

stringent population factors. See, Eldorado, Arkansas, *supra*, and Naples, Florida, BC Docket No. 80-415, 46 FR 25461, published May 7, 1981. We are also influenced by the on-going emphasis for additional FM stations in Bend despite our earlier denial to that community. Such insistence implies to us that the proponents believe that additional stations can endure despite the alleged competitive nature of the market.

17. As the parties recognize, the population criteria are flexible guidelines and not immutable standards. Petitioners have shown that Bend is expected to grow, and that as the hub of the County, it is also the regional retail sales center and the location of numerous state and Federal offices.

18. In the early 1960's the Commission reviewed the availability of channels and made channel assignments to communities with populations in excess of 25,000 people, even without stated expressions of interest. At the same time, it dealt separately with several petitions requesting assignments to specific communities of less than 25,000 people. By limiting unrequested assignments to communities with more than 25,000 people, the Commission maintained flexibility in the Table, permitting later assignments to smaller communities where interest developed. Here, interests have been expressed in two new assignments which could provide Bend with additional diverse local outlets of self-expression designed to meet its special needs, interests and issues.

19. We note that the preclusive effect of a third and fourth assignment to Bend upon the neighboring communities would be negligible since alternate channels are available for assignment to the relevant precluded communities. See Poplar Bluff, Missouri (BC Docket No. 78-188, 45 FR 21636, published April 2, 1980; and North Platte, Nebraska, (BC Docket No. 79-114), 44 FR 67866, published November 27, 1979. In any event, no interest was submitted herein for an FM channel in any of the listed precluded communities. Where an interest has been shown for an assignment, to allow the allocation to remain fallow on the chance of some future expression of interest elsewhere would be to "artificially restrain" the provision of broadcast service to the detriment of the public interest. Therefore, we find that the population guidelines are not an obstacle to the proposed assignments.

20. The alleged economic impact these proposed assignments could have on the existing Bend stations is a matter which can best be assessed at the application

stage where it would be feasible to investigate and consider the merits of various allegations, rather than in a rule making proceeding. See, Rome, New York 42 R.R. 2d 618 (1978); Healdsburg, California, 52 F.C.C. 2d 244 (1975); Beaverton, Michigan, 44 R.R. 2d 55 (1978).

21. In view of the foregoing considerations, we believe that the public interest would be served by the assignment of Channels 248 and 289 to Bend, Oregon, as that community's third and fourth FM assignments.

22. Accordingly, it is ordered, That effective February 16, 1982, § 73.202(b) of the Commission's rules, the FM Table of Assignments, is amended as follows:

City	Channel Nos.
Bend, Oregon	231, 248, 264, 289

23. Authority for the action taken herein is contained in sections 4(i), 5(d)(1), 303 (g) and (r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

24. For further information concerning this proceeding, contact Nancy V. Joyner, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; (42 U.S.C. 154, 303))

Federal Communications Commission.

Martin Blumenthal,  
Acting Chief, Policy and Rules Division,  
Broadcast Bureau.

[FR Doc. 81-3703 Filed 12-28-81; 9:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

[Twenty-ninth Rev. S. O. 1473]

#### Various Railroads Authorized To Use Tracks and/or Facilities of Chicago, Rock Island & Pacific Railroad Co., Debtor (William M. Gibbons, Trustee)

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Twenty-ninth Revised Service Order No. 1473.

**SUMMARY:** Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes various railroads to provide interim service over the Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), and to use such

tracks and facilities as are necessary for operations. This order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

**EFFECTIVE:** 12:01 a.m., December 26, 1981, and continuing in effect until 11:59 p.m., December 31, 1981, unless otherwise modified, amended or vacated by order of this Commission.

**FOR FURTHER INFORMATION CONTACT:** M. F. Clemens, Jr., (202) 275-7840.

#### SUPPLEMENTARY INFORMATION:

Decided: December 22, 1981.

Pursuant to Section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254 (RITEA), the Commission is authorizing various railroads to provide interim service over Chicago, Rock Island and Pacific Railroad Company, Debtor (William M. Gibbons, Trustee), (RI) and to use such tracks and facilities as are necessary for those operations.

In view of the urgent need for continued service over RI's lines pending the implementation of long-range solutions, this order permits carriers to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

Appendix A, to the previous order, is revised by adding to Item 23, the authority for Kyle Railroad Company (Kyle) to operate between Belleville and Phillipsburg, Kansas, a distance of approximately 92.8 miles. Pursuant to this authority, Kyle will establish rates and necessary interchanges to permit the routing of traffic via the Atchison, Topeka and Santa Fe Railway (ATSF) at Courtland, Kansas. This should provide shippers at Phillipsburg with a previously unavailable routing option. At present, Burlington Northern Railroad (BN) will be responsible to switch all industries located at Phillipsburg and arrange with Kyle on a mutually agreed upon point at which interchange of eastbound traffic can occur.

Appendix B of Thirteenth Revised Service Order No. 1473 is unchanged, and becomes Appendix B of this order.

