMPETITIVE BIDDING EXEMPTION" is revised to read as follows:

Subpart B—Competitive Bidding Exemption

§ 1175.10 [Amended]

(158) In the newly redesignated § 1175.10, the statutory references are revised as follows:

(a) In paragraph (a), "section 20a" is revised to read "49 U.S.C. 11301".

(b) In paragraph (b), "section 20a of the Act" is revised to read "49 U.S.C. 11301".

(159) In the newly redesignated § 1175.10(b), remove the words which follow the date "June 18, 1952".

(160) In the newly redesignated § 1175.10(c), the reference to "Part 1110 of this Chapter" is revised to read "49 CFR 1170.3(e)".

(161) In the newly redesignated Part 1175, the last paragraph of the Appendix, which begins "The foregoing requirements . . ." is removed.

PART 1176—CHANGES IN SECURITIES OR INSTRUMENTS AND FILING CERTIFICATES AND REPORTS

(162) Former Part 1114 is redesignated as Part 1176.

(163) In the newly redesignated Part 1176, the heading is revised to read as set forth above.

(164) The authority citation to the newly redesignated Part 1176 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11301–11302; 5 U.S.C. 559.

§ 1176.1 [Amended]

(165) In the newly redesignated § 1176.1, the reference to "Rule 15 of the General Rules of Practice (§ 1100.15 of this Chapter)" in paragraph (a) is revised to read "49 CFR 1104.4".

(166) In the newly redesignated § 1171.1, the statutory references are revised as follows:

(a) In paragraph (e)(1)(ii), "paragraph (3) of section 20b, 49 U.S.C. 20b" is revised to read "49 U.S.C. 11363".

(b) In paragraph (f), "(to the extent not inconsistent with paragraph (1) of section 20b, 49 U.S.C. 20b)" is revised to read "49 U.S.C. 11361".

(c) In paragraph (h), "paragraph (1) of section 20b of the Interstate Commerce Act (49 U.S.C. 20b)" is revised to read "49 U.S.C. 11361".

(d) In paragraph (h), "paragraph (3) of section 20b" is revised to read "49 U.S.C. 11362".

§ 1176.2 [Amended]

(167) In the newly redesignated § 1176.2, "paragraph (9) of section 20a of the Interstate Commerce Act, 49 U.S.C. 20a or otherwise" is in paragraph (h) is revised to read "49 U.S.C. 11301(b)(2)".

(168) In the newly redesignated § 1176.2, "Rule 84 of the General Rules of Practice (§ 1100.84 of this chapter)" in paragraph (1) is revised to read "49 CFR 1114.7".

§ 1176.3 [Amended]

(169) In the newly redesignated § 1176.3, the statutory references are revised as follows:

(a) In paragraph (a), "section 20a of the Interstate Commerce Act (49 U.S.C. 20a)" is revised to read "49 U.S.C. 11301".

(b) In paragraph (e), "paragraph (2) of section 20b (49 U.S.C. 20b)" is revised to read "49 U.S.C. 11362(a)".

§ 1176.4 [Amended]

(170) In the newly redesignated § 1176.4, "section 20a of the Interstate Commerce Act (49 U.S.C. 20a)" is revised to read "49 U.S.C. 11301".

PART 1177—RECORDATION OF DOCUMENTS

(171) Part 1116 is redesignated as Part 1177.

(172) The authority citation to the newly redesignated Part 1177 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11303; 5 U.S.C. 559.

PART 1178-1179—[RESERVED]

(173) New parts 1178–1179 are added and reserved.

PARTS 1180-1189—COMBINATIONS AND OWNERSHIP

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

(174) Former Part 1111 is redesignated as Part 1180, and a center heading is added to precede the newly redesignated Part 1180 as set forth above.

(175) The authority citation to the newly redesignated Part 1180 is revised to read as follows:

Authority: 49 U.S.C. 10321, 11341, 11345 and 11346; 5 U.S.C. 559; 45 U.S.C. 904 and 915.

(176) The authority citation to Subpart B of the newly redesignated Part 1180 is removed.

PART 1181—TRANSFERS OF OPERATING RIGHTS UNDER 49 U.S.C. 10926

(177) Former Parts 1132, 1141, 1151, 1133 and former § 1045.11 are redesignated as Part 1181 as follows:

(a) §§ 1132.1–1132.5 redesignated as §§ 1181.1 through 1181.5 respectively;
(b) §§ 1141.1–1141.10 redesignated as §§ 1181.10 through 1181.19 respectively;
(c) §§ 1151.1–1151.7 redesignated as §§ 1181.20 through 1181.26 respectively;
(d) §§ 1133.1–1133.2 redesignated as §§ 1181.30 through 1181.31 respectively;
(e) §§ 1045.11 redesignated § 1181.32.

(178) In the newly redesignated Part 1181, the part heading is revised to read as set forth above.

(179) The authority citation to the newly redesignated Part 1181 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 10926; 5 U.S.C. 559.

(180) The newly redesignated §§ 1181.1–1181.5 are designated as Subpart A to Part 1181, the heading of which is added to read as follows:

Subpart A—Motor Carrier Operating Rights

§ 1181.1 [Amended]

(181) In the newly redesignated § 1181.1, the note which follows paragraph (a) is removed.

(182) The newly redesignated §§ 1181.10–1181.19 are designated as Subpart B to Part 1184, the heading of which is added to read as follows:

Subpart B—Water Carrier Operating Rights

§ 1181.11 [Amended]

(183) In the newly redesignated § 1181.11, the heading is revised to read as follows:

"§ 1181.11 Transfers effected under 49 U.S.C. § 11343–44."

(184) In the newly redesignated § 1181.11, the statutory references are revised as follows:

(a) In the first sentence, "section 5(13) of the Interstate Commerce Act" is revised to read "49 U.S.C. § 10102 (18), (7), (21), (11), or (27)".

(b) In the first sentence, "section 5(2) of the act" is revised to read "49 U.S.C. § 11343–44".

(c) In the second sentence, "section 5(2) of the act" is revised to read "49 U.S.C. 11343–44".

§ 1181.12 [Amended]

(185) In the newly redesignated § 1181.12, the heading is revised to read as follows:

"§ 1181.12 Transfers not effected under 49 U.S.C. §§ 11343–44."

(186) In the newly redesignated § 1181.12, the statutory references are revised as follows:

(a) In the introductory text and paragraph (g), "section 5(13) of the act" is revised to read "49 U.S.C. 10101 (18), (7), (21), (11), or (27)".

(b) In the introductory text, "section 5(2) of the act" is revised to read "49 U.S.C. 11343–44".

(c) In paragraph (g), "section 5 of the act" is revised to read "49 U.S.C. 11343(c)".

(187) In the newly redesignated § 1181.12, the words "Part III of" are removed from paragraph (o).

§ 1181.14 [Amended]

(188) In the newly redesignated § 1181.14, "Rule 15 of the General Rules of Practice (§ 1100.15 of this chapter)" is revised to read "49 CFR 1104.4".

§ 1181.15 [Amended]

(189) In the newly redesignated § 1181.15, "Rule 225 of the General Rules of Practice" in paragraph (c) is revised to read "49 CFR Part 1118".

(190) The authority citation which follows the newly redesignated § 1181.15 is removed.

(191) In the newly redesignated § 1181.15, the statutory references are revised as follows:

(a) In paragraph (e), "Section 5(2) of the act" is revised to read "49 U.S.C. 11343–44".

(b) In paragraph (e), "Section 5(2) of the proceedings" is revised to read "proceedings under 49 U.S.C. 11343–44".

§ 1181.16 [Amended]

(192) In the newly redesignated §1181.16, the words "Part III of" are removed from paragraph (d).

(193) The newly redesignated §§ 1181.20–1181.26 are designated as Subpart C to Part 1181, the heading of which is added to read as follows:

Subpart C—Freight Forwarder Operating Rights

§ 1181.21 [Amended]

(194) In the newly redesignated § 1181.21, "or is a carrier subject to Part I, II, or III of the Interstate Commerce Act" in paragraph (g) is revised to read "or is carrier subject to Title 49, subtitle IV; Chapter 105".

(195) In the newly redesignated § 1181.21, "Part IV of" in paragraph (j) is removed.

§ 1181.23 [Amended]

(196) In the newly redesignated § 1181.23, "Rules 15 of the Commission's General Rules of Practice (§ 1100.15 of this subchapter)" is revised to read "49 CFR 1104.4".

(197) The newly redesignated § 1181.24 is amended as follows:

(a) In paragraph (e)(1), "section 17(8) of the Interstate Commerce Act" is revised to read "49 U.S.C. 10324".

(b) In paragraph (e)(2), "general rules of practice (Part 1100 of this Chapter)" is revised to read "Rules of General Applicability, 49 CFR 1100–1129".

(c) In paragraph (e)(2), "Part 1151 of this Chapter)" is revised to read "Subpart C of this Part".

(d) In paragraph (e)(3), "Motor Carrier Board" is revised to read "Review Board".

(e) In paragraph (e)(3), "Special rules of practice, set forth in Rule 225 of the Commission's general rules of practice (49 CFR 1100.225)" is revised to read "49 CFR Part 1118".

§ 1181.24 [Amended]

(198) The authority citation which follows the newly redesignated § 1181.24 is removed.

§ 1181.25 [Amended]

(199) In the newly redesignated § 1181.25, "Part IV of" in the second sentence of paragraph (d) is removed.

(200) The newly redesignated §§ 1181.30–1181.32 are designated as Subpart D to Part 1181, the heading of which is added to read as follows:

Subpart D—Broker Licenses

(201) In former Part 1133, remove the cross reference which appeared after the table of contents and before the text.

§ 1181.30 [Amended]

(202) In the newly redesignated § 1181.30, "section 211 of the Interstate Commerce Act" in paragraph (a) is revised to read "49 U.S.C. 10924".

(203) The authority citation which follows the newly redesignated § 1181.30 is removed.

§ 1181.31 [Amended]

(204) In the newly redesignated § 1181.31, "Rule 225 of the General Rules of Practice" is revised to read "49 CFR Part 1118".

(205) The authority citation which follows the newly redesignated § 1187.37 is removed.

(206) In the newly redesignated Part 1181, a new Subpart E is added to read as follows:

Subpart E—Procedures for Changing the Name or Business Form of a Motor Carrier, Broker, or Freight Forwarder

Sec.
1181.40 Scope.
1181.41 Procedures.

§ 1181.40 Scope.

The term transfer as used in 49 CFR Part 1811 does not apply to transactions to accomplish changes in the form of a business, such as the incorporation of a partnership or sole proprietorship. Note these procedures also apply when a corporation or partnership changes its legal name or when any entity changes its trade name or assumed name.

§ 1181.41 Procedures.

To accomplish such changes, a letter providing the information set forth below should be addressed to the Office of the Secretary, Applications and Fee Unit, Interstate Commerce Commission, Washington, D.C. 20423. The envelope should be marked NAME CHANGE. The information required is (a) the docket number(s) and name of the carrier requesting the change; (b) a copy of the articles of incorporation on the state certificate reflecting the corporation; (c) the name(s) of the owner(s) of the stock and the distribution of the shares; (d) the name of the officers and directors of the corporation; and (e) a statement that there is no change in the ownership, management or control of the business.

PART 1182—MOTOR CARRIER APPLICATIONS TO CONSOLIDATE, MERGE, OR ACQUIRE CONTROL UNDER 49 U.S.C. 11343–11344

(207) Former §§ 1100.240–1100.244 are redesignated as new Part 1182 as follows:

§ 1100.240 redesignated as § 1182.1
§ 1100.241 redesignated as § 1182.2
§ 1100.242 redesignated as § 1182.3
§ 1100.243 redesignated as § 1182.4
§ 1100.244 redesignated as § 1182.5

(208) In the newly designated Part 1182, the part heading is added to read as set forth above:

(209) The authority citation to the newly redesignated Part 1182 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11343, 11344 and 11345a; 5 U.S.C. 559.

§ 1182.1 [Amended]

(210) The newly redesignated § 1182.1, is amended as follows:

(a) The section heading is revised to read as follows:

"§ 1182.1 *Applications under 49 U.S.C. 11343–11344.*"

(b) In paragraph (b), the first sentence is removed and the following is inserted in its place:

"Applicants for authority under 49 U.S.C. 11343–11344 to consolidate, merge, purchase, or lease operating rights and properties of a motor carrier shall complete application form OP–F–44. Applicants for authority under 49 U.S.C. 11343–11344 to acquire control of a motor carrier or motor carriers through ownership of stock, or otherwise, shall complete application form OP–F–45. The filing fee for either application is $700, payable at time and place of application, payable to the Interstate Commerce Commission. Once accepted, filing fees will not be refunded. If an application is rejected, the fee will be refunded. Separate fees need not be paid on related applications filed by the same applicant(s) which would be the subject of one proceeding. (See 49 CFR 1002.2(c) regarding directly related applications)."

(c) In paragraph (b), remove the word "the" which precedes "forms" within the parentheses and change the second "or" to "and" in the last sentence.

(d) In paragraph (c)(2), the word "from" in the first sentence is revised to read "of".

(e) In paragraph (c)(2), the words "from the filing requirement" are removed from the second sentence.

(f) In paragraph (c)(2), the third sentence is revised to read as follows: "Applicants may not file their application until after the Commission has rendered a decision on the waiver request."

(g) In the introductory text of paragraph (c)(4), the word "the" which precedes "modified procedure" is removed.

(h) In paragraph (c)(4)(i), the word "upon" is revised to read "on".

(i) In paragraph (c)(4)(ii), "(See rule 240(g) *infra.*)" is revised to read "(See 49 CFR 1182.1(g))".

(j) In paragraph (d)(1), the word "those" is added between "are" and "filed" in the second sentence.

(k) In paragraphs (d) (1) and (2), "49 U.S.C. 11344", is revised to read "49 U.S.C. 11343–11344".

(l) In paragraph (d)(2), the parentheses which appear around the word "lead" are removed.

(m) In paragraph (e), "(2) two" is revised to read "two (2)".

(n) In paragraph (e), "10423" is revised to read "20423".

(o) In paragraph (f)(1), the words "Interstate Commerce" which precede the word "Commission" are removed.

(p) In paragraph (f)(2), "rule 240(g) *infra*" which appears in parentheses is revised to read "49 CFR 1182.1(g)".

(q) In paragraph (f)(3), the words "because of ministerial error" and "Interstate Commerce" are removed.

(r) In paragraph (g)(2), "Also" and the commas which precede and follow the word "simultaneously" in the second sentence, and "the" which precedes

(s) In paragraph (g)(3), the word "infra" which follows the cross reference is removed.

(t) In paragraph (g)(4), the word "optional" in the first sentence is removed, and the "an" which precedes that word is revised to read "a".

(u) In paragraph (g)(4), the parentheses which enclose the word "optional" in the second sentence are removed.

(v) In paragraph (i)(3), the parentheses are removed, the words "shall be" are added to precede "served", and "upon" which follows "served" is revised to read "on".

(w) In paragraph (j)(1), the words "to be" and the "the" which precedes "modified" are removed.

(x) In paragraph (j)(2), the words "to be" are removed, and "this" is revised to read "that".