It is the opinion of the Commission that an emergency exists requiring that the railroads listed in the attached appendices be authorized to conduct operations using RI tracks and/or facilities; that notice and public procedure are impracticable and contrary to the public interest; and good cause exists for making this order effective upon less than thirty days' notice.

*It is ordered,*

§ 1033.1473 Twenty-ninth Revised Service Order No. 1473.

(a) Various railroads are authorized to use tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company (RI) debtor (William M. Gibbons, Trustee), as listed in Appendix A to this order, in order to provide interim service over the RI; and as listed in Appendix B to this order, to provide for continuation of joint or common use facility agreements essential to the operations of these carriers as previously authorized in Service Order No. 1435.

(b) The Trustee shall permit the affected carriers to enter upon the property of the RI to conduct service as authorized in paragraph (a) of this section.

(c) The Trustee will be compensated on terms established between the Trustee and the affected carrier(s); or upon failure of the parties to agree as hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by Section 122(a) Pub. L. 96-254.

(d) Interim operators, authorized in Appendix A to this order, shall, within fifteen (15) days of its effective date, notify the Railroad Service Board of the date on which interim operations were commenced or the expected commencement date of those operations. Termination of interim operations will require at least thirty (30) days notice to the Railroad Service Board and affected shippers.

(e) Interim operators, authorized in Appendix A to this order, shall, within thirty days of commencing operations under authority of this order, notify the RI Trustee of those facilities they believe are necessary or reasonably related to the authorized operations.

(f) During the period of the operations over the RI lines authorized in paragraph (a) of this section, operators shall be responsible for preserving the value of the lines, associated with each operation, to the RI estate, and for performing necessary maintenance to avoid undue deterioration of lines and associated facilities.

(1) In those instances where more than one railroad is involved in the joint use of RI tracks and/or facilities described in Appendix B, one of the affected carriers will perform the maintenance and have supervision over the operations in behalf of all the carriers as may be agreed to among themselves, or in the absence of such agreement, as may be decided by the Commission.

(g) Any operational or other difficulty associated with the authorized operations shall be resolved through

agreement between the affected parties or, failing agreement, by the Commission's Railroad Service Board.

(h) Any rehabilitation, operational, or other costs related to authorized operations shall be the sole responsibility of the interim operator incurring the costs, and shall not in any way be deemed a liability of the United States Government.

(i) Application. The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(j) Rate applicable. Inasmuch as the operations described in Appendix A by interim operators over tracks previously operated by the RI are deemed to be due to carrier's disability, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via RI, until tariffs naming rates and routes specifically applicable become effective.

(1) The operator under this temporary authority will not be required to protect transit rate obligations incurred by the RI or the directed carrier, Kansas City Terminal Railway Company, on transit balances currently held in storage.

(k) In transporting traffic over these lines, all interim operators described in Appendix A shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to that traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between the carriers; or upon failure of the carriers to so agree, the divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(l) To the maximum extent practicable, carriers providing service under this order shall use the employees who normally would have performed the work in connection with traffic moving over the lines subject to this Order.

(m) Effective date. This order shall become effective at 12:01 a.m., December 28, 1981.

(n) Expiration date. The provisions of this order shall expire at 11:59 p.m., December 31, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

This action is taken under the authority of 49 U.S.C. 10304, 10305, and Section 122, Pub. L. 96-254.

This order shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms

of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.  
Agatha L. Mergenovich,  
Secretary.

Appendix A—RI Lines Authorized to be Operated by Interim Operators

1. Louisiana and Arkansas Railway Company (LA):

A. Tracks one through six of the Chicago, Rock Island and Pacific Railroad Company's (RI) Cadiz yard in Dallas, Texas, commencing at the point of connection of RI track six with the tracks of The Atchison, Topeka and Santa Fe Railway Company (ATSF) in the southwest quadrant of the crossing of the ATSF and the Missouri-Kansas-Texas Railroad Company (MKT) at interlocking station No. 19.

2. Peoria and Pekin Union Railway Company (PPU): All Peoria Terminal Railroad property on the east side of the Illinois River, located within the city limits of Pekin, Illinois

3. Union Pacific Railroad Company (UP):

A. Beatrice, Nebraska  
B. Approximately 36.5 miles of trackage extending from Fairbury, Nebraska, to RI Milepost 581.5 north of Hallam, Nebraska

4. Toledo, Peoria and Western Railroad Company (TPW):

A. Peoria Terminal Company trackage from Hollis to Iowa Junction, Illinois

5. Chicago and North Western Transportation Company (CNW):

A. from Minneapolis-St. Paul, Minnesota, to Kansas City, Missouri

B. from Rock Junction (milepost 5.2) to Inver Grove, Minnesota (milepost 0)

C. from Inver Grove (milepost 344.7) to Northwood, Minnesota

D. from Clear Lake Junction (milepost 191.1) to Short Line Junction, Iowa (milepost 73.8)

E. from Short Line Junction Yard (milepost 354) to West Des Moines, Iowa (milepost 364)

F. from Short Line Junction (milepost 73.8) to Carlisle, Iowa (milepost 64.7)

G. from Carlisle (milepost 64.7) to Allerton, Iowa (milepost 0)

H. from Allerton, Iowa (milepost 363) to Trenton, Missouri (milepost 415.9)

I. from Trenton (milepost 415.9) to Air Line Junction, Missouri (milepost 502.2)

J. from Iowa Falls (milepost 97.4) to Estherville, Iowa (milepost 206.9)

K. from Bricelyn, Minnesota (milepost 57.7) to Ocheyedan, Iowa (milepost 246.7)

L. from Palmer (milepost 454.5) to Royal, Iowa (milepost 502)

M. from Dows (milepost 113.4) to Forest City, Iowa (milepost 158.2)

N. from Cedar Rapids (milepost 100.5) to Cedar River Bridge, Iowa (milepost 96.2) and

to serve all industry formerly served by the RI at Cedar Rapids

O. from Newton (milepost 320.5) to Earlham, Iowa (milepost 388.6)

P. Sibley, Iowa

Q. Worthington, Minnesota

R. Altoona to Pella, Iowa

S. Carlisle to Indianola, Iowa

T. Omaha, Nebraska (between milepost 502 to milepost 504)

U. Earlham (milepost 388.6) to Dexter, Iowa (milepost 393.5)

V. Peoria Terminal Company trackage from Iowa Junction (RI milepost 164.32/PTC milepost .91) through Hollis, Illinois to the Illinois River bridge (milepost 7.40)

6. *Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW):*

A. from West Davenport, through and including Muscatine, to Fruitland, Iowa, including the Iowa-Illinois Gas and Electric Company near Fruitland

B. Washington, Iowa

C. from Newport, to a point near the east bank of the Mississippi River, sufficient to serve Northwest Oil Refinery, at St. Paul Park, Minnesota

D. from Davenport to Iowa City, Iowa

E. at Davenport, Iowa

7. *Davenport, Rock Island and North Western Railway Company (DRI):*

A. Moline, Illinois

B. Rock Island, Illinois, including 26th Street yard

C. from Rock Island through Milan, Illinois, to a point west of Industrial complex

D. from Rock Island, Illinois, to Davenport, Iowa, sufficient to include service to Rock Island Arsenal

8. *St. Louis Southwestern Railway Company (SSW):*

A. from Brinkley to Briark, Arkansas, and at Stuttgart, Arkansas

B. at North Topeka and Topeka, Kansas

9. *Little Rock & Western Railway Company (LRWN):* from Little Rock, Arkansas

(milepost 135.2) to Perry, Arkansas (milepost 184.2); and from Little Rock (milepost 136.4) to the Missouri Pacific/RI Interchange (milepost 130.6).

10. *Missouri Pacific Railroad Company (MP):* from Little Rock, Arkansas (milepost 135.2) to Hazen, Arkansas (milepost 91.5); Little Rock, Arkansas (milepost 135.2) to Pulaski, Arkansas (milepost 142.0); Hot Springs Junction (milepost 0.0) to and including Rock Island milepost 4.7.

11. *Norfolk and Western Railway Company (NW):* is authorized to operate over tracks of the Chicago, Rock Island and Pacific Railroad Company running southerly from Pullman Junction, Chicago, Illinois, along the western shore of Lake Calumet approximately four plus miles to the point, approximately 2,500 feet beyond the railroad bridge over the Calumet Expressway, at which point the RI track connects to Chicago Regional Port District track, for the purpose of serving industries located adjacent to such tracks. Any trackage rights arrangements which existed between the Chicago, Rock Island and Pacific Railroad Company and other carriers, and which extend to the Chicago Regional Port District Lake Calumet Harbor, West Side, will be continued so that shippers at the port can have NW rates and

routes regardless of which carrier performs switching services.

12. *Southern Railway Company (SOU):*

A. At Memphis, Tennessee.

13. *Cadillac and Lake City Railroad (CLK):*

A. from Sandown Junction (milepost 0.1) to and including junction with DRGW Belt Line (milepost 2.7) all in the vicinity of Denver, Colorado

B. from Colorado Springs (milepost 609.1) to and including all rail facilities at Colorado Springs and Roswell, Colorado (milepost 602.8), all in the vicinity of Colorado Springs, Colorado

C. from Limon, Colorado (milepost 532) to but not including Caruso, Kansas (milepost 429.3), with over-head rights from Caruso to Colby, Kansas, in order to effect interchange with the Union Pacific

D. Rock Island trackage rights over Union Pacific Railroad Company between Limon and Denver, Colorado.

14. *Baltimore and Ohio Railroad Company (BO):*

A. from Blue Island, Illinois (milepost 15.7) to Bureau, Illinois (milepost 114.2), a distance of 98.5 miles

B. from Bureau, Illinois (milepost 114.12) to Henry, Illinois (milepost 126.94) a distance of approximately 12.8 miles.

15. *Keota, Washington Transportation Company (KWTR):*

A. from Keota to Washington, Iowa; to effect interchange with the Chicago, Milwaukee, St. Paul and Pacific Railroad Company at Washington, Iowa, and to serve any industries on the former RI which are not being served presently

B. at Vinton, Iowa (milepost 120.0 to 123.0)

C. from Vinton Junction, Iowa (milepost 23.4) to Iowa Falls, Iowa (milepost 97.4).

16. *The La Salle and Bureau County Railroad Company (LSBC):*

A. from Chicago (milepost 0.60) to Blue Island, Illinois (milepost 16.61), and yard tracks 6, 9 and 10; and crossover 115 to effect interchange at Blue Island, Illinois.