(y) In paragraph (k), the word "with" in the second sentence is revised to read "indicating".

(211) Section 1182.1 is further amended by revising paragraphs (a) and (c)(3) to read as follows:

§ 1182.1 Applications under 49 U.S.C. 11343-11344.

(a) *Procedures used generally.* The Commission uses two types of procedures. Most cases are processed under *modified procedure* (the evidentiary record is composed entirely of written statements). Occasionally, a case involves extraordinary substantive issues, the resolution of which requires testimony from persons at an *oral hearing.* These rules govern both types of proceedings. It is the Commission's policy to process cases under modified procedure whenever possible.

* * * * *

(c) * * *

(3) *Caption summary.* Each application shall be accompanied by a caption summary describing the proposed transaction, and indicating (i) whether any portion of the operating rights involved in the transaction is proposed to be cancelled or restricted, (ii) whether an application under 49 U.S.C. 11349 to perform temporarily the service proposed to be acquired in the permanent application has been filed, and (iii) whether another application has been filed under provisions of Title 49, Subtitle IV, U.S. Code, "Transportation" which is directly related to the proposed transaction. (See 49 CFR 1182.1(d) regarding directly related applications.)

* * * * *

(212) In the newly redesignated §1182.2, the heading and paragraphs (a) and (b) are revised to read as follows:

§ 1182.2 How to oppose an application.

(a) *Filing a protest.*

(1) Protests to an acquisition application shall be filed (received at the Commission), within 45 days from the date of the application is published in the **Federal Register.**

(2) A protest shall also be served on applicants' representatives.

(3) Failure to file a timely protest waives further participation in the proceeding.

(b) *Contents of a protest.*

(1) Protests shall be verified.

(2) All information upon which the protestant plans to rely shall be put in the protest including the grounds on which the protest is made and the protestant's interest in the proceeding, and any request for oral hearing. See 49 CFR 1182.3.

(3) A protest may include a request that the Commission allow (i) additional evidentiary submissions from the parties to a proceeding or (ii) further procedural steps to develop the evidentiary record (e.g. discovery). The request must demonstrate that this procedure is necessary to resolve the *specific issues* giving rise to the request. If the Commission finds, whether on its own motion, or that of a party, that the record requires supplementation, it shall issue a decision indicating the additional information required and the time frames within which such information must be submitted. Upon receipt of such information the record will be closed and the case will go forward to decision.

* * * * *

§ 1182.3 [Amended]

(213) The newly redesignated § 1182.3 is amended as follows:

(a) In the introductory text of paragraph (a), the word "the" which follows the word "using" is removed.

(b) In paragraph (a)(2), the word "determine" and "it" that follows the word "which" are removed, and "the evidence" is added to follow the word "out".

(c) In paragraph (b)(2), the "s" on the end of the word "proceedings" and the word "to" between "mailing" and "them" are removed.

(d) In paragraph (b)(3), the parenthetical phrase is removed.

(e) In paragraph (c)(1), the semicolon is revised to be a comma.

(f) In paragraph (d), the part of the sentence which follows the comma and begins with the word "failing" is removed.

(g) In paragraph (e), the second sentence is removed.

§ 1182.5 [Amended]

(214) The newly redesignated § 1182.5 is amended as follows:

(a) In the heading and paragraphs (a)(1), (e)(3), (f)(1), (f)(2), (f)(3), (g), (h)(1) and (h)(2), the references to "49 U.S.C. 11344" are revised to read "49 U.S.C. 11343-11344".

(b) In paragraph (b), "by an appropriate decisional body", and the letter "s" on the words "hearings" and "proceedings" in the third sentence are removed.

(c) In paragraph (b), "where it is" in the forth sentence is revised to read "when".

(d) In paragraph (c)(1), the word "an" which precedes "application" is removed, and "form OP-F-46. The application fee is $60." is added to follow "applications".

(e) In paragraphs (d), (f)(4), and (i)(2), "upon" is revised to read "on".

(f) In paragraph (f)(3), "of record" in the second sentence is removed.

(g) In paragraph (g), the commas which follow the words "oppose" and "seasonably" are removed.

(h) In paragraph (i), "for example," in the second sentence is removed.

(i) In paragraph (j)(1), the parentheses around the address are removed.

PART 1183—CONTROL OF CONSOLIDATION OF MOTOR CARRIERS OR THEIR PROPERTIES

(215) Former Part 1134 is redesignated as Part 1183 as follows:

§ 1134.1 redesignated as §1183.1;
§ 1134.3 redesignated as §1181.2;
§ 1134.4 redesignated as §1181.3;
§ 1134.6 redesignated as §1183.4;
§ 1134.50 redesignated as §1181.5;
§ 1134.51 redesignated as §1181.6;

(216) The authority citation to the newly redesignated Part 1183 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11341, 11343, 11344, and 11345a; 5 U.S.C. 559.

§ 1183.1 [Amended]

(217) In the newly redesignated § 1183.1, "section 5, Interstate

Commerce Act" is revised to read "49 U.S.C. 11343".

(218) In the newly redesignated § 1183.1, "shall be sent" is added to follow the parentheses in the last sentence of paragraph (b).

§ 1183.2 [Amended]

(219) In the newly redesignated § 1183.2, the statutory references are revised as follows:

(a) In the introductory text, "Section 5 of the Interstate Commerce Act" is revised to read "49 U.S.C. 11343".

(b) In the introductory text, "Part II of the Act" is revised to read "Subchapter II of chapter 105 of the act".

(c) In paragraph (a), "Section 220 of the act" is revised to read "49 U.S.C. 11145".

(220) In the newly redesignated § 1183.2, the figure "$300,000" appearing in the introductory text and paragraphs (a), (b) and (c) is revised to read "$2 million".

(221) The authority citation which follows the newly redesignated § 1183.2 is removed.

§1183.3 [Amended]

(222) In the newly redesignated § 1183.3, the statutory references are revised to read as follows:

(a) In paragraph (a), "Section 5, Interstate Commerce Act" is revised to read "49 U.S.C. 11343".

(b) In paragraph (a), "Part II of the Act" is revised to read "Subchapter II of chapter 105 of the act".

(c) In paragraph (c), "part II" is revised to read "Subchapter II of chapter 105 of the act"

(223) The authority citation which follows the newly redesignated § 1183.3 is removed.

§ 1183.4 [Amended]

(224) In the newly redesignated § 1183.4, the statutory references are revised as follows:

(a) In paragraph (a), "section 210a(b), Interstate Commerce Act" is revised to read "49 U.S.C. 11349".

(b) In paragraph (a), "section 5" is revised to read "49 U.S.C. 11343".

§ 1183.5 [Amended]

(225) In the newly redesignated § 1183.5, "section 5, Interstate Commerce Act" in paragraph (a) is revised to read "49 U.S.C. 11343".

§ 1183.6 [Amended]

(226) In the newly redesignated § 1183.6, "section 5 of the Interstate Commerce Act" in paragraph (a) is revised to read "49 U.S.C. 11343".

PART 1184—MOTOR CARRIER POOLING OPERATIONS

(227) Former Part 1139 is redesignated as Part 1184.

(228) The authority citation to the newly redesignated Part 1184 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11342; 5 U.S.C. 559.

§ 1184.2 [Amended]

(229) In the newly redesignated § 1184.2, redesignate paragraphs (1) through (13) as paragraphs (a) through (m).

(230) In the newly redesignated § 1184.2, "his/her" in paragraph (m) is revised to read "applicant's".

PART 1185—INTERLOCKING OFFICERS

(231) Former Part 1112 is redesignated as Part 1185.

(232) The authority citation to the newly redesignated Part 1185 is revised to read as follows:

Authority: 49 U.S.C. 10321 and 11322; 5 U.S.C. 559.

§ 1185.1 [Amended]

(233) In the newly redesignated § 1185.1, "section 20(a)(1) of the Interstate Commerce Act" is revised to read "49 U.S.C. 11301(a)(1)".

(234) In the newly redesignated Part 1185, the heading and text of § 1185.3 are revised to read as follows:

§ 1185.3 Authorization.

Authorization will be granted only upon application as provided in this part.

§ 1185.4 [Amended]

(235) In the newly redesignated § 1185.4, "such an order" is revised to read "authorization".

§ 1185.5 [Amended]

(236) In the newly redesignated § 1185.5, "An order", which begins the sentence in parentheses in paragraph (c), is revised to read "A decision".

§ 1185.8 [Amended]

(237) In the newly redesignated § 1185.8, "an order" in the first sentence is revised to read "a decision".

§ 1185.9 [Amended]

(238) In the newly redesignated § 1185.9, "an order of" in the introductory text is removed.

(239) In the newly redesignated § 1185.9, "section 5 of the act" in paragraph (a) is revised to read "49 U.S.C. 11343–11344".

PARTS 1186–1189—[RESERVED]

(240) New parts 1186–1198 are added and reserved.

PARTS 190–1199—REORGANIZATIONS

PART 1190—REORGANIZATION OF RAILROADS

(241) Former Part 1117 is redesignated as Part 1190 as follows:

§§ 1117.1–1117.12. redesignated as §§ 1190.1–1190.12 respectively;

§§ 1117.51–1117.55 redesignated as §§ 1190.20–1190.24 respectively.

(242) The authority citation to the newly redesignated Part 1190 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Bankruptcy Act of March 3, 1933, 47 Stat. 1467 at 1474.

Note.—*The regulations in parts 1190, 1191, and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

(243) A center heading is added to precede the newly redesignated Part 1190 as set forth above.

(244) In the newly redesignated Part 1190, the heading *"Special Rules of Procedures"* is removed, and §§ 1190.1 through 1190.12 are designated as Subpart A, the heading of which is added to read as follows:

Subpart A—Special Procedures

§ 1190.12 [Amended]

(245) In the newly redesignated § 1190.12, the first sentence of paragraph (b) is revised to read as follows:

§ 1190.12 Procedures governing application.

* * * * *

(b) The original application and six copies shall be filed. * * *

(246) In the newly redesignated Part 1190, §§ 1190.20–1190.20 are designated as Subpart B, and the heading "Ratification of Appointment as Trustee" is amended by designating it as the heading for Subpart B as follows:

Subpart B—Ratification of Appointment as Trustee

§ 1190.23 [Amended]

(247) In the newly redesignated § 1190.23, "Rules 15 and 16 of the General Rules of Practice (§§ 1100.15

and 1100.16 of this Chapter)" is revised to read "49 CFR 1104.4 and 1104.5".

PART 1191—CORPORATE REORGANIZATION OF CARRIERS AND CORPORATIONS

(248) Former Part 1118 is redesignated as Part 1191.

(249) The authority citation to the newly redesignated Part 1191 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Section 177 of Act of June 22, 1938, 840 Stat. at 891.

Note.—*The regulations in parts 1190, 1191, and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

§ 1191.1 [Amended]

(250) In the newly redesignated § 1191.1, "Chapter 1, Title 49, of the United States Code" is revised to read "Title 49, subtitle IV, chapter 105".

§ 1191.2 [Amended]

(251) In the newly redesignated § 1191.2, the statutory references are revised as follows:

(a) "Section 5, Chapter 1, Title 49, of the United States Code" is revised to read "49 U.S.C. 11343–11344".

(b) "Chapter 1 of said Title 49" is revised to read "Title 49, subtitle IV, chapter 105".

§ 1191.3 [Amended]

(252) In the newly redesignated § 1191.3, ", 20423" is added to the address at the end of the section.

PART 1192—CORPORATE REORGANIZATION OF MOTOR CARRIERS

(253) Former Part 1135 is redesignated as Part 1192.

(254) The authority citation to the newly redesignated Part 1192 is revised and a note is added to follow the revised citation to read as follows:

Authority: 49 U.S.C. 10321; 5 U.S.C. 559 and Section 177 of Act of June 22, 1938, 840 Stat. at 891.

Note.—*The regulations in parts 1190, 1191, and 1192 apply only to carriers which are the subject of bankruptcy or reorganization proceedings instituted prior to October 1, 1978 under the then-effective bankruptcy laws. Carriers in bankruptcy or undergoing reorganization pursuant to proceedings filed after October 1, 1978 and subject to the present provisions of Title 11, United States Code, are not subject to these regulations.

(255) In the newly redesignated § 1192.1, "Part II of the Interstate Commerce Act" in paragraph (b)(1) is revised to read "Title 49, subtitle IV, chapter 109".

PARTS 1193-1199—[RESERVED]

(256) New parts 1193–1199 are added and reserved.

Title 49, Chapter X, Subchapters A, C and D are amended by changing the references as follows:

PART 1002—[AMENDED]

(257) Part 1002 is amended by replacing the references in the left-hand column with the references in the right-hand colunm wherever they appear.

Old Reference	*New Reference*
1100.253(e)	1160.64
1131.1(b)(1)	1162.1(b)(1)
Part 1137	Part 1109
1115.25	1175.10
1136.4	1167.4
1116.1	1177.1

PART 1003—[AMENDED]

(258) Part 1003 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever they appear.

Old Reference	*New Reference*
Part 1115	Part 1175
Part 1131	Part 1162, Subpart A
Part 1132	Part 1181, Subpart A
Part 1133	Part 1181, Subpart D
Part 1134	Part 1183
Part 1140	Part 1166

PART 1011—[AMENDED]

(259) Part 1011 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever they appear.

Old Reference	*New Reference*
1100.66(a)	1113.3(a)
1100.95	1133.2
1100.98(e)	1115.5
Part 1102	Part 1135
Part 1104	Part 1139

PART 1012—[AMENDED]

(260) Part 1012 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
49 CFE 1100.98	Part 1115

PART 1043—[AMENDED]

(261) Part 1043 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1132.3	1181.3

PART 1045B—[AMENDED]

(262) Part 1045B is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
49 CFR 1100, Appendix B No. 6	§ 1112.9

PART 1067—[AMENDED]

(263) Part 1067 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1132.3	1181.13

PART 1201—[AMENDED]

(264) Part 1201 is amended by replacing the references in the left-hand column with the references in the right-hand column wherever it appears:

Old Reference	*New Reference*
Part 1121	Part 1152
1121.20	1152.10
1121.21	1152.11
Part 1121, Subpart D	Part 1152, Subpart D
Part 1125	Part 1155

PART 1300—[AMENDED]

(265) Part 1300 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
Part 1102	Part 1135

PARTS 1300, 1301, AND 1302—[AMENDED]

(266) Parts 1300, 1301, and 1302 are amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1100.22	1130.1

PARTS 1307 AND 1310—[AMENDED]

Parts 1307 and 1310 are amended by replacing the references in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1100.40	1132.1
1100.200	1132.2

PART 1331—[AMENDED]

(268) Part 1331 is amended by replacing the reference in the left-hand column with the reference in the right-hand column wherever it appears.

Old Reference	*New Reference*
1100.15	1104.4

Subchapters A, C, and D are further amended as follows:

PART 1011—[AMENDED]

(269) In § 1011.5, the words "Rule 95 of the General Rules of Practice" and the parentheses that surround "49 CFR 1133.2" in paragraph (a)(1) are removed.