B. from Western Avenue (Subdivision 1A, milepost 16.6) to 119th Street (Subdivision 1A, milepost 14.8), at Blue Island Illinois.

C. from Gresham (subdivision 1, milepost 10.0) to South Chicago (subdivision 1B, milepost 14.5) Chicago, Illinois.

D. From Pullman Junction, Chicago, Illinois, (milepost 13.2) running southerly to the entrance of the Chicago International Port, a distance of approximately five miles, for the purpose of bridge rights only.

17. *The Atchison, Topeka and Santa Fe Railway Company (ATSF):*

A. At Alva, Oklahoma

18. *The Brandon Corporation (BRAN):*

A. from Belleville, Kansas (milepost 226.1), to Manhattan, Kansas (milepost 143.0), a distance of approximately 83 miles.

19. *Iowa Northern Railroad Company (IANR):*

A. from Cedar Rapids, Iowa (milepost 100.5), to Waterloo, Iowa (milepost 150.76).

B. from Shell Rock, Iowa (milepost 172.1), to Manly, Iowa (milepost 225.1).

C. At Vinton, Iowa, and west on the Iowa Falls Line to milepost 24.3.

20. *Iowa Railroad Company (IRRC):*

A. from Council Bluffs (milepost 490.15) to Dexter, Iowa (milepost 393.0) a distance of approximately 97.15 miles.

B. from Audubon Junction (milepost 440.7) to Audubon, Iowa (milepost 465.1) a distance of approximately 24.4 miles.

C. from Hancock, Iowa (milepost 6.4) to Oakland, Iowa (milepost 12.3) a distance of approximately 5.9 miles.

21. *Missouri-Kansas-Texas Railroad Company (MKT):*

A. from Oklahoma City, Oklahoma (milepost 496.4) to McAlester, Oklahoma (milepost 365.0), a distance of approximately 131.4 miles.

22. *Chicago Short Line Railway Company (CSL):*

A. from Pullman Junction easterly for approximately 1,000 feet to serve Clear-View Plastics, Inc., all in the vicinity of the Calumet switching district.

\*23. *Kyle Railroad Company (Kyle):*

A. from Belleville (milepost 189.4) to Phillipsburg, Kansas (milepost 282.0), a distance of approximately 92.6 miles.

\* Added.

[FR Doc. 81-37120 Filed 12-26-81; 6:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 611

#### Foreign Fishing; Squid Allocation

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

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) allocates 18,668 metric tons of Loligo squid from "reserve" to the total allowable level of foreign fishing. This action is required by the formula established in the regulations implementing the fishery management plan for Atlantic squid. The allocation will encourage full utilization of the optimum yield.

**EFFECTIVE DATE:** December 29, 1981.

**FOR FURTHER INFORMATION CONTACT:** Salvatore A. Testaverde, 617-281-3600.

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Squid Fishery (FMP), as amended, established a reserve of 19,000 metric ton (mt) of Loligo squid (45 FR 45296); regulations provided a mechanism to allocate all or part of the reserve to the total allowable level of foreign fishing (TALFF) (45 FR 68363).

The implementing regulations at 50 CFR 611.51(b) and 655.22(c) direct the Regional Director of the Northeast Region, NMFS, to allocate the reserve to TALFF if certain criteria are met. Following the procedures of § 655.22(a), the domestic catch of Loligo from April through August, 1981, of 1,794 mt has been multiplied by 1.3. This quantity equals 2,332 mt. Since 2,332 mt plus 5,000

mt authorized for joint ventures is more than the initial level of the domestic harvest of 7,000 mt, the excess of 332 mt will remain in the reserve. The remainder, 18,668 mt, is allocated to TALFF.

Dated: December 18, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

**PART 611—FOREIGN FISHING**

50 CFR Part 611 is revised as follows:

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1821 and 1855.  
 2. Appendix 1 to § 611.20, entry 1-D is revised to read as follows:

§ 611.20 Total allowable level of foreign fishing.

\* \* \* \* \*

APPENDIX I

Species	Species area code	OY	DAH*	DAP	JVP	DNP	Reserve	TALFF
1. Northwest Atlantic Ocean fisheries:								
D. Squid fisheries:								
Squid, long-finned	502	44,000	7,000	2,332	4,668	0	332	36,668

[FR Doc. 81-37106 Filed 12-28-81; 8:45 am]

BILLING CODE 3510-22-M

# Proposed Rules

Federal Register

Vol. 46, No. 249

Tuesday, December 29, 1981

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

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Parts 1 and 17

#### Gross Margining of Omnibus Accounts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission") is proposing new rule § 1.58 which would require positions held in omnibus accounts to be margined on a gross basis. The Commission believes that such a rule is necessary to help to prevent, or at least limit, financial loss to customers, members of the marketplace and the marketplace itself which may be caused by the bankruptcy or insolvency of a futures commission merchant ("FCM") which is not a clearing member of a commodity exchange. The purpose of the proposed rule is to require the transfer of certain funds now controlled by an originating FCM to the generally better-capitalized clearing FCM, and to strengthen the financial early warning system by providing carrying FCMs with greater information about the financial condition of those FCMs for which they are carrying omnibus accounts.