(270) In § 1011.7, the words "Rule 98(e) of the general rules of practice," in paragraph (c)(1) are removed.

(271) In § 1011.7, the words "Rule 66a(a) of the general rules of practice," in paragraph (a) are removed.

(272) In § 1011.7, the words "Rule 95 of the general rules of practice" and the parentheses that surround "49 CFR 1113.3(a)," in paragraph (c) are removed.

PART 1012—[AMENDED]

(273) In § 1012.4, the words "Commission's General Rules of Practice," in paragraph (b) are removed.

PART 1301—[AMENDED]

(274) In § 1301.81 paragraph (a)(8) and § 1301.85 the words "Rule 22 of the General Rules of Practice" and the parentheses that surround "§ 1130.1 of ths chapter" are removed.

PART 1304—[AMENDED]

(275) In § 1304.9 the words "Rule 20 of the General Rules of Practice" and the parentheses that surround § 1130.1 of this chapter", in the cross reference to paragraph (k) are removed.

PART 1310—[AMENDED]

(276) In § 1310.8, the words "Commission's Rules of Practice" and the parentheses that surround "49 CFR 1132.1" in paragraph (b) are removed.

PART 1331—[AMENDED]

(277) In § 1331.1, the words "Rule 15 of the general rules of practice" and the parentheses that surround "§ 1104.4 of this chapter" in the introductory text are removed.

SUBCHAPTER B—[AMENDED]

(278) In Subchapter B of Title 49 former Part 1100 is further amended by removing center headings and subpart headings, that read as follows:

(a) Subpart A—Rules of General Applicability

(b) Practitioners

(c) Special Rules Respecting Joint Boards

(d) Pleadings Specifications Generally

(e) Commencement of Proceedings

(f) Petitions Seeking Institution of Rulemaking Proceedings

(g) Hearings

(h) Briefs, Reports, Oral Arguments

(i) Order Compliance, Damage Statements

(j) Special Rail Requirements

(k) Subpart B—Special Rules of Practice

(279) Subchapter B of Title 49 former Part 1100 is further amended by removing the section numbers and section headings of the following sections:

§§ 1100.4, 1100.44, 1100.47, 1100.53, 1100.82, 1100.97, 1100.225, 1100.245, 1100.250.

(280) Subchapter B of Title 49 is further amended by removing the Introductory Note which follows the center heading for former Parts 1140–1149.

(281) Subchapter B of Title 49 is further amended by removing center headings that read as follows:

(a) Parts 1110–1119–Rail Carriers Consolidation, Finance, and Reorganization

(b) Parts 1120–1129—Special Procedures—Rail Carriers Certificate of Public Convenience and Necessity

(c) Parts 1130–1139—Special Procedures—Motor Carriers and Brokers Certificates, Permits, Licenses

(d) Parts 1140–1149—Special Procedures—Water Carriers

(e) Parts 1150–1159—Special Procedures—Freight Forwarders

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

Fishermen's Contingency Fund

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 296

Fishermen's Contingency Fund

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: These rules revise the Fishermen's Contingency Fund regulations to implement the Outer Continental Shelf Lands Act amendments. These changes simplify the submission of claims and reduce the time required to process claims and compensate eligible applicants.

DATE: These regulations are effective on October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Page Building 2, Room 309, Washington, D.C. 20235, telephone number: (202) 634-7496.

SUPPLEMENTARY INFORMATION: Title IV of the Outer Continental Shelf Lands Act Amendments of 1978 established the Fishermen's Contingency Fund (the "Fund") to compensate commercial fishermen for property or economic loss caused by oil and gas obstructions on the United States Outer Continental Shelf (OCS). The Fund is comprised of fees collected from offshore energy interests. This amendment of program rules simplifies the submission of claims against the Fund and reduces the time required for processing claims and compensating eligible applicants. Claims will now be reviewed administratively by the National Marine Fisheries Service (NMFS), rather than adjudicated by an Administrative Law Judge. The time period for fishermen to report damages to the National Marine Fisheries Service in order to gain a presumption of causation by OCS-related activities is increased from 5 days after the date of discovery of the damage to 15 days after the day on which the involved fishing vessel returns to port. Compensation for economic loss will be based on 25 percent of gross income lost, rather than on loss of profits. Area accounts within the Fund and obstruction surveys on the OCS are no longer required.

The Agency has determined that these rules are not "major" under Executive Order 12291 or associated Departmental guidelines because they do not significantly affect the economy, costs, or prices and have no impact on competition, employment, investment, or productivity. Accordingly, no regulatory impact analysis is required.

Since these rules provide a benefit, they are exempt from the notice and comment provisions of the Administrative Procedure Act. In addition, Pub. L. 97-212 requires publication of final regulations no later than 120 days after the date of its enactment. This would be October 28, 1982. A regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

These rules do not require the collection of any additional information. All information collected will comply with the Department of Commerce's FY82 Information Collection Budget. These rules do not increase the Federal paperwork burden for individuals, small business, or other persons under the Paperwork Reduction Act of 1980. OMB Docket Number: 21-008-208.

The Assistant Administrator for Fisheries, National Marine Fisheries Service, has determined that these rules do not require an environmental impact statement under the National Environmental Policy Act.

List of Subjects in 50 CFR Part 296

Claims, Continental shelf, Fisheries, Fishing vessels, Oil and gas exploration.

Dated: October 26, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Accordingly, 50 CFR Part 296 is revised as follows:

PART 296—FISHERMEN'S CONTINGENCY FUND

Sec.

296.1 Purpose.
296.2 Definitions.
296.3 Fishermen's contingency fund.
296.4 Claims eligible for compensation.
296.5 Instructions for filing claims.
296.6 NMFS processing of claims.
296.7 Burden of proof and presumption of causation.
296.8 Amount of award.
296.9 Initial determination.
296.10 Agency review.
296.11 Final determination.
296.12 Payment of costs.
296.13 Payment of award for claim.
296.14 Subrogation.
296.15 Judicial review.

Authority: Pub. L. 97-212 (43 U.S.C. 1841 et seq.).

§ 296.1 Purpose.

These regulations implement Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended (Title IV). Title IV establishes a Fishermen's Contingency Fund to compensate commercial fishermen for damage or loss caused by obstructions associated with oil and gas activities on the Outer Continental Shelf.

§ 296.2 Definitions.

"Area affected by Outer Continental Shelf activities" means the area within a 3-mile radius of any casualty site which:

(a) Includes any portion of a leased block, pipeline, easement, right of way, or other OCS oil and gas exploration, development, or production activity; or

(b) Is otherwise associated (as determined by the Chief, Financial Services Division) with OCS oil and gas activities, such as, for example, expired lease areas, relinquished rights-of-way or easements, and areas used extensively by surface vessels supporting OCS oil and gas activities (areas landward of the OCS are included when such areas meet this criterion).

"Chief, FSD" means the Chief of the Financial Services Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

"Citizen of the United States" means any person who is a United States citizen, any State, or any corporation, partnership, or association organized under the laws of any state which meets the requirements for documenting vessels in the U.S. coastwise trade.

"Commercial Fisherman" means any citizen of the United States who owns, operates, or is employed on a commercial fishing vessel.

"Commercial Fishing Vessel" means any marine craft which is documented under the laws of the United States or, if under five net tons, registered under the laws of any State, and used for commercial fishing or activities directly related to commercial fishing.

"Easement" means a right of use or easement granted under 30 CFR section 250.18.

"Fish" means all forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

"Fishing Gear" means any commercial fishing vessel, and any equipment of such vessel.

"Fund" means the Fishermen's Contingency Fund established by Title IV of the Outer Continental Shelf Lands Act Amendments of 1978.

"Holder" means the owner of record of each lease, prelease exploratory drilling permit, easement, or right-of-

way or any agent or assignee of an owner.

"Lease" means any authority under section 8 or section 6 of the OCS Lands Act to develop and produce or explore for oil or gas.

"Negligence or Fault" includes, but is not limited to, failure to:

(a) Remain outside of any navigation safety zone established around oil and gas rigs and platforms by any responsible Federal agency;

(b) Avoid obstructions recorded on nautical charts or in the Notice to Mariners or marked by a buoy or other surface marker (casualties occurring within a one-quarter mile radius of obstructions so recorded or marked are presumed to involve negligence or fault of the claimant);

(c) Abide by established rules of the road;

(d) Use proper care; or

(e) Use due care and diligence to mitigate the damage or loss.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control. Generally, but not in all cases, this includes all submerged lands lying seaward of the territorial sea (3 miles from a State's coastline, or 9 miles from the coast of Texas or Florida).

"Person" means an individual, partnership, corporation, association, public or private organization, government, or other entity.

"Resulting Economic Loss" means the gross income, as estimated by the Chief, FSD, that a claimant will lose because of not being able to fish, or having to reduce fishing effort, during the period before the damaged or lost fishing gear concerned is repaired or replaced and available for use. This period must be reasonable. This period begins on the date of the casualty and stops on the date the damage could reasonably have been remedied by repair or replacement.

"Right-of-way" means any right-of-way granted under section 5(e) of the OCS Lands Act or under 43 CFR 3340.0–5.

"Secretary" means the Secretary of Commerce or his designee.

§ 296.3 Fishermen's contingency fund.

(a) *General.* There is established in the Treasury of the United States the Fishermen's Contingency Fund. The Fund is available without fiscal year limitation as a revolving fund to carry out the purposes of Title IV of the Outer Continental Shelf Lands Act Amendments of 1978, as amended.

(b) *Payments into the Fund.* Each Holder of an exploration permit, lease, easement, or rights-of-way for the construction of a pipeline, or a prelease exploration drilling permit issued or maintained under the Outer Continental Shelf Lands Act, in effect on or after June 30, 1982, shall pay assessments to the Fund. All pipeline right-of-way and easements are to be included for assessment except those constructed and operated lines within the confines of a single lease or group of contiguous leases under unitized operation or single operator. Payments will not be required for geological or geophysical permits, other than prelease exploratory drilling permits issued under section 11 of the Outer Continental Shelf Lands Act (43 U.S.C. 1340).

(1) *Assessments to maintain the Fund.* When the total amount in the Fund is less than the Chief, FSD, determines is needed to pay Fund claims and expenses, the Chief, FSD, will notify the Secretary of the Interior that additional assessments are needed.

(2) *Billing and collections.* The Secretary of the Interior will calculate the amounts to be paid by each Holder and shall notify each Holder of the dollar amount and the time and place for all payments. Each assessment shall be paid to the Secretary of the Interior no later than 45 days after the Secretary of the Interior sends notice of the assessment.

(3) *Annual assessment limits.* No Holder shall be required to pay in excess of $5,000 for any lease, permit, easement or right-of-way in any calendar year.

(c) *Moneys recovered through subrogation.* Any moneys recovered by the Secretary through the subrogation of a claimant's rights shall be deposited into the Fund.

(d) *Investments of the fund.* Excess sums in the Fund will be invested in obligations of, or guaranteed by, the United States. Revenue from such investments shall be deposited in the Fund.

(e) *Litigation.* The Fund may sue and be sued in its own name.

§ 296.4 Claims eligible for compensation.

(a) *Claimants.* Damage or loss eligible for Fund compensation must be suffered by a commercial fisherman.

(d) *Damage or loss of fishing gear.* Damage or loss is eligible for Fund compensation if it was caused by materials, equipment, tools, containers, or other items associated with OCS oil and gas exploration, development, or production activities. Damage or loss may be eligible for compensation even though it did not occur in OCS waters if the item causing the damage or loss was associated with oil and gas exploration, development, or production activities in OCS waters.

(c) *Effective date.* These regulations will apply to claims filed on or after June 30, 1982, and to those claims refiled under (d) of this section.

(d) *Refiled claims.* Any claim filed before June 30, 1982, will be subject to these regulations if:

(1) No final decision had been made on the claim by June 30, 1982; and

(2) The claimant has notified the Secretary in writing by August 11, 1982, of his intent to refile the claim.

(e) *Exceptions.* Damage or loss is not eligible for Fund compensation: (1) If the damage or loss was caused by the negligence or fault of the claimant;

(2) If the damage or loss occurred prior to September 18, 1978;

(3) To the extent that damage or loss exceeds the replacement value of the fishing gear involved;

(4) For any portion of the damage or loss which can be compensated by insurance;

(5) If the claim is not filed within 60 days after the date the claimant discovers the damage or loss; or

(6) If the damage or loss was caused by an obstruction unrelated to OCS oil and gas exploration, development, or production activities.

§ 296.5 Instructions for filing claims.

(a) *Fifteen-day report required to gain presumption of causation.* (1) *General.* Damages or losses are presumed to be qualified for compensation if certain requirements are satisfied. One requirement is that a report must be made to NMFS within fifteen (15) days after the date on which the vessel first returns to a port after discovering the damage or loss. Filing of a fifteen-day report must be followed up by filing a detailed claim.

(2) *When and how to file a fifteen-day report.* To qualify for the presumption of causation, a fifteen-day report must be made to NMFS within fifteen days after the date on which the vessel first returns to a port after discovering the damage or loss. Satisfaction of the fifteen-day requirement is determined by the postmark, if the report is mailed; by the date of a call, if the report is telephoned or radiotelephoned; or, by the date of appearance, if the report is made in person. The fifteen-day report must be made to one of the following NMFS Offices:

Chief, Financial Services Branch, Northeast Region, National Marine Fisheries Service, Post Office Building, Box 1109, Gloucester, Massachusetts 01930, (617) 281–3224

Chief, Fisheries Development Analysis Branch, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, Duval Building, St. Petersburg, Florida 33702, (813) 893-3272

Chief, Fisheries Development Division, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, (213) 548-2478

Chief, Financial Services Branch, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, N.E., Bin C15700, Seattle, WA 98115, (206) 527-6127

Chief, Fisheries Development, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, (907) 586-7224

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4688

(3) *Written confirmation of oral fifteen-day report.* The Chief, FSD, strongly recommends that claimants confirm, in writing, as soon as possible, the substance and accuracy of each fifteen-day report that is made by telephone, radiotelephone, or other oral communication. Address the written confirmation to:

Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C. 20235

(4) *Contents of fifteen-day report.* Each fifteen-day report must include the following information:

(i) The claimant's name and address;

(ii) The name of the commercial fishing vessel involved;

(iii) The location of the obstruction which caused the damage or loss;

(iv) A description of the nature of the damage or loss;

(v) The date such damage or loss was discovered;

(vi) If the fifteen-day report is made after the vessel returns to port, the date on which the vessel first returned to port after discovering the damage.

(b) *Form of claim.* Claims must be in writing. Claims may be submitted on NOAA form 88-164. This form may be obtained from any NMFS regional office or from the Chief, FSD. Although claimants are not required to use this claim form, it will probably be to their benefit to do so.

(c) *Who must file, and when and where to file, claims.* All claimants (including those who filed 15-day reports to gain the presumption of causation) must file a claim no later than 60 days after the date the damage or loss is discovered. The term "filed" means delivered in person, or mailed (as determined by the date of the postmark) to the Chief, Financial Services Division, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C. 20235. The Chief, FSD, suggests that mailed claims be sent by registered or certified mail, return receipt requested, so the claimant will have a record that the claim was received by the Chief, FSD.

(d) *Aggregating claims.* If more than one commercial fisherman suffers loss or damage from the same incident (for example, when several members of the crew lost income due to loss of fishing time), all claims should be submitted on their behalf by the owner or operator of the commercial fishing vessel involved.

(e) *Contents of claim.* Each claim must be signed by the claimant and must accurately and completely provide the following information:

(1) The name, mailing address, telephone number, citizenship, and occupational status (for example, vessel owner, operator, or crew member) of each claimant;

(2) The name and Coast Guard documentation number or State registration number of the commercial fishing vessel involved in the damage or loss;

(3) The home port, type, and size of the vessel involved in the casualty;

(4) A full statement of the circumstances of the damage or loss including:

(i) The date when the casualty was first discovered by the claimant,

(ii) The water depth (if known) and visibility at the time and location where the casualty occurred,

(iii) The direction, speed, and activities of the claimant's vessel immediately before, during, and after the casualty (including a full description of both the deployment of any fishing gear which is the subject of the claim and all attempts at retrieval of the gear).

(iv) The names and addresses of all witnesses to the casualty,

(v) The location where the casualty occurred in Loran C coordinates or the next most accurate method of position fixing available to the claimant,

(vi) A description of the item or obstruction (if sighted or recovered) which caused the casualty, and whether or not any surface markers were attached to or near the obstruction. Submit any available photographs of the item or obstruction. State reasons for believing the obstruction is associated with OCS oil and gas activities.

(5) The amount claimed for property damage or loss and a full statement of the type and extent of damage or loss including:

(i) An inventory of all components of fishing gear damaged or lost,

(ii) The date, place, and cost of acquisition of all fishing gear damaged or lost and proof of its purchase (sales receipts, affidavits, or other evidence),

(iii) One estimate from a commercial fishing gear repair or supply company of the present replacement or repair (whichever applies) cost of the damaged or lost fishing gear. If the gear will be repaired by the claimant himself, a detailed estimate by the claimant identifying the repair cost.

(6) The amount claimed for economic loss and the basis for that amount with supporting documentation, as follows:

(i) Trip tickets for the three vessel trips immediately before the trip during which the casualty was discovered and for the vessel trip immediately following the trip during which the casualty occurred.

(ii) A statement of the amount of time involved on each of the vessel trips above (or if the casualty involves fixed gear, a statement of the number of gear units hauled on each of these trips).

(iii) A statement of the amount of time lost from fishing because of the damage or loss and a full explanation of why this time period is reasonable.

(iv) Documentation of the date replacement gear was ordered and received or the date gear repair began and ended. This documentation may consist of purchase orders, bills of lading, or statements from sellers or repairers.

(7) The amount claimed for other consequential loss or costs (including fees for claim preparation, etc.) with suitable documentation of the amounts claimed (such as invoices, receipts, etc.).

§ 296.6 NMFS processing of claims.

(a) *Action by NMFS.* Upon receipt of a claim, the Chief, FSD, will:

(1) Send an abstract of the claim to the Secretary of the Interior;

(2) Send the reported location of any obstruction which was not recovered and retained to the National Ocean Survey, which will inform the Defense Mapping Agency Hydrographic/Topographic Center.

(b) *Actions by the Interior Department.* Upon receipt of an abstract of a claim, the Interior Department will immediately: (1) Convert the casualty coordinates into latitude and longitude, plot the casualty site, and advise NMFS whether the site is in an area affected by OCS activities; (2) make reasonable efforts to notify all persons known to have engaged in activities associated with OCS energy activity in the vicinity where the damage or loss occurred.

(c) *Responses to notice of claim.* (1) Each person notified by the Interior Department will, within thirty days after receipt of the notice, advise the Chief,

FSD, and the Interior Department whether he admits or denies responsibility for the damages claimed.

(2) Each person notified by the Interior Department who fails to give timely and proper advice of admission or denial of responsibility shall be presumed to deny responsibility for the damages claimed.

(3) If any person admits responsibility, the Chief, FSD, will initiate action to recover from that party any sums paid or to be paid for the claimed damages.

(4) Any person referred to in this section, including lessees or permittees or their contractors or subcontractors, may submit evidence about any claim to the Chief, FSD.

(d) *Failure to meet filing requirements.* The Chief, FSD, may reject any claim that does not meet the filing requirements. The Chief, FSD, will give a claimant whose claim is rejected written notice of the reasons for rejection within 30 days after the date on which the claim was filed. If the claimant does not refile an acceptable claim within 30 days after the date of this written notice, the claimant is not eligible for Fund compensation unless there are extenuating circumstances.

(e) *Proceedings*—(1) *Location.* Any required proceeding will be conducted within such United States judicial district as may be mutually agreeable to the claimant and the Assistant Administrator, NMFS, or his designee, or if no agreement can be reached, within the United States judicial district in which the claimant's home port is located.

(2) *Powers.* For purposes of any proceeding, the Assistant Administrator, NMFS, or his designee, shall have the power to administer oaths and subpoena witnesses and the production of books, records, and other evidence relative to the issues involved.

(3) *Amendments to claims.* A claimant may amend the claim at any time before the Chief, FSD, issues an initial determination.

(4) *Criminal penalty for fraudulent claims.* Any person who files a fraudulent claim is subject to prosecution under 18 U.S.C. sections 287 and 1001, each of which, upon conviction, imposes a penalty of not more than a $10,000 fine and 5 years' imprisonment, or both.

§ 296.7 Burden of proof and presumption of causation.

(a) *Burden of proof.* The claimant has the burden to establish, by a preponderance of the evidence, all facts necessary to qualify his claim, including:

(1) The identity or nature of the item which caused the damage or loss; and

(2) That the item is associated with oil and gas exploration, development, or production activities on the Outer Continental Shelf.

(b) *Presumption of causation.* Notwithstanding the above, damages or losses are presumed to be caused by items associated with oil and gas exploration, development, or production activities on the OCS if the claimant establishes that:

(1) The claimant's commercial fishing vessel was being used for commercial fishing and was located in an area affected by OCS oil and gas exploration, development, or production activities;

(2) A report on the location of the obstruction which caused such damage or loss, and the nature of such damage or loss, was made within fifteen days after the date on which the vessel first returned to a port after discovering such damage;

(3) There was no record on the most recent nautical charts issued by the National Ocean Survey, NOAA, or in any weekly Notice to Mariners issued by the Defense Mapping Agency Hydrographic/Topographic Center, in effect at least 15 days before the date the damage or loss occurred, then an obstruction existed in the immediate vicinity where the damage or loss occurred. In the case of damages caused by a pipeline, the presumption will be available regardless of whether the pipeline was recorded on charts or in the Notice to Mariners; and

(4) There was no proper surface marker or lighted buoy attached, or closely anchored, to such obstruction.

(c) *Geographic exclusion from presumption of causation.* Damage or loss occurring within a one-quarter mile radius of obstructions recorded on charts or in a Notice to Mariners, or properly marked, is presumed to involve the recorded or marked obstruction.

§ 296.8 Amount of award.

(a) *Actual damages.* The award for damaged fishing gear will be the lesser of the gear's repair cost or replacement cost. The award for lost fishing gear will be the gear's replacement cost.

(b) *Consequential damages.* An award may also include compensation for any damage or loss (except personal injury) that is incurred as a consequence of the fishing gear damage or loss.

(c) *Resulting economic loss.* An award may also include twenty five per cent of the resulting economic loss from a fishing gear damage or loss.

(d) *Attorney, CPA, consultant fees.* An award may also include compensation for reasonable fees paid by the claimant to an attorney, CPA, or other consultant for the preparation or prosecution of a claim.

(e) *Negligence of claimant.* (1) An award will be reduced to the extent that the loss or damage was caused by the negligence or fault of the claimant. (For example, a claimant who sustained $10,000 in damages and whose negligence or fault was found to be responsible for 40% of the damage would receive $6,000 in compensation. If the same claimant were responsible for 99% of the negligence or fault that caused the damage, the claimant would receive $100 in compensation).

(2) Negligence of the owner or operator of the fishing vessel or gear will reduce crewmember awards to the same extent that it reduces an award to the vessel's owner or operator.

(f) *Insurance proceeds.* An award will be reduced by the amount the claimant has, or reasonably would have, received under a commercial policy of full hull and machinery and protection and indemnity insurance, whether or not such insurance was in effect at the time the casualty occurred.

§ 296.9 Initial determination.

The Chief, FSD will make an initial determination on a claim within 60 days after the day on which the claim is accepted for filing. The initial determination will state:

(a) If the claim is disapproved, the reason for disapproval, or

(b) If the claim is approved, the amount of compensation and the basis on which the amount was determined.

§ 296.10 Agency review.

(a) Within 30 days after the Chief, FDS, issues an initial determination, the claimant, or any other interested person who submitted evidence relating to the initial determination, may ask the Assistant Administrator, NMFS, or his designee, for a review of the initial determination.

(b) The petitioner may submit written or oral evidence within 30 days of filing the petition for review.

§ 296.11 Final determination.

(a) If a petition for review of an initial determination is filed within 30 days after the date the Chief, FSD, issues an initial determination, the Assistant Administrator, NMFS, or his designee will conduct a review of the initial determination, and will issue a final determination no later than 60 days after receipt of the request for review of the initial determination.

(b) If a petition for review of an initial determination is not filed within 30 days after the day on which the Chief, FSD,

issues an initial determination, the initial determination will become a final determination.

§ 296.12 Payment of costs.

(a) *By person denying responsibility for damage.* Any person who is notified by the Interior Department and fails to respond or denies responsibility for the damages claimed will pay the costs of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(b) *By the claimant.* Any claimant who files a claim will pay the cost of the proceedings if such person is subsequently found to be responsible for the damage claimed.

(c) *By person denying responsibility for damage and the claimant.* If more than one party is found to have responsibility for the damage claimed, then the cost of the proceedings will be apportioned between them.

§ 296.13 Payment of award for claim.

(a) Upon an initial determination, the Chief, FSD, shall immediately disburse the claim awarded if the claimant:

(1) States in writing that he will not request review of the initial determination; and

(2) Signs an agreement to repay all or any part of the award if the award should for any reason be subsequently reduced.

(b) If the claimant does not submit the statement and agreement specified above, the Chief, FSD, will not disburse the award until 30 days after issuance of the initial determination.

§ 296.14 Subrogation.

(a) Upon payment of a claim, the Chief, FSD, Will obtain a subrogation agreement signed by the claimant which:

(1) Assigns to the Fund the claimant's rights against third parties; and

(2) Provides that the claimant will assist the Fund in any reasonable way to pursue those rights.

(b) Collection of subrogated rights. If a reasonable chance of successful collection exists, NMFS will refer any subrogated rights to the Justice Department for collection.

(c) Any moneys recovered through subrogation shall be deposited into the Fund.

§ 296.15 Judicial review.

Any claimant or other person who is aggrieved by a final determination may, no later than 30 days after the determination, seek judicial review of the determination in the United States District Court for such judicial district as may be mutually agreeable to the parties concerned or, if no agreement can be reached, in the United States District Court for the judicial district in which the claimant's home port is located.

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November 1, 1982

Part IV

Environmental Protection Agency

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating Operations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2070-7]

Standards of Performance for New Stationary Sources; Metal Coil Surface Coating Operations

April 26, 1982.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Standards of performance for metal coil surface coating operations were proposed in the **Federal Register** on January 5, 1981 (45 FR 1102). This action promulgates standards of performance for metal coil surface coating operations. These standards implement Section 111 of the Clean Air Act and are based on the Administrator's determination that metal coil surface coating operations cause or contribute significantly to all pollution that may reasonably be anticipated to endanger public health or welfare. The intended effect of these standards is to require all new, modified, and reconstructed metal coil surface coating operations to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health, and environmental and energy impacts.

EFFECTIVE DATE: November 1, 1982.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this new source performance standard (NSPS) is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this rule. Under Section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Metal Coil Surface Coating Industry: Background Information for Promulgated Standards," EPA-450/3-80-035b. The BID contains (1) a summary of all the public comments made on the proposed standards and the Administrator's response to the comments, (2) a summary of the changes made to the standards since proposal, and (3) the final environmental impact statement (EIS), which summarizes the impacts of the standards.

Docket. A docket, number A-80-5, containing information considered by EPA in development of the promulgated standards is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (A-130), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Porter, Section Chief, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. EPA, Research Triangle Park, North Carolina 27711, telephone (919) 541-5578.

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0660.

The Standards

Standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> * * * Application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact, and energy requirements) the Administrator determines has been adequately demonstrated (Section 111(a)(1)).

The standards apply to all new, modified, and reconstructed metal coil surface coating (coil coating) operations. Existing facilities are not subject to the standards unless they undergo a modification or a reconstruction as defined in 40 CFR 60.14 and 60.15. Compliance with the standards can be achieved by any of four approaches for each affected facility. The owner or operator can use coatings whose average volatile organic compound (VOC) content on a monthly basis is 0.28 kilograms per liter (kg/*l*) of coating solids applied or less; the owner or operator can apply higher VOC-content coatings if he reduces VOC emissions to 0.14 kg/*l* of coating solids applied or less; the owner or operator can comply by demonstrating an overall VOC emission reduction of 90 percent or greater prior to discharge to the atmosphere; or the owner or operator can comply by the combined use of low VOC-content coatings and higher VOC-content coatings with a control device to achieve a calculated monthly emission limit. The owner or operator using an incinerator to control VOC emissions is required to construct an enclosure of the coating application station during the test of incinerator efficiency to evaluate the capture efficiency of the control system.

The standards require each owner or operator to conduct monthly performance tests to demonstrate compliance with the proposed emission limits. Where coatings are used without a VOC capture system and emission control device to meet the numerical limit of 0.28 kg/*l* of coating solids applied, the owner or operator is required to calculate and record a weighted average of the VOC content of coatings applied (including dilution solvents) for each affected facility for each calendar month. Manufacturers' formulation data will normally be used for that purpose; Reference Method 24 will be used to resolve any disputes that may occur.

Where higher VOC-content coatings are used with a VOC capture system and emission control device to meet the numerical limit of 0.14 kg/*l* of coating solids applied, the owner or operator is required to calculate and record the weighted average of the VOC content (including dilution solvents) of coatings applied for each affected facility for each calendar month. During the initial performance tests, the owner or operator must measure the overall VOC emission reduction achieved by the VOC capture system and emission control device. Reference Method 25 and the equations provided in the standards are used for these determinations. Compliance is demonstrated where the overall VOC emission reduction is equal to or less than 0.14 kg/*l*.

Where compliance is achieved through the demonstration of a 90-percent overall reduction in VOC emissions, the owner or operator will conduct an initial performance test by using Reference Method 25 and the equations provided in the standards. Compliance is demonstrated where the overall percent reduction is equal to or greater than 90 percent. After the first monthly test, the owner or operator is required to monitor the operating parameters of the control device.