**DATES:** Comments must be submitted on or before March 1, 1982.

**ADDRESS:** Comments should be sent to: Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581. Attention: Secretariat.

**FOR FURTHER INFORMATION CONTACT:** Daniel A. Driscoll, Deputy Director, Division of Trading and Markets, at the above address. Telephone: (202) 254-8955.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

During the last six months of 1980, customers sustained losses of approximately \$7 million because of the

bankruptcies of three FCMs. Each of those three FCMs traded solely by means of omnibus accounts. These recent, substantial customer losses were especially disturbing when compared to the relatively insignificant losses due to bankruptcy of FCMs in prior years. However, in view of the growth and volatility of the commodity markets in recent years, the amount of money put in jeopardy by the 1980 bankruptcies was not extraordinary. For instance, the average amount of segregated funds required of FCMs audited by the Commodity Exchange Authority, the Commission's predecessor agency, in 1970 was \$213,000. In 1976, a year after the formation of the Commission, the average segregation required of FCMs audited by the Commission's staff had increased to \$2.1 million. By 1979, this figure had climbed to \$4.9 million, and by 1980 it had risen to \$8.7 million. Thus, the \$7 million in customer losses resulting from the 1980 bankruptcies was less than the average amount of funds required to be segregated by one FCM audited by the Commission's staff in 1980. Moreover, on December 31, 1980, those non-member FCMs trading solely through omnibus accounts held, in the aggregate, more than \$125 million of customer funds in segregation. The Commission views with great concern the fact that this amount of customer funds is being held by firms that, in comparison to clearing FCMs, generally have less capital and are less equipped to handle the volatility of the commodity markets, a concern which was highlighted by the three bankruptcies which occurred during the last half of 1980. The Commission notes that many FCMs which trade solely through omnibus accounts are subject to less scrutiny than other FCMs, because at the present time only the Commission monitors the financial condition of non-member FCMs.<sup>1</sup>

##### II. The Financial Monitoring System

In light of the 1980 bankruptcies, the Commission reexamined the program designed to prevent loss of customer funds resulting from financial failures of FCMs. That program is based on four elements: (1) segregation of customer

<sup>1</sup> The National Futures Association ("NFA"), whose registration the Commission recently approved, has an audit and financial compliance program for all FCMs and the NFA should provide additional resources devoted to auditing non-member FCMs.

funds; (2) minimum financial requirements; (3) periodic financial reports; and (4) an early warning system. The program relies heavily on voluntary compliance and voluntary notification from an FCM when the firm triggers the early warning system or is not in compliance with the Commission's financial requirements. The program also depends on timely receipt of the relevant information, but because of the volatility of the commodity markets, it may be difficult to obtain information in a timely manner. For example, although all FCMs must file a year-end financial report which is certified by an independent public accountant, the financial condition of a firm can change dramatically from week to week, let alone from year to year.

The Commission also reexamined its methods of monitoring the financial condition of FCMs. The Commission's audit staff reviews the financial statements which non-member FCMs must submit, and conducts periodic audits of such firms. Audits of firms are scheduled on a priority basis, and firms where customer funds appear to be in jeopardy are, of course, given top priority. Those situations ordinarily involve firms that are undercapitalized or undersegregated or firms that have triggered the early warning system. The second priority involves situations where the potential exists for priority one jeopardy, such as FCMs that have a history of segregation, minimum financial or recordkeeping problems, but that are currently in compliance. The third priority consists of those cases in which there is no known or suspected danger to customer funds. Examination of FCMs may also be initiated because of large commodity price fluctuations or because of information received concerning a particular FCM.

The Commission has carefully reviewed possible ways in which to improve its program for monitoring the financial condition of FCMs. The Commission has concluded that the segregation system works about as well as can be expected, although it is far from foolproof. To make it completely effective, access to customer money by the FCM would have to be totally prohibited. A third party trustee would have to accept and hold all customer funds and commingling of any kind would have to be prohibited, including

the commingling of one customer's funds with those of another customer in the same account at a bank or clearing organization. Since the Commission does not believe that such an approach is possible as a practical matter, and since it would require amendments to the Commodity Exchange Act, as amended ("Act") (7 U.S.C. 1 *et seq.* (1976 & Supp. III 1979)), it does not appear that changing the segregation requirements is the answer. It has been suggested that some form of customer account protection or insurance be instituted to prevent customer losses due to the financial failure of an FCM. Although the Commission believes that an insurance program in the commodity industry could be helpful, the Commission also recognizes that insurance would not prevent customer losses but would instead provide a means to spread such losses throughout the industry.