Where compliance is achieved by the combined use of low VOC-content coatings and higher VOC-content coatings with a control device, the owner or operator is required to calculate and record a weighted average VOC content of coatings applied (including dilution solvents) for each affected facility for each calendar month. Separate calculations must be made for coatings used without the control device in operation and for coatings used with the control device in operation. During the initial performance test, the owner or operator must measure the overall VOC emission reduction achieved by the capture

system and control device. The owner or operator is then required to calculate a monthly emission limit and the VOC emissions to the atmosphere to determine compliance.

If thermal incineration is used, the owner or operator is required to install and operate a device to monitor and record continuously the combustion temperature of the control device. The standards require the owner or operator to record all coating periods of more than 3 hours duration where the average combustion temperature falls 28° C (50° F) or more below the temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency. If catalytic incineration is used, the owner or operator is required to install a device to monitor and record continuously the gas temperature both upstream and downstream of the incinerator catalyst bed. The owner or operator is required to record all coating periods in excess of 3 hours where the average difference between the temperatures upstream and downstream of the catalyst bed falls below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency or where the average inlet (or upstream) temperature falls 28° C (50° F) or more below the inlet temperature at which compliance was demonstrated during the most recent measurement of incinerator efficiency.

Environmental, Energy, And Economic Impacts

The environmental, energy, and economic impacts of standards of performance are normally expressed as incremental differences between the impacts of complying with the proposed standards and those of complying with a typical State implementation plan (SIP). Many existing metal coil surface coating operations are located in areas that are considered nonattainment areas for purposes of achieving the national ambient air quality standard (NAAQS) for ozone. New facilities are expected to have the same geographic distribution as existing plants. States are in the process of revising their SIP's for these areas. In revising SIP's, States generally consider the recommendations contained in control techniques guidelines (CTG) documents. The CTG document applicable to this source category is "Control of Volatile Organic Emissions From Existing Stationary Sources, Volume II, Surface Coating of Cans, Coil, Paper, Fabrics, Automobiles, and Light-Duty Trucks," EPA-450/2-77-088 (CTG). Although the CTG documents are published for guidance only and are not legally binding on the States, impacts were estimated by assuming that most States will revise their existing SIP's in accordance with the CTG recommendations or retain their existing limits on VOC emission.

Approximately 70 percent of the existing coil coating plants are located in States that currently require VOC emissions to be reduced by at least 85 percent prior to discharge, except for plants that use waterborne or other low VOC-content coatings. This emission limit is more stringent than the CTG recommendations, and it appears that these States plan to maintain this level of control for VOC emissions. The ramaining plants are located in States that use a permit system for controlling VOC emissions. These States are expected to revise their SIP's to require VOC emission reductions to the CTG-recommended level, which is equivalent to a 64-percent reduction in the emissions from the average industry solvent-borne coating formulation of 60 percent VOC's and 40 percent solids by volume.

The standards would reduce VOC emissions from a typical plant by approximately 33 percent in States that currently control VOC emissions by a numerical limit (85-percent reduction) and reduce emissions from a typical plant by approximately 72 percent in States that adopt the CTG-recommended level of control (64-percent reduction). With no NSPS, nationwide VOC emissions from new plant capacity are projected to be 8,600 megagrams (Mg) per year after 5 years. Implementation of the NSPS would reduce these emissions by 6,000 Mg per year. In addition, after 5 years, the NSPS would also result in an emission reduction of 2,000 Mg per year from the control of existing plant capacity brought under the standards by modifications and reconstruction. Thus, the total fifth-year emission reduction resulting from implementation of the NSPS would be 8,000 Mg. An estimated 85 percent of new plants will use higher VOC-content coatings and incineration systems to comply with the standards, and the remaining 15 percent will use low VOC-content coating.

EPA recognizes that the estimated 8,000-Mg emission reduction is substantially greater than the 3,200 Mg estimate contained in the proposal preamble. The previous estimate was based on gross industry coating usage data that implied an average applied dry coating thickness of 0.025 millimeter (mm) or 0.001 in. (1 mil). A more reasonable approach is to estimate the emission reduction by using model plant data, which were the basis of cost and economic analyses and which used an average applied dry coating thickness of 1.8 mils. The 1.8-mil value was offered as typical by several industry sources and was subsequently approved by numerous industry reviewers of model plant data. The change in film thickness, plus rounding of model plant data to achieve consistency between costs and emission reduction estimates, results in the estimated fifth-year emission reduction of 8,000 Mg.

Little or no water pollution or solid waste impact from new, modified, or reconstructed coil coating plants is expected to result from application of the standards. None of the control techniques used by the coil coating industry generates either liquid or solid waste; therefore, the standards would have no impact in these areas.

Nationwide energy usage by the coil coating industry totaled about 6,600 terajoules (TJ) in 1978. The standards will result in an energy usage increase of about 1 percent per year, which is equivalent to 200,000 barrels of crude oil in the fifth year. Plants located in States requiring an 85-percent reduction and that achieve compliance through the use of higher VOC-content coatings in combination with an incinerator are expected to decrease their energy consumption by about 5 percent. However, for plants regulated to the CTG-recommended level of control, compliance with the standards through the use of incineration could result in as much as a 50-percent increase in energy consumption in some individual plants if one of the more energy-efficient systems identified as being capable of achieving the CTG-recommended limits is used as the baseline. Little or no impact in energy consumption is expected to result from the standards for plants meeting the emission limits with the use of waterborne or other low VOC-content coatings without the use of incineration.

The standards increase both the capital and annualized costs of new coil coating plants. Based on a predicted industry growth rate of 12 percent per year through 1985, the increased capital costs of new plants that locate in States requiring an 85-percent reduction in VOC emissions could range from $110,000 for a small plant to $140,000 for a large plant. This capital outlay represents an increase in the total capital costs of a new plant of approximately 1.4 percent for a small plant and 0.9 percent for a large plant. The increase in total annualized costs could range from $11,000 for a small plant to $23,000 for a large plant. For plants that locate in States that adopt

the CTG-recommended limits, capital costs for a new plant could increase by $180,000 for a small plant and by $920,000 for a large plant—2.3- and 6.6-percent increases, respectively, in the total capital costs of a new plant. Total annualized costs could increase by $55,000 for a small plant and by $395,000 for a large plant. Compliance with the standards could result in increases in the price of coil coated metal ranging from 0.2 percent for a large plant in 85-percent reduction areas to 4.1 percent for a large plant in States that adopt the CTG-recommended limits. The effects for other plant sizes fall between these two values.

During the first 5 years, the incremental capital costs of the NSPS are estimated to be approximately $18.8 million, and the incremental annualized costs in the fifth year are estimated at $5.4 million. These values are lower than those in the proposal preamble—$20.0 million and $7 million for the capital and annualized cost increments, respectively. The previous values were computed to show the maximum cost to the industry by assuming that all new plant capacity will use solvent-borne coatings and incineration as a means of complying with the standard. The lower estimates given above are based on the more realistic assumption that 15 percent of new plant capacity will comply with the standards by using waterborne coatings and thus incur no costs. This latter assumption is consistent with the estimates of emission reduction given above.

Cost estimates for plants in CTG areas are probably overstated by a substantial amount. These cost estimates were based on the least expensive devices that appear to be potentially capable of meeting CTG limits. In practice, however, these units are not now used. Rather, the predominant trend is toward use of modern heat recovery incineration systems. These systems, in addition to effectively reducing emissions, help to ensure a stable energy supply for coaters by using the coating solvents as fuel. The use of coating solvents as fuel is a benefit for which no credit is given in the economic analysis but that is important enough to cause many coil coaters to install the systems without a regulatory requirement.

The environmental, energy, and economic impacts are discussed in greater detail in the BID for the promulgated standards, "Metal Coil Surface Coating Industry—Background Information for Promulgated Standards of Performance," EPA-450/3-80-035b.

In addition to achieving emission reductions beyond those required by a typical SIP, standards of performance have other benefits. They establish a degree of national uniformity, which precludes situations in which some States may attract new industries because they have less stringent air pollution standards than other States. Further, standards of performance provide documentation, which reduces uncertainty in case-by-case determinations of best available control technology (BACT) for facilities located in attainment areas and lowest achievable emission rates (LAER) for facilities located in nonattainment areas. This documentation includes identification and comprehensive analysis of alternative emission control technologies, development of associated costs, evaluation and verification of applicable emission test methods, and identification of specific emission limits achievable with alternate technologies. The costs are provided for an economic analysis that reveals the affordability of controls in an unbiased study of the economic impact of controls on an industry.

Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (45 FR 30666, May 9, 1980) of a meeting of the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) to discuss the metal coil surface coating operations standards recommended for proposal. This meeting was held on June 4 and 5, 1980. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal. The standards were proposed and published in the **Federal Register** on January 5, 1981, (45 FR 1102). The preamble to the proposed standards discussed the availability of the proposal BID, "Metal Coil Surface Coating Industry—Background Information for Proposed Standards," EPA-450/3-80-035a, which describes in detail the regulatory alternatives considered and their impacts. Public comments were solicited at the time of proposal, and, when requested, copies of the BID were distributed to interested parties. To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was held on February 4, 1981, at Research Triangle Park, North Carolina. The hearing was open to the public, and each attendee was given an opportunity to comment on the proposed standards. The public comment period was from February 4, 1981, to April 6, 1981.

Six comment letters were received and two interested parties testified at the public hearing concerning issues relative to the proposed standards of performance for metal coil surface coating operations. The comments have been carefully considered, and, where determined appropriate by the Administrator, changes have been made in the proposed standards.

Significant Comments and Changes to the Proposed Standards

Comments on the proposed standards were received from coil coaters, coating manufacturers, and Federal and State environmental agencies. A detailed discussion of these comments and responses can be found in the promulgation BID, "Metal Coil Surface Coating Industry: Background Information for Promulgated Standards of Performance," EPA-450/3-80-035b. The summary of comments and responses in the BID serves as the basis for the revisions that have been made to the standards between proposal and promulgation. The major comments and responses are summarized in this preamble. Most of the comment letters contained multiple comments. The comments have been divided into the following areas: General, Emission Control Technology, Environmental Impact, Legal Considerations, and Test Methods and Monitoring.

Significant changes in the standards since proposal involve compliance and reporting procedures. A procedure was added to the compliance provisions by which coil coaters can compute a monthly emission limit for affected facilities that control emissions by the combined use of low-solvent technology and higher solvent coatings with a control device. Reporting of monthly performance test data has been dropped from the standards, but owners and operators are required to record and maintain these data.

General

Two commenters questioned the need for an NSPS for coil coating, stating that, for economic reasons, new coil coating lines already employ the best technology for capturing VOC emissions to burn as fuel for their ovens and, therefore, do not contribute significantly to VOC emissions nationwide. They also questioned EPA's determination that coil coating contributes significantly to air pollution.

Section 111 of the Clean Air Act requires EPA to promulgate NSPS's for all source categories that contribute significantly to harmful air pollution (Section 111(b)(1), (f)(1)). Metal coil

coating is such a category (40 CFR 60.16 (Source Category No. 22); 44 FR 49222 (August 21, 1979)).

EPA recognizes that the recent trend in the coil coating industry has been toward the use of incineration with heat recovery as an energy conserving and economically attractive operating setup. EPA appreciates the emission reduction that has been achieved by this trend; however, promulgation of an NSPS is necessary to ensure that emission reductions reflecting best demonstrated technology (BDT) are achieved.

One commenter stated that EPA regulations covering VOC emissions from metal surface coating operations are inequitable in that the emission limits proposed for coil coating are more stringent than the limits proposed for other metal coating operations.

Section 111 requires that each NSPS reflect BDT for that source category. EPA uses the same approach in evaluating BDT for different source categories. The fact that the resulting emission limits are different for different source categories is irrelevant ("*Portland Cement Association* v. *Ruckelshaus*," 486 F.2d 375, 389 (D.C. Cir. 1973); "*National Lime Association* v. *EPA*," 627 F.2d 416, 447 n. 108 (D.C. Cir. 1980).

One respondent commented that the projected growth rate for coil coating used in the background study (12 percent per year) is too high and that a rate of 8 to 10 percent is more realistic.

The 12-percent per year growth rate mentioned in the background study is a misstatement of the growth rate used in the analyses. Total coating capacity was estimated to increase by a constant amount each year over a 5-year period. The increase used was equal to 12 percent of the total industry capacity in the baseline year. This is not equal to a 12-percent annual growth rate. Stated on a percentage basis, the annual growth rates assumed were 12 percent the first year, 10.7 percent the second year, 9.8 percent the third year, 9.0 percent the fourth year, and 8.5 percent the fifth year. Over the 5-year period, the average annual growth rate was approximately 10 percent per year. This growth rate is within the range of the growth rate values suggested by the commenter, and, therefore, EPA concludes that the projections in the background study are reasonable.

One commenter stated that he was unsure whether or not the standards permit a coater to use low VOC-content coatings that have a VOC content greater than 0.28 kg/*l* of coating solids in conjunction with other lower VOC-content coatings and to comply by computing the weighted average of the VOC contents.

The standards state that an affected facility is in compliance if each coating used has a VOC content less than or equal to 0.28 kg/*l* of coating solids or if the volume weighted average VOC content of all coatings used in a calendar month is less than or equal to 0.28 kg/*l* of coating solids. A procedure for computing the volume weighted average VOC content is provided in the standards. EPA considers that the concerns of the commenter are clearly covered in the standards as written and, therefore, made no changes to the wording of the standards in response to this comment.

One public hearing participant stated that the definition of "affected facility" should be changed from each coating operation to an entire coating line to permit averaging of the two coating operations on a tandem coil coating line. The public hearing participant later submitted this in a letter.

The choice of the affected facility for these standards is based on the Agency's interpretation of Section 111 of the Act and judicial construction of its meaning. Under Section 111, the NSPS must apply to "new sources"; "source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant" (Section 111(a)(3)). Most industrial plants, however, consist of numerous pieces or groups of equipment that emit air pollutants and that might be viewed as "sources." EPA therefore uses the term "affected facility" to designate the equipment, within a particular kind of plant, chosen as the "source" covered by given standards.

In choosing the affected facility, EPA must decide which pieces or groups of equipment are the appropriate units for separate emission standards. The Agency must do this in light of the terms and purpose of Section 111. One major consideration is that the use of a narrower definition results in bringing replacement equipment under the NSPS sooner. For example, if an entire plant were designated as the affected facility, no part of an existing plant would be subject to the standards unless the plant as a whole were "modified." If, on the other hand, each piece of equipment were designated as an affected facility, then, as each piece was replaced, it would be a new source subject to the standards. Because the purpose of Section 111 is to minimize emissions by the application of BDT (considering cost, other health and environmental effects, and energy requirements) at all new and modified sources, there is a presumption that a narrower designation of the affected facility is proper. This ensures that new emission sources would be subject to the standards as they are installed. This presumption can be overcome, however, if the Agency concludes that relevant statutory factors (technical feasibility, cost, energy, and other environmental impacts) point to a broader definition.

Designation of an entire coil coating line or an entire plant as an affected facility was considered in the development of the standards. These options were rejected in favor of designating each coating operation as an affected facility. In addition to the advantages cited above, this designation also simplifies recordkeeping and enforcement activities and, in many cases, gives added flexibility to owners or operators by allowing them to use different control technologies on each coating operation without the need for complicated averaging calculations.

One commenter stated that the definition of "coil coating" is too broad and would result in the regulation of many operations not considered in the development of the standards. The commenter suggested that the definition of "coil coating" be modified to exclude operations that process only metal with thicknesses less than 0.178 mm (0.007 in.), commonly considered to be metal foil, and to exclude operations covered by the proposed NSPS for can coating.

Metal foil is defined by the Aluminum Association as metal strip with a thickness less than 0.152 mm (0.006 in.). While metal foil fits the definition of metal coil contained in the proposed standards (i.e., a continuous metal strip packaged in a roll or coil), coating formulations, application rates, emissions, and process operations for foil are quite different from those for coil. In the background study for the coil coating standards, EPA did not evaluate foil processing operations nor identify BDT. Foil processing is therefore excluded from coverage under the coil coating standards. EPA has, therefore, modified the definition of "coil coating" to exclude operations that process only metal with a thickness less than 0.152 mm (0.006 in.). This cutoff point is based on the formal definition of "foil products" that is used by the aluminum industry and that was communicated to EPA by the Aluminum Association and verified by a major producer of foil products. EPA could find no basis for selecting 0.178 mm (0.007 in.) as a point of differentiation as suggested by the commenter. The comment regarding operations covered by the coil coating standards that are also covered by the can coating standards reflects a

misinterpretation of the coverage of the standards. Coil coating of can stock is covered by the coil coating standards but is excluded from coverage by the can surface coating standards.

One public hearing participant commented that affected facilities where waterborne coatings are used for a significant portion of the time, but where solvent-borne coatings are also used, should be allowed to meet the waterborne emission limit when waterborne coatings are used and the emission limit for solvent-borne coatings and a control device for the remainder of their coating operations. This method of compliance was not allowed by the proposed standards.

The few coil coating lines that are the basis for the comment use waterborne coatings for 80 to 90 percent of their coating operations and solvent-borne coatings for the remainder of the time. Incinerators for these lines are designed for the operation only when solvent-borne coatings are used and do not have heat recovery facilities. Where such incinerators are used to reduce emissions from waterborne coatings, previous EPA analyses indicate that energy costs are very high because of the required use of a large quantity of supplemental fuel and that emission reductions are small because of the low VOC concentration in the exhaust stream. The costs per unit of emission reduction achieved become exorbitant under these circumstances. Consequently, a procedure was added to the promulgated standards by which coil coaters can calculate an emission limit each month based on the relative amounts of coatings used with and without the emission control device in operation. Operators can then comply with the calculated VOC emission limit, which will have a value between 0.14 (or a 90-percent emission reduction) and 0.28 kg/l of coating solids applied, by the combination of waterborne coatings and solvent-borne coatings with a capture system and control device.

Two approaches were considered for this provision. Under the first approach (the one incorporated), owners or operators compute an affected facility's monthly emission limit, weighted according to the coating solids applied with each control technology, and then compute actual monthly emissions to determine compliance. Under the second approach, each affected facility would be required to achieve compliance with the emission limit for low VOC-content coatings (0.28 kg/l of coating solids applied) during the portion of the month when these coatings are used, and would be required to achieve compliance with the emission limit for higher VOC-content coatings and a control device (0.14 kg/l of coating solids applied, or a 90-percent emission reduction) for the portion of the month when this system is used.

The second approach has a disadvantage relative to the first one in that the averaging time over which compliance must be demonstrated may range from 1 day (or less) to a calendar month (~30 days). The established emission limits are based on a calendar month averaging time to allow owners or operators the flexibility of using coatings with a wide range of VOC content, which is very common in the industry, and still achieve compliance on a monthly basis. If the averaging time is reduced to less than a calendar month, the data may not support the emission limits now specified. In view of this disadvantage, the first approach was incorporated into the standards. The number of installations to which this provision applies is quite small, but the provision was determined necessary to allow particular installations to continue their normal operating patterns.

Emission Control Technology

One public hearing participant and one commenter stated that the emission limit for low VOC-content coatings contained in the proposed standards, 0.28 kg/l of coating solids applied, is too stringent and would stifle research and development activities in low-solvent technology. It was further stated that the emission limit in the proposed standards was based mainly on coatings applied to architectural and building products and that the technology was not demonstrated for all applications. Particular reference was made to the coating of can-end stock as requiring a separate emission limit for low-solvent technology.

EPA believes that the data obtained during the background study adequately demonstrate the availability of waterborne coatings that will meet the proposed emission limits for most applications. EPA did not identify any low VOC-content coatings applicable for coil coating can-end stock and does not know of any now in use. The coil coating lines identified during the background study that coat can-end stock all use solvent-borne coatings. In recent discussions, several coating manufacturers stated that they are now working on the development of waterborne coatings for can-end stock and that the operating requirements for this application pose difficult problems in reducing the VOC content of the coatings. Reasons cited for these problems include the limitations established by the U.S. Food and Drug Administration on the ingredients that can be used in such coatings and the severe stress that the coatings must withstand during the can-end forming process.

Some coating manufacturers have indicated that coatings for can-end stock with a VOC content in the range of 0.4 to 0.5 kg/l of coating solids may become available within the next few years, but they do not expect the levels of VOC content to be much below this range. Emissions from such coatings would be substantially greater than emissions from other coil coating operations that use either low VOC-content coatings or higher VOC-content coatings and incineration.

Because the use of higher VOC-content coatings with a control device has been determined to be technically and economically feasible and not exorbitantly costly, EPA has not established a separate emission limit for coil coating of can-end stock.

One commenter suggested that, instead of placing stringent emission limits on coil coaters, EPA should require other metal surface coating operations to change to the use of precoated coil as a more environmentally favorable process.

EPA has identified BDT (considering cost, other health and environmental effects, and energy requirements) for each metal surface coating operation and has based the standards for each operation on that technology. The Agency believes that this procedure is consistent with the provisions of Section 111 of the Clean Air Act. This comment addresses other surface coating NSPS's and does not question or cast any doubt on the appropriateness of the coil coating NSPS; therefore, no changes have been made as a result of this comment.

One commenter suggested that the proposed standards incorrectly emphasize the installation of incinerators over the use of low-solvent technology and stated that EPA did not consider low-solvent technology in the development of the standards. The commenter further stated that the energy analysis was flawed by incorrect assumptions related to coater room exhausts.

These comments were originally submitted at the NAPCTAC meeting in June 1980 and were resubmitted along with additional comments relating to the proposed standards. Subsequent to the NAPCTAC meeting and prior to proposal, EPA made changes to the standards in response to these

comments. Several additional regulatory alternatives were evaluated, and separate provisions were added to the standards relating to the use of low-solvent technology. As proposed, the standards allow compliance by either low-solvent technology or incineration. The comment regarding consideration of low-solvent technology is therefore not applicable. Changes were also made to the provisions relating to coater rooms. As a result, the coater room exhaust is no longer required to enter the oven or control device. The energy-related comment referring to the coater room exhaust requirement also no longer applies. EPA therefore believes that an adequate response has been made to these comments and that they do not pertain to the proposed standards.

Environmental Impact

One commenter stated that the draft EIS in the proposal BID may understate final emission levels by a factor of 2 because incinerators are only capable of achieving a 90-percent reduction in VOC emissions rather than the 95-percent reduction assumed in the development of the draft EIS.

EPA believes that the emission test data presented in the proposal BID adequately demonstrate the ability of incinerators to reduce emissions by 95 percent when operated at a temperature of 760° C (1,400° F) or more. This conclusion is based on emission tests at four plants where the incinerators were operated at 760° C (1,400° F) or greater and that achieved an emission reduction of 95 percent or greater and on tests at a fifth plant where an emission reduction of 95 percent or more was achieved at temperatures below 760° C (1,400° F). These data are itemized in Chapter 4 of the proposal BID.

Legal Considerations

One commenter stated that EPA's raw data base for the proposed standards is inadequate and was not based on Reference Method 25 testing.

The standards are based on the Reference Method 25 test conducted by EPA during the background study. This test showed a 95-percent reduction across the incinerator at a temperature of 760° C (1,400° F). During that test, a continuous flame ionization detector (FID) was also used to measure VOC concentration in the incinerator outlet. The FID measurements consistently showed an emission reduction of approximately 99 percent at 760° C (1,400° F). There are other test data available that were obtained with an FID. In all these tests where the incinerator was operated at 760° C (1,400° F) or greater, the FID data consistently show an emission reduction of approximately 99 percent. These other data reinforce the validity of selecting 95 percent as the standard based on Reference Method 25 measurements.

Test Methods and Monitoring

One commenter believes that Reference Method 25 is inappropriate as the only method for compliance testing because it is virtually unavailable to any source outside the Los Angeles area, where the air pollution control district owns the equipment and performs the tests, or outside the service area of a single commercial laboratory in the Midwest capable of carrying out the technique.

There are at least five commercial laboratories in the Midwest and Northeast that are capable of performing compliance tests using Reference Method 25. Most of these laboratories are capable of supplying testing services to any region of the country.

One commenter stated that Reference Method 25 is highly laboratory oriented and requires extensive capital investment if individual sources must prepare to carry out the testing procedure. This commenter further stated that Reference Method 25 is subject to criticism for potential bias; that no suppliers exist for an instrument to handle analyses of Reference Method 25 test samples; and that, while one U.S. company has offered an instrument for sale, it has not performed reliably.

At least one company has already built a prototype instrument, which has functioned reliably as the nonmethane organic analyzer described in Reference Method 25. In addition, there are now a number of commercial laboratories capable of supplying this service.

One commenter was particularly concerned with the inability of Reference Method 25 to account for the bias that can be introduced by particulate matter, such as a flake of paint or a droplet of condensed hydrocarbon.

Although organic particulate matter could be a potential problem if it were collected in the Reference Method 25 sampling train, this can be easily prevented by including a filter in the sample train upstream of the cold traps. Using a filter is an option that is permitted in Method 25.

One commenter believes that alternative test procedures are available by which direct measurement can be made of total gaseous organic compounds with an FID. This method has adequately demonstrated the ability to monitor emissions on a real-time basis—an ability particularly important for cyclic processes or those that do not emit a uniform level of pollutants. The commenter, therefore, urged that the Agency consider substituting a more suitable method or, at least, providing for one or more alternative methods. The commenter offered to provide documentation and detail of the method considered superior and practical.

EPA is presently developing a procedure using a flame ionization analyzer that may be used as an alternative method in certain cases. It will be permitted as an alternative procedure for determining the efficiency of control devices on coating operations if the analyzer is calibrated with the solvent material used in the coating process. This procedure will be available for use as an alternative procedure as soon as it is published in the **Federal Register** in its final form and the necessary changes have been made in the appropriate regulations.

In the meantime, one can apply under § 60.8(b) for alternative method status. All that is required is that one submit a detailed written procedure for the candidate method and data comparing the candidate method and the reference method.

A comment received during the development of another surface coating standard questioned the relationship of the proposed standards and the use of Reference Method 24 for determining compliance. The commenter stated that the proposed standards should include a "cushion" that would allow for differences in test results caused by variations in the three experimentally determined parameters used to calculate VOC content of coatings.

Upon evaluation, EPA determined that this comment is equally applicable to the coil coating regulation.

EPA recognizes the potential variability in the results when Reference Method 24 is used to analyze water-based coatings. The method itself contains a procedure to account for this variability. The promulgated standards require that, when Reference Method 24 results are used to determine compliance, they be adjusted as described in Section 4.4 of Reference Method 24. This adjustment applies only to waterborne coatings.

If the actual VOC level of a waterborne coating is at or below the standard, there is less than 1 chance in 10,000 that the Reference Method 24 adjusted results will show the VOC levels to be above the standard.

One commenter challenged the use of the terms "total enclosure" and "total capture of VOC emissions" in the proposed test procedure for incinerators.

stating that there is no such thing as total enclosure and total capture.

EPA agrees that, taken literally, the terms "total enclosure" and "total capture of VOC emissions" describe conditions that are extremely difficult to achieve. Although these terms were used in a practical engineering sense, a literal interpretation could lead to both compliance and enforcement difficulties. In view of this possibility, EPA has changed the wording of the test procedure to eliminate the two terms and has replaced them with a requirement that coating station enclosures be maintained at a negative pressure to achieve good capture of VOC emissions.

Docket

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA's responses to significant comments, the contents of the docket will serve as the record in case of judicial review (Section 307(d)(7)(A)).

Miscellaneous

The effective date of this regulation is November 1, 1982. Section 111 of the Clean Air Act provides that standards of performance or revisions thereof become effective upon promulgation and apply to affected facilities, construction or modification of which was commenced after the date of proposal (January 5, 1981).

As prescribed by Section 111, establishment of standards was preceded by the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979) that these sources contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare. In accordance with Section 117 of the Act, publication of these promulgated standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

The rulemaking process that implements performance standards ensures adequate technical review and promotes participation of representatives of the industry being considered for regulation, government, and the public affected by that industry's emissions. The resultant regulation represents a balance in which Government resources are applied in a well-publicized national forum to reach a decision on a pollution emission level that allows for a dynamic economy and a healthful environment.

This regulation will be reviewed 4 years from the date of promulgation as required by the Clean Air Act. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements. The reporting requirements in this regulation will be reviewed as required under EPA's sunset policy for reporting requirements in regulations.

Section 317 of the Clean Air Act requires the Administrator to prepare an economic impact assessment for any new source standard of performance promulgated under Section 111(b) of the Act. An economic impact assessment was prepared for this regulation and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the standards to ensure that cost was carefully considered in determining BDT. The economic impact assessment is included in the BID for the proposed standards.

In addition to conducting an economic impact analysis, EPA examined the emission reduction and annualized costs—expressed in dollars per ton of pollutant removed per year—for three levels of control in typical plants. The three levels of control are an overall emission reduction of 64 percent, as recommended by the CTG; an overall emission reduction of 85 percent, as specified in many existing SIP's; and an overall emission reduction of 90 percent, as contained in the NSPS. This examination showed that an 85-percent level of control reduces emissions by 174 Mg (192 tons) per year relative to the CTG recommendation and increases annualized costs by $982/Mg ($890/ton). It also showed that the incremental emission reduction achieved by increasing the control level from 85 to 90 percent is 41 Mg (45 tons) per year at an annualized cost of $668/Mg ($609 ton). These annualized costs per ton of pollutant removed are comparable to costs and associated emission reductions in other industries that control VOC emissions.

The Paperwork Reduction Act of 1980 (Pub. L. 95-511) requires EPA to submit to the Office of Management and Budget (OMB) certain public reporting/recordkeeping requirements before proposal. The reporting/recordkeeping requirements associated with this standard have been submitted to OMB for approval, and have been assigned Control No. 2000-0660.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding a regulation to be major. The industry wide annualized costs in the fifth year after the standards would go into effect would be $5.4 million, much less than the $100 million established as the first criterion for a major regulation in the Order. The estimated price increase of less than 3 percent associated with the proposed standards would not be considered a "major increase in costs or prices" specified as the second criterion in the Order. The economic analysis of the proposed standards' effects on the industry did not indicate any significant adverse effects on competition, investment, productivity, employment, innovation, or the ability of U.S. firms to compete with foreign firms (the third criterion in the Order).