The Commission has made certain improvements in elements of the financial monitoring program other than segregation. The Commission strengthened the minimum financial and related reporting requirements and the early warning system for all FCMs by adopting certain amendments to those rules effective December 31, 1980.<sup>2</sup> In addition, the Commission increased its auditing of non-member FCMs. Beginning in December, 1980, the Commission required non-member FCMs which hold customer funds to contact the Commission's audit staff every day to report their segregation calculations, and written segregation reports must be filed weekly. The audit staff also visits each non-member FCM with over \$1 million in customer funds at least once a month to perform a limited scope audit. None of these procedures eliminates the potential for the loss of customer funds due to bankruptcy, but they should enhance the staff's ability to promptly detect firms experiencing financial difficulties.

The Commission believes that the proper approach for finding a solution to the problem is to compare the financial monitoring program which exchanges employ for their clearing member FCMs and the financial monitoring program which the Commission uses for non-member FCMs. There are many similarities in the two programs. The exchanges rely on a program of segregation, recordkeeping and minimum financial regulations which is the same as the Commission's. The exchanges have the same early warning system that the Commission does. The exchanges perform audits and review

financial statements in the same way the Commission's staff does. The exchange members are audited once a year by an independent public accountant just as the non-members are.

The most significant difference in the respective programs is the information that the exchanges have about clearing members which the Commission does not have about omnibus accounts. Such information is primarily developed from the pay and collect information that is generated by the individual clearing organizations. This information is generated on a daily basis by the individual clearing organizations as a result of the price changes in open positions. If adverse price changes occur, the clearing member must pay the clearing house; if the price changes are advantageous, the clearing member will collect from the clearing house. This is, in effect, an early warning system that the exchanges have which the Commission does not have. Even though, in most cases, the information is generated on a net basis rather than on a gross basis, the review of pay and collect information provides a very good indication of potential problems in a firm. Such a review will show where to look for the problems, which is at those firms which are repeatedly required to pay the clearing house due to adverse market movements.

In addition to the information available to exchanges about their clearing members through the pay and collect data generated by their financial monitoring program, there is an informal information network which exists among member FCMs. There are not many things which happen at one member that are not known by at least some other members, and this information very often finds its way to the self-regulatory organizations. Conversely, the Commission staff has rarely, if ever, received information from a member FCM that a non-member FCM was having problems until the problems were so significant that the member FCM was ready to liquidate all the positions in the account.<sup>3</sup>

<sup>2</sup> The early warning system, as amended effective February 28, 1980, requires an FCM to notify the Commission within 24 hours whenever it determines that any position it carries for another FCM must be liquidated or transferred immediately, or that the trading of any account of such other FCM shall be traded only for purposes of liquidation, because such other FCM has failed to meet a call for margin or to make other required deposits. There is a similar requirement for a clearing organization with respect to its member FCMs. Section 1.12(f) of the Commission's regulations (17 CFR 1.12(f) (1981)).

### III. Gross Margining of Omnibus Accounts

To compensate for the information which is routinely obtained by the exchanges about their clearing member FCMs but which is unavailable to the Commission or any self-regulatory organization with respect to omnibus accounts, the Commission believes that a gross margining system for omnibus accounts should be instituted. Under § 17.04,<sup>4</sup> carrying FCMs receive information from originating FCMs regarding open positions in omnibus accounts on a gross basis and that information is in turn passed along to the Commission and the exchanges in what is essentially a clerical operation. While the Commission recognizes that such information is important for the carrying FCMs, the exchanges and the Commission, it is imperative that more and better information be provided. The need for more information became apparent when the Commission asked several clearing firms which were carrying positions for one of the FCMs that went bankrupt in 1980 whether they suspected problems with the FCM before the bankruptcy occurred. Each of those clearing firms stated that it did not suspect any problem because the FCM's account was almost always properly margined on a net basis.

If the carrying FCMs were to receive not only position information on omnibus accounts from originating FCMs on a gross basis, but, in addition, the carrying FCMs were to receive the additional margin represented by those positions, a greater impact would be achieved and potential financial problems at the originating FCM would become more apparent to the carrying FCM. If the originating FCM was unable to meet a margin call, that would be an indication that the firm was in a deteriorating financial condition.

For the reasons stated above, the Commission is proposing that the carrying FCMs margin omnibus accounts on a gross basis. Further, as discussed above, the Commission recognizes the key role of the clearing members in assuring financial integrity and correcting potential problems. The Commission believes that gross margining would strengthen the industry by moving segregated funds into clearing firms which are better capitalized and subject to greater scrutiny while at the same time not imposing any significant burden on the industry. The gross margining system would require that margin funds be

<sup>4</sup> 17 CFR 17.04(1981), as amended, 46 FR 50960, 50966 (December 8, 1981).

<sup>1</sup> 45 FR 79416 (December 1, 1980).

deposited ultimately with clearing member FCMs, even if there is more than one omnibus account interposed between such a firm and the trader. Both customer and proprietary accounts would be covered by proposed rule 1.58.