This regulation was submitted to OMB for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket referenced in the address section of this preamble.

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron. Lead. Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel, Sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: October 20, 1982.

Anne M. Gorsuch,

Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended by adding a new Subpart TT as follows:

Subpart TT—Standards of Performance for Metal Coil Surface Coating

Sec.

60.460 Applicability and designation of affected facility.

60.461 Definitions.

Sec.
60.462 Standards for volatile organic compounds.
60.463 Perfomance test and compliance provisions.
60.464 Monitoring of emissions and operations.
60.465 Reporting and recordkeeping requirements.
60.466 Test methods and procedures.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601(a)), and additional authority as noted below.

Subpart TT—Standards of Performance for Metal Coil Surface Coating

§ 60.460 Applicability and designation of affected facility.

(a) The provisions of this subpart apply to the following affected facilities in a metal coil surface coating operation: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously.

(b) This subpart applies to any facility identified in paragraph (a) of this section that commences construction, modification, or reconstruction after January 5, 1981.

§ 60.461 Definitions.

(a) All terms used in this subpart not defined below are given the same meaning as in the Act or in Subpart A of this part.

"Coating" means any organic material that is applied to the surface of metal coil.

"Coating application station" means that portion of the metal coil surface coating operation where the coating is applied to the surface of the metal coil. Included as part of the coating application station is the flashoff area between the coating application station and the curing oven.

"Curing oven" means the device that uses heat or radiation to dry or cure the coating applied to the metal coil.

"Finish coat operation" means the coating application station, curing oven, and quench station used to apply and dry or cure the final coating(s) on the surface of the metal coil. Where only a single coating is applied to the metal coil, that coating is considered a finish coat.

"Metal coil surface coating operation" means the application system used to apply an organic coating to the surface of any continuous metal strip with thickness of 0.15 millimeter (mm) (0.006 in.) or more that is packaged in a roll or coil.

"Prime coat operation" means the coating application station, curing oven, and quench station used to apply and dry or cure the initial coating(s) on the surface of the metal coil.

"Quench station" means that portion of the metal coil surface coating operation where the coated metal coil is cooled, usually by a water spray, after baking or curing.

"VOC content" means the quantity, in kilograms per liter of coating solids, of volatile organic compounds (VOC's) in a coating.

(b) All symbols used in this subpart not defined below are given the same meaning as in the Act and in Subpart A of this part.

C_a= the VOC concentration in each gas stream leaving the control device and entering the atmosphere (parts per million by volume, as carbon).
C_b= the VOC concentration on each gas stream entering the control device (parts per million by volume, as carbon).
C_f= the VOC concentration in each gas steam emitted directly to the atmosphere (parts per million by volume, as carbon).
D_c= density of each coating, as received (kilograms per liter).
D_d= density of each VOC-solvent added to coatings (kilograms per liter).
D_r= density of VOC-solvent recovered by an emission control device (kilograms per liter).
E= VOC destruction efficiency of the control device (fraction).
F= the proportion of total VOC's emitted by an affected facility that enters the control device (fraction).
G= volume-weighted average mass of VOC's in coatings consumed in a calendar month per unit volume of coating solids applied (kilograms per liter).
L_c= the volume of each coating consumed, as received (liters).
L_d= the volume of each VOC-solvent added to coatings (liters).
L_r= the volume of VOC-solvent recovered by an emission control device (liters).
L_s= the volume of coating solids consumed (liters).
M_d= the mass of VOC-solvent added to coatings (kilograms).
M_o= the mass of VOC's in coatings consumed, as received (kilograms).
M_r= the mass of VOC's recovered by an emission control device (kilograms).
N= the volume-weighted average mass of VOC emissions to the atmosphere per unit volume of coating solids applied (kilograms per liter).
Q_a= the volumetric flow rate of each gas stream leaving the control device and entering the atmosphere (dry standard cubic meters per hour).
Q_b= the volumetric flow rate of each gas stream entering the control device (dry standard cubic meters per hour).
Q_f= the volumetric flow rate of each gas steam emitted directly to the atmosphere (dry standard cubic meters per hour).
R= the overall VOC emission reduction achieved for an affected facility (fraction).
S= the calculated monthly allowable emission limit (kilograms of VOC per liter of coating solids applied).
V_s= the proportion of solids in each coating, as received (fraction by volume).
W_o= the proportion of VOC's in each coating, as received (fraction by weight).

§ 60.462 Standards for volatile organic compounds.

(a) On and after the date on which § 60.8 requires a performance test to be completed, each owner or operator subject to this subpart shall not cause to be discharged into the atmosphere more than:

(1) 0.28 kilogram VOC per liter (kg VOC/*l*) of coating solids applied for each calendar month for each affected facility that does not use an emission control device(s); or

(2) 0.14 kg VOC/*l* of coating solids applied for each calendar month for each affected facility that continuously uses an emission control device(s) operated at the most recently demonstrated overall efficiency; or

(3) 10 percent of the VOC's applied for each calendar month (90 percent emission reduction) for each affected facility that continuously uses an emission control device(s) operated at the most recently demonstrated overall efficiency; or

(4) a value between 0.14 (or a 90-percent emission reduction) and 0.28 kg VOC/*l* of coating solids applied for each calendar month for each affected facility that intermittently uses an emission control device operated at the most recently demonstrated overall efficiency.

§ 60.463 Performance test and compliance provisions.

(a) Sections 60.8 (d) and (f) do not apply to the performance test.

(b) The owner or operator of an affected facility shall conduct an initial performance test as required under § 60.8(a) and thereafter a performance test for each calendar month for each affected facility according to the procedures in this section.

(c) The owner or operator shall use the following procedures for determining monthly volume-weighted average emissions of VOC's in kg/*l* of coating solids applied.

(1) An owner or operator shall use the following procedures for each affected facility that does not use a capture system and control device to comply with the emission limit specified under § 60.462(a)(1). The owner or operator shall determine the composition of the coatings by formulation data supplied by the manufacturer of the coating or by an analysis of each coating, as received,

using Reference Method 24. The Administrator may require the owner or operator who uses formulation data supplied by the manufacturer of the coatings to determine the VOC content of coatings using Reference Method 24 or an equivalent or alternative method. The owner or operator shall determine the volume of coating and the mass of VOC-solvent added to coatings from company records on a monthly basis. If a common coating distribution system serves more than one affected facility or serves both affected and existing facilities, the owner or operator shall estimate the volume of coating used at each affected facility by using the average dry weight of coating and the surface area coated by each affected and existing facility or by other procedures acceptable to the Administrator.

(i) Calculate the volume-weighted average of the total mass of VOC's consumed per unit volume of coating solids applied during each calendar month for each affected facility, except as provided under § 60.463(c)(1)(iv). The weighted average of the total mass of VOC's used per unit volume of coating solids applied each calendar month is determined by the following procedures.

(A) Calculate the mass of VOC's used (Mo+Md) during each calendar month for each affected facility by the following equation:

$$M_o+M_d=\sum_{i=1}^{n} L_{ci}D_{ci}W_{oi}+\sum_{j=1}^{m} L_{dj}D_{dj}$$

($\Sigma L_{dj}D_{dj}$ will be 0 if no VOC solvent is added to the coatings, as received)

where

n is the number of different coatings used during the calendar month, and

m is the number of different VOC solvents added to coatings used during the calendar month.

(B) Calculate the total volume of coating solids used (L_s) in each calendar month for each affected facility by the following equation:

$$L_s=\sum_{i=1}^{n} V_{si}L_{ci}$$

where

n is the number of different coatings used during the calendar month.

(C) Calculate the volume-weighted average mass of VOC's used per unit volume of coating solids applied (G) during the calendar month for each affected facility by the following equation:

$$G=\frac{M_o+M_d}{L_s}$$

(ii) Calculate the volume-weighted average of VOC emissions to the atmosphere (N) during the calendar month for each affected facility by the following equation:

N=G

(iii) Where the volume-weighted average mass of VOC's discharged to the atmosphere per unit volume of coating solids applied (N) is equal to or less than 0.28 kg/*l*, the affected facility is in compliance.

(iv) If each individual coating used by an affected facility has a VOC content, as received, that is equal to or less than 0.28 kg/*l* of coating solids, the affected facility is in compliance provided no VOC's are added to the coatings during distribution or application.

(2) An owner or operator shall use the following procedures for each affected facility that continuously uses a capture system and a control device that destroys VOC's (e.g., incinerator) to comply with the emission limit specified under § 60.462(a) (2) or (3).

(i) Determine the overall reduction efficiency (R) for the capture system and control device.

For the initial performance test, the overall reduction efficiency (R) shall be determined as prescribed in paragraphs (c)(2)(i) (A), (B), and (C) of this section. In subsequent months, the owner or operator may use the most recently determined overall reduction efficiency (R) for the performance test, providing control device and capture system operating conditions have not changed. The procedure in paragraphs (c)(2)(i) (A), (B), and (C) of this section, shall be repeated when directed by the Administrator or when the owner or operator elects to operate the control device or capture system at conditions different from the initial performance test.

(A) Determine the fraction (F) of total VOC's emitted by an affected facility that enters the control device using the following equation:

$$F=\frac{\sum_{i=1}^{l} C_{bi}Q_{bi}}{\sum_{i=1}^{l} C_{bi}Q_{bi}+\sum_{i=1}^{p} C_{fi}Q_{fi}}$$

where

l is the number of gas streams entering the control device, and

p is the number of gas streams emitted directly to the atmosphere.

(B) Determine the destruction efficiency of the control device (E) using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the device by the following equation:

$$E=\frac{\sum_{i=1}^{n} Q_{bi}C_{bi}-\sum_{j=1}^{m} Q_{aj}C_{aj}}{\sum_{i=1}^{n} Q_{bi}C_{bi}}$$

where.

n is the number of gas streams entering the control device, and

m is the number of gas streams leaving the control device and entering the atmosphere.

The owner or operator of the affected facility shall construct the VOC emission reduction system so that all volumetric flow rates and total VOC emissions can be accurately determined by the applicable test methods and procedures specified in § 60.466. The owner or operator of the affected facility shall construct a temporary enclosure around the coating applicator and flashoff area during the performance test for the purpose of evaluating the capture efficiency of the system. The enclosure must be maintained at a negative pressure to ensure that all VOC emissions are measurable. If a permanent enclosure exists in the affected facility prior to the performance test and the Administrator is satisfied that the enclosure is adequately containing VOC emissions, no additional enclosure is required for the performance test.

(C) Determine overall reduction efficiency (R) using the following equation:

R=EF

If the overall reduction efficiency (R) is equal to or greater than 0.90, the affected facility is in compliance and no further computations are necessary. If the overall reduction efficiency (R) is less than 0.90, the average total VOC emissions to the atmosphere per unit volume of coating solids applied (N) shall be computed as follows.

(ii) Calculate the volume-weighted average of the total mass of VOC's per unit volume of coating solids applied (G) during each calendar month for each

affected facility using equations in paragraphs (c)(1)(i) (A), (B), and (C) of this section.

(iii) Calculate the volume-weighted average of VOC emissions to the atmosphere (N) during each calendar month by the following equation:

$$N = G(1-R)$$

(iv) If the volume-weighted average mass of VOC's emitted to the atmosphere for each calendar month (N) is less than or equal to 0.14 kg/l of coating solids applied, the affected facility is in compliance. Each monthly calculation is a performance test.

(3) An owner or operator shall use the following procedure for each affected facility that uses a control device that recovers the VOC's (e.g., carbon adsorber) to comply with the applicable emission limit specified under § 60.462(a) (2) or (3).

(i) Calculate the total mass of VOC's consumed (M_o+M_d) during each calendar month for each affected facility using equation (1).

(ii) Calculate the total mass of VOC's recovered (M_r) during each calendar month using the following equation:

$$M_r = L_r D_r$$

(iii) Calculate the overall reduction efficiency of the control device (R) for each calendar month for each affected facility using the following equation:

$$R = \frac{M_r}{M_o + M_d}$$

If the overall reduction efficiency (R) is equal to or greater than 0.90, the affected facility is in compliance and no further computation are necessary. If the overall reduction efficiency (R) is less than 0.90, the average total VOC emissions to the atmosphere per unit volume of coating solids applied (N) must be computed as follows.

(iv) Calculate the total volume of coating solids consumed (L_s) and the volume-weighted average of the total mass of VOC's per unit volume of coating solids applied (G) during each calendar month for each affected facility using equations in paragraphs (c)(1)(i) (B) and (C) of this section.

(v) Calculate the volume-weighted average mass of VOC's emitted to the atmosphere (N) for each calendar month for each affected facility using equation (8).

(vi) If the weighted average mass of VOC's emitted to the atmosphere for each calendar month (N) is less than or equal to 0.14 kg/l of coating solids applied, the affected facility is in compliance. Each monthly calculation is a performance test.

(4) An owner or operator shall use the following procedures for each affected facility that intermittently uses a capture system and a control device to comply with the emission limit specified in § 60.462(a)(4).

(i) Calculate the total volume of coating solids applied without the control device in operation (L_{sn}) during each calendar month for each affected facility using the following equation:

$$L_{sn} = \sum_{i=1}^{n} V_{si} L_{ci}$$

where

n is the number of coatings used during the calendar month without the control device in operation.

(ii) Calculate the total volume of coating solids applied with the control device in operation (L_{sc}) during each calendar month for each affected facility using the following equation:

$$L_{sc} = \sum_{i=1}^{m} V_{si} L_{ci}$$

where

m is the number of coatings used during the calendar month with the control device in operation.

(iii) Calculate the mass of VOC's used without the control device in operation ($M_{on}+M_{dn}$) during each calendar month for each affected facility using the following equation:

$$M_{on}+M_{dn} = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}$$

where

n is the number of different coatings used without the control device in operation during the calendar month, and

m is the number of different VOC-solvents added to coatings used without the control device in operation during the calendar month.

(iv) Calculate the volume-weighted average of the total mass of VOC's consumed per unit volume of coating solids applied without the control device in operation (G_n) during each calendar month for each affected facility using the following equation:

$$G_n = \frac{M_{on}+M_{dn}}{L_{sn}}$$

(v) Calculate the mass of VOC's used with the control device in operation ($M_{oc}+M_{dc}$) during each calendar month for each affected facility using the following equation:

$$M_{oc}+M_{dc} = \sum_{i=1}^{n} L_{ci} D_{ci} W_{oi} + \sum_{j=1}^{m} L_{dj} D_{dj}$$

where

n is the number of different coatings used with the control device in operation during the calendar month, and

m is the number of different VOC-solvents added to coatings used with the control device in operation during the calendar month.

(vi) Calculate the volume-weighted average of the total mass of VOC's used per unit volume of coating solids applied with the control device in operation (G_c) during each calendar month for each affected facility using the following equation:

$$G_c = \frac{M_{oc}+M_{dc}}{L_{sc}}$$

(vii) Determine the overall reduction efficiency (R) for the capture system and control device using the procedures in § 60.463(c)(2)(i) (A), (B), and (C) or § 60.463(c)(3) (i), (ii), and (iii), which is applicable.

(viii) Calculate the volume-weighted average of VOC emissions to the atmosphere (N) during each calendar month for each affected facility using the following equation:

$$N=\frac{G_n L_{sn}+G_c L_{sc}(1-R)}{L_{sn}+L_{sc}}$$

(ix) Calculate the emission limit(s) for each calendar month for each affected facility using the following equation:

$$S=\frac{0.28\,L_{sn}+0.1\,G_c L_{sc}}{L_{sn}+L_{sc}} \text{ or } \frac{0.28\,L_{sn}+0.14\,L_{sc}}{L_{sn}+L_{sc}}$$

which is greater.

(x) If the volume-weighted average mass of VOC's emitted to the atmosphere for each calendar month (N) is less than or equal to the calculated emission limit (S) for the calendar month, the affected facility is in compliance. Each monthly calculation is a performance test.

§ 60.464 Monitoring of emissions and operations.

(a) Where compliance with the numerical limit specified in § 60.462(a)(1) or (2) is achieved through the use of low VOC-content coatings without the use of emission control devices or through the use of higher VOC-content coatings in conjunction with emission control devices, the owner or operator shall compute and record the average VOC content of coatings applied during each calendar month for each affected facility, according to the equations provided in § 60.463.

(b) Where compliance with the limit specified in § 60.462(a)(4) is achieved through the intermittent use of emission control devices, the owner or operator shall compute and record for each affected facility the average VOC content of coatings applied during each calendar month according to the equations provided in § 60.463.

(c) If thermal incineration is used, each owner or operator subject to the provisions of this subpart shall install, calibrate, operate, and maintain a device that continuously records the combustion temperature of any effluent gases incinerated to achieve compliance with § 60.462(a) (2), (3), or (4). This device shall have an accuracy of ±2.5° or ±0.75 percent of the temperature being measured expressed in degrees Celsius, which is greater. Each owner or operator shall also record all periods (during actual coating operations) in excess of 3 hours during which the average temperature in any thermal incinerator used to control emissions from an affected facility remains more than 28° C (50° F) below the temperature at which compliance with § 60.462(a) (2), (3), or (4) was demonstrated during the most recent measurement of incinerator efficiency required by § 60.8. The records required by § 60.7 shall identify each such occurrence and its duration. If catalytic incineration is used, the owner or operator shall install, calibrate, operate, and maintain a device to monitor and record continuously the gas temperature both upstream and downstream of the incinerator catalyst bed. This device shall have an accuracy of ±2.5° C or ±0.75 percent of the temperature being measured expressed in degrees Celsius, whichever is greater. During coating operations, the owner or operator shall record all periods in excess of 3 hours where the average difference between the temperature upstream and downstream of the incinerator catalyst bed remains below 80 percent of the temperature difference at which compliance was demonstrated during the most recent measurement of incinerator efficiency or when the inlet temperature falls more than 28° C (50° F) below the temperature at which compliance with § 60.462(a) (2), (3), or (4) was demonstrated during the most recent measurement of incinerator efficiency required by § 60.8. The records required by § 60.7 shall identify each such occurrence and its duration.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

§ 60.465 Reporting and recordkeeping requirements.

(a) Where compliance with the numerical limit specified in § 60.462(a) (1, (2), or (4) is achieved through the use of low VOC-content coatings without emission control devices or through the use of higher VOC-content coatings in conjunction with emission control devices, each owner or operator subject to the provisions of this subpart shall include in the initial compliance report required by § 60.8 the weighted average of the VOC content of coatings used during a period of one calendar month for each affected facility. Where compliance with § 60.462(a)(4) is achieved through the intermittent use of a control device, reports shall include separate values of the weighted average VOC content of coatings used with and without the control device in operation.

(b) Where compliance with § 60.462(a) (2), (3), or (4) is achieved through the use of an emission control device that destroys VOC's, each owner or operator subject to the provisions of this subpart shall include the following data in the initial compliance report required by § 60.8:

(1) The overall VOC destruction rate used to attain compliance with § 60.462(a) (2), (3), or (4) and the calculated emission limit used to attain compliance with § 60.462(a)(4); and

(2) The combustion temperature of the thermal incinerator or the gas temperature, both upstream and downstream of the incinerator catalyst bed, used to attain compliance with § 60.462(a) (2), (3), or (4).

(c) Each owner or operator subject to the provisions of this subpart shall maintain at the source, for a period of at least 2 years, records of all data and calculations used to determine monthly VOC emissions from each affected facility and to determine the monthly emission limit, where applicable. Where compliance is achieved through the use of thermal incineration, each owner or operator shall maintain, at the source, daily records of the incinerator combustion temperature. If catalytic incineration is used, the owner or operator shall maintain at the source daily records of the gas temperature, both upstream and downstream of the incinerator catalyst bed.

§ 60.466 Test methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.462 as follows:

(1) Reference Method 24, or data provided by the formulator of the coating for determining the VOC content of each coating as applied to the surface of the metal coil. In the event of a dispute, Reference Method 24 shall be the reference method. When VOC content of waterborne coatings, determined by Reference Method 24, is used to determine compliance of affected facilities, the results of the Reference Method 24 analysis shall be adjusted as described in Section 4.4 of Reference Method 24;

(2) Reference Method 25, both for measuring the VOC concentration in each gas stream entering and leaving the control device on each stack equipped with an emission control device and for measuring the VOC concentration in each gas stream emitted directly to the atmosphere;

(3) Method 1 for sample and velocity traverses;

(4) Method 2 for velocity and volumetric flow rate;

(5) Method 3 for gas analysis; and

(6) Method 4 for stack gas moisture.

(b) For Method 24, the coating sample must be at least a 1-liter sample taken at a point where the sample will be representative of the coating as applied to the surface of the metal coil.

(c) For Method 25, the sampling time is to be at least 60 minutes, and the minimum sample volume is to be at least 0.003 dry standard cubic meter (DSCM); however, shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(d) The Administrator will approve testing of representative stacks on a case-by-case basis if the owner or operator can demonstrate to the satisfaction of the Administrator that testing of representative stacks yields results comparable to those that would be obtained by testing all stacks.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414))

[FR Doc. 82-29693 Filed 10-29-82; 8:45 am]

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federal register

Monday
November 1, 1982

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Pacific Coast Groundfish Fishery

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 21026-218]

Pacific Coast Groundfish Fishery

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

ACTION: Emergency interim rule and request for comment.

SUMMARY: NOAA issues emergency regulations to amend on an interim basis the regulations governing fishing for groundfish in the Pacific Ocean off the coasts of Washington, Oregon, and California. This rule reduces the level of fishing for sablefish in the Pacific Coast groundfish fishery by imposition of a trip limit of 3,000 pounds per vessel per trip possibly for the remainder of the year. These regulations are intended to prevent overfishing of the sablefish resource. Comments on the reduction are requested.

EFFECTIVE DATE: 2400 hours PDT, October 27, 1982 until 2400 hours PST, December 11, 1982, or until rescinded, modified, superseded, or extended. Comments should be received November 22, 1982.

ADDRESS: Send comments to H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115. Aggregate data upon which this notice is based are available for public inspection in the office of the Director during working hours.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206-527-6150.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved on January 4, 1982, and implementing final regulations were published on October 5, 1982 (47 FR 43964). Section 663.21(b) requires that when the Secretary of Commerce (Secretary) determines that the numerical optimum yield (OY) for any species will be reached, he will publish a notice of closure prohibiting retention or landing of that species when taken in the fishery conservation zone (FCZ). Accuracy of the current sablefish OY (13,400 mt) presently specified in the FMP has been questioned and fishermen have requested that it be reviewed and, if inaccurate, modified for the following reasons: (1) The harvest of sablefish in 1980 and 1981 was about 8,000 tons less than the OY for the two years, therefore possibly providing additional harvestable fish in 1982; (2) OY is based not only on biological factors, but includes consideration of social and economic factors as well; (3) Federal regulations provide for modification of OY for social, economic or biological reasons where there is no evidence that biological stress to either sablefish or any other species would result; (4) it would be premature to completely close the fishery before the accuracy of the OY is verified; and (5) premature closure of the fishery would result in economic hardship to many fishermen.

At its September meeting in Portland, Oregon, the Pacific Fishery Management Council (Council), received comments from its Groundfish Management Team (Team) and the public on the status of the sablefish stock and instructed the team to review further the OY and acceptable biological catch (ABC) estimates for sablefish to determine if there is a basis for increasing these numbers. Section 663.22(b) provides the Secretary the authority, on the recommendation of the Council, to increase numerical OYs by as much as 30 percent in any single year, if it would not cause biological stress to the stock and would promote full utilization. The Council will consider the term's findings and further public comment at its November 17-18, 1982 meeting.

To insure that the fishery is managed on the basis of the best scientific information available as required by section 301(a)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and to prevent the premature closure of the fishery, the Secretary, after considering the recommendations of the Council and the State fishery directors of Washington, Oregon, and California, has decided to await the Council's report and recommendations and further public comment, in order to determine whether the current OY should be increased or whether the current estimate is accurate. In the meantime, to provide a biological safety measure to ensure that biological stress or temporary overfishing of the sablefish stock does not occur before a hearing is held and the Council's report and recommendations are received, the Secretary is imposing a trip limit of 3,000 pounds per vessel. The 3,000 pound trip limit, determined according to § 663.27(b)(3), is based on the average proportion of sablefish landed from mixed groundfish trawls containing sablefish in 1982.

This trip limit will go into effect on October 27 with a 48-hour "grace period" to allow fishermen a reasonable length of time to became aware of this trip limit, complete fishing trips, and off-load catches made prior to October 27. This trip limit is effective for 45 days under authority of section 305(e) of the Magnuson Act, and may be extended (but not past 2400 PST December 31, 1982), modified, or terminated earlier if conditions warrant.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that these emergency regulations are necessary and appropriate for conservation and management of the groundfish resource off the costs of Washington, Oregon, and California and that they are consistent with the Magnuson Act, including the national standards, and other applicable law.

Recognizing the critical need for these interim regulations for the 1982 groundfish fisheries, the Assistant Administrator has determined that an emergency exists; these regulations are issued under authority of section 305(e) of the Magnuson Act to amend the existing regulations. He has determined that continued effect of the regulations now in force would not provide adequate protection of the resource and would cause unnecessary economic hardships for fishermen and coastal communities; therefore, it is necessary to promulgate these emergency regulations immediately.

The Assistant Administrator finds for good cause that the reasons which justify promulgating emergency regulations under section 305(e) of the Magnuson Act also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of, these emergency regulations, under the provisions of section 553 (b) and (d) of the Admininstrative Procedure Act, 5 U.S.C. 551 *et seq.*

The NOAA Administrator has determined that the rules are not "major" under Executive Order (E.O.) 12291 requiring a regulatory impact analysis. A relatively small number of fisherman conducting a directed fishery for sablefish will be adversely affected, as they would be if the directed fishery for sablefish was closed.

The NOAA Administrator has determined that the emergency which justifies the promulgation of emergency regulations under section 305(e) of the Magnuson Act also constitutes an emergency situation under section 8(a)(1) of E.O. 12291. Because it is

imperative to implement these rules immediately, it is impracticable to comply with section 3(c)(3), which requires that NOAA transmits to the Director of the Office of Management and Budget (OMB) a copy of every nonmajor rule, at least 10 days prior to publication. However, a copy of these emergency regulations has been transmitted to the Director of OMB.

The Regulatory flexibility Act does not apply to these emergency rules, which will be published without prior opportunity for public comment.

This action was within the range of alternatives analyzed in the FEIS for the 1982 Pacific Groundfish. Therefore, a supplement is not required. The 1982 FEIS is on file with the Environmental Protection Agency.

These emergency regulations do not entail any Federal collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3507.

List of Subjects in 50 CFR Part 663

Fish, Fisheries, Fishing.

Dated: October 27, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

PART 663—PACIFIC COAST GROUNDFISH FISHERY

For reasons set out in the preamble, 50 CFR Part 663 is amended as follows:

1. The authority citation for Part 663 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Part 663 is amended by revising § 663.27(b)(3), as printed in the final rule published on October 5, 1982 (47 FR 43964), to read as follows:

§ 663.27 Catch restrictions.

* * * * *

(b) * * *

(3) *Sablefish.* (i) When it is determined that 95 percent of the OY will be reached for that portion of the Monterey subarea between 37°00′ N. latitude and 36°30′ N. latitude, or for the fishery management area as a whole, the Secretary will publish a notice of closure in accordance with § 663.23 establishing a trip limit for the area. The trip limit will be based on the most recent data available for the season and will equal the average percentage of sablefish in all trawl landings containing sablefish in the area (37°00′ N. latitude to 36°30′ N. latitude, or the fishery management area as a whole), but in no event will the trip limit exceed 30 percent by weight of all fish on board.

(ii) From 2400 hours PDT, October 27, 1982, until 2400 hours PST, December 11, 1982, the trip limit for sablefish is 3,000 pounds per vessel per fishing trip.

[FR Doc. 82-30012 Filed 10-27-82; 4:54 pm]

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FEDERAL REGISTER PAGES AND DATES, NOVEMBER

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—NOVEMBER 1982

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (see 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
November 1	November 16	December 1	December 16	January 3	January 31
November 2	November 17	December 2	December 17	January 3	January 31
November 3	November 18	December 3	December 20	January 3	February 1
November 4	November 19	December 6	December 20	January 3	February 2
November 5	November 22	December 6	December 20	January 4	February 3
November 8	November 23	December 8	December 23	January 7	February 7
November 9	November 24	December 9	December 27	January 10	February 7
November 10	November 26	December 10	December 27	January 10	February 8
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November 15	November 30	December 15	December 30	January 14	February 14
November 16	December 1	December 16	January 3	January 17	February 14
November 17	December 2	December 17	January 3	January 17	February 15
November 18	December 3	December 20	January 3	January 17	February 16
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November 22	December 7	December 22	January 6	January 21	February 22
November 23	December 8	December 23	January 7	January 24	February 22
November 24	December 9	December 27	January 10	January 24	February 22
November 26	December 13	December 27	January 10	January 25	February 24
November 29	December 14	December 29	January 13	January 28	February 28
November 30	December 15	December 30	January 14	January 31	February 28

CFR CHECKLIST; 1981-82 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1981/82. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

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1-199	6.50
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13	8.00
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15 Parts:	
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CFR Index	9.50

CFR Unit (Rev. as of Apr. 1, 1982):

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240-end	8.00
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20 Parts:	
1-399	6.50
400-499	8.00
500-end	8.50
21 Parts:	
1-99	7.00
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170-199	7.50
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300-499	8.50
500-599	8.00
600-799	6.00
800-1299	7.00
1300-end	5.50
22	9.00
23	7.50
24 Parts:	
0-199	7.00
200-499	8.50
500-799	7.00
800-1699	7.50
1700-end	7.00
26 Parts:	
1 (§§ 1.0-1.169)	9.00
1 (§§ 1.170-1.300)	7.50
1 (§§ 1.301-1.400)	7.00
1 (§§ 1.401-1.500)	7.50
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1 (§§ 1.641-1.850)	7.50
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List of Public Laws

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Last Listing October 28, 1982