In making this proposal, the Commission is aware of certain matters which would be of particular concern if such a system were adopted. For example, it has been suggested that a system of gross margining would allow carrying FCMs to steal the customers of the originating FCM. The Commission does not believe that there is any merit to such an argument. Gross margining would not necessitate fully-disclosed accounts. As the Commission stated when it adopted requirements for gross reporting of omnibus accounts, "the originating FCM is required to disclose only the open position data for the omnibus account as a whole and is not required to disclose to the carrying FCM the identity of persons trading through the account."<sup>6</sup> Similarly, under a gross margining system, the originating FCM is required only to deposit and maintain margin for the positions reported to the carrying FCM and is not required to disclose the identity of persons trading through the omnibus account.

The Commission also does not believe that a gross margining system would impose unreasonable recordkeeping and operating burdens on FCMs. The Commission is proposing to amend § 17.04 so that the positions required to be margined under the gross margining system would be determined in the same manner that is used in determining open positions in an omnibus account for purposes of complying with § 17.00(f) and § 1.37(b). An originating FCM is already required by § 17.04 of the Commission's regulations<sup>6</sup> to report to its carrying FCM the gross positions represented by each omnibus account carried in the name of the originating FCM. Carrying FCMs in turn are required to maintain a daily record of such gross positions pursuant to § 1.37(b) of the Commission's regulations.<sup>7</sup> Furthermore, when filing Series '01 reports with the Commission, carrying FCMs are currently required to reflect omnibus accounts on a gross basis. Consequently, it does not appear that requiring gross margining of omnibus accounts will entail significant new recordkeeping or operational burdens. The only additional recordkeeping which would be required

would result from the voluntary decision of the carrying FCM. If a carrying FCM, in accordance with the provisions in paragraph (b) of proposed § 1.58, were to allow the amount of margin required for a spread or hedge position traded through an omnibus account to be the same as would be required if the position were held in an account with the carrying FCM in the name of the beneficial holder, the carrying FCM would have to obtain and retain a written representation from the originating FCM to show that the particular contracts in question were part of a spread or hedge transaction. (Spread or hedge margin requirements are generally less than those required for positions which are not part of a spread or hedge transaction.) The Commission is not specifying a mechanism by which the originating FCM must provide the necessary information to the carrying FCM so that the latter can justify assessing only a spread or hedge margin. Instead, both parties would be free to adopt the method they deem most appropriate to insure their ability to comply with their obligations under the Commission's regulations. For example, an originating FCM could attach to the report required to be submitted to the carrying FCM pursuant to § 17.04 a statement indicating which positions are part of a spread or hedge transaction. In any event, the Commission believes that a system can be designed to allow the assessment of spread or hedge margins by carrying FCMs in appropriate circumstances which does not require originating FCMs to disclose customer names or customer account numbers to carrying FCMs.

The Commission does not believe that originating FCMs would suffer financially from being required to margin omnibus account positions on a gross basis. Originating FCMs would not be precluded from depositing United States Treasury Bills or some other acceptable form of interest-bearing instrument with the carrying FCM and originating FCMs would not, therefore, have to forego the interest they are currently earning on segregated funds. Consequently, and because a gross margining system would not require originating FCMs to disclose the names of their customers to carrying FCMs, rule 1.58 would not have anti-competitive impact. See Section 15 of the Act (7 U.S.C. 19 (1976)).

The Commission recognizes that gross margining of omnibus accounts will not eliminate the potential for bankruptcies of FCMs, but it should promote the earlier detection of impending financial

difficulties and permit protective or remedial action to be taken which will help to prevent, or at least limit, losses to customers. The Commission also recognizes that the customer protections of gross margining are dependent upon the FCM accurately reporting the positions in the omnibus account on a gross basis. If an FCM fails to do so, the firm would violate § 17.04 of the Commission's regulations. The carrying FCM must simply insure that all positions reported in accordance with that provision are properly margined, absent any circumstances which should lead the carrying FCM to undertake further investigation.<sup>8</sup>

#### IV. Amendments to Section 17.04

The Commission is also proposing to amend § 17.04 so that option positions traded through omnibus accounts would be required to be reported on a gross basis and, in addition, the Commission is proposing to clarify certain language in § 17.04 concerning futures. At the present time, § 17.04 applies only to futures positions traded through an omnibus account. The Commission intended to have option positions traded through an omnibus account reported on a gross basis, but believed that this objective could be achieved through rules promulgated by the exchanges establishing a large trader reporting system for options. The large trader reporting system for options will be administered by the exchanges, and the Commission will review the rules of the exchanges relating to large trader reporting in connection with its review of designation applications. Because the Commission proposes to include option positions within the gross margining system, however, and because proposed new rule § 1.58 would incorporate § 17.04 by reference, the Commission is also proposing to amend § 17.04 so that it would apply to options.

#### V. Certification Under the Regulatory Flexibility Act

The Commission does not believe that the proposed rule would have significant economic impact on small entities. As discussed above, although the proposed rule would require that more funds be

<sup>6</sup> The Commission's authority to promulgate a gross margining requirement is not circumscribed by Section 5a(12) of the Act. That provision only prohibits the Commission from reviewing any rule of a contract market relating to the setting of levels of margin. A gross margining requirement will not in any way interfere with the setting of margin levels by contract markets: it will merely require that all customers' positions are margined at least at the levels set by the contract markets, and that margin funds are held in the "stronger hands" of clearing member FCMs.

<sup>5</sup> 44 FR 25431, 25433 (May 1, 1979).

<sup>6</sup> 17 CFR 17.04(1981), as amended, 46 FR 59660, 59966 (December 8, 1981).

<sup>7</sup> 17 CFR 1.37(b)(1981), as amended, 46 FR 54500, 54523 (November 3, 1981).

transferred from originating FCMs to carrying FCMs, this would not preclude originating FCMs from depositing interest-bearing instruments with the carrying FCMs and continuing to earn interest on segregated funds. Nor should FCMs risk losing customers or suffer any significant additional operational or recordkeeping burdens.<sup>9</sup> Accordingly, pursuant to Section 3(a) of the Regulatory Flexibility Act, 94 Stat. 1168 (5 U.S.C. 605(b)), the Chairman, on behalf of the Commission, certifies that the rule proposed herein, if promulgated, will not have a significant economic impact on a substantial number of small entities. However, the Commission particularly invites comment from any firms or other persons which believe that promulgation of this rule might have a significant economic impact upon their activities.

In consideration of the foregoing and pursuant to the authority contained in Sections 4d, 4f, 4g and 8a of the Act, 7 U.S.C. 8d, 8f, 8g and 12a (1976 & Supp. III 1979), the Commission hereby proposes to amend 17 CFR Part 1 by adding a new § 1.58, and to amend 17 CFR Part 17 by revising § 17.04, to read as follows:

#### PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. Section 1.58 is proposed to be added to 17 CFR Part 1 to read as follows:

##### § 1.58 Gross margining of omnibus accounts.

(a) Each futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant on an omnibus basis must collect, and each futures commission merchant for which the omnibus account is being carried must deposit, initial and maintenance margin on each position reported in accordance with § 17.04 of this chapter at a level no less than that established for customer accounts by the rules of the applicable contract market.

(b) If the futures commission merchant which carries a commodity futures or commodity option position for another futures commission merchant allows a position to be margined as a spread position or as a hedged position in accordance with the rules of the applicable contract market, the carrying

futures commission merchant must obtain and retain a written representation from the futures commission merchant for which the omnibus account is being carried that each such position is entitled to be so margined.

#### PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS AND FOREIGN BROKERS

2. Section 17.04 is proposed to be revised to read as follows:

##### § 17.04 Reporting Omnibus Accounts to the Carrying Futures Commission Merchant or Foreign Broker.

(a) Any futures commission merchant, clearing member or foreign broker who establishes an omnibus account with another futures commission merchant or foreign broker shall report to that futures commission merchant or foreign broker the total open long positions and the total open short positions in each future of a commodity, and, for commodity option transactions, the total open put options purchased, the total open put options granted, the total open call options purchased, and the total open call options granted for each commodity option expiration date, in such account at the close of trading each day. The information required by this section shall be reported in sufficient time to enable the futures commission merchant or foreign broker with whom the omnibus account is established to comply with Part 17 of these regulations and reporting requirements established by the contract markets.

(b) In determining open long and open short futures positions, and open purchased and open granted option positions, in an omnibus account for purposes of complying with § 17.00 (f), § 1.37(b) and § 1.58 of this chapter, a futures commission merchant, clearing member or foreign broker shall total the open long positions of all traders and the open short positions of all traders in each future of a commodity, and, for commodity option transactions, shall total the open put options purchased, the open put options granted, the open call options purchased, and the open call options granted of all traders for each commodity option expiration date. The futures commission merchant, clearing member or foreign broker shall, if both open long and short positions in the same future are carried for the same trader, compute open long or open short futures positions as instructed below.

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

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 81-37118 Filed 12-28-81; 8:45 am]

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#### DEPARTMENT OF ENERGY

##### Bonneville Power Administration

##### 18 CFR Ch. X

#### Proposed Amendments to Rules of Procedure Governing Rate Adjustments; Extension of Opportunity for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Proposed Amendments to Rules of Procedure Governing Bonneville Power Administration Rate Adjustments; Notice of Extension of Opportunity for Public Review and Comment.

**SUMMARY:** By Federal Register Notice of December 9, 1981 (46 FR 60406), Bonneville Power Administration published proposed amendments to its rules of procedure governing rate adjustments, based in part on comments received in response to a Federal Register Notice of February 10, 1981 (46 FR 11697), "Rules of Procedure Governing Bonneville Power Administration Rate Adjustments," and BPA's experience in its 1981 Wholesale Power Rate and Transmission Hearings conducted February through May 1981. A public meeting on the proposed amendments was scheduled for, and held on, December 21, 1981, with a written comment period ending December 24, 1981. This notice extends the period that BPA will accept public comments from December 24, 1981, to January 4, 1982.

**DATE:** Written comments may be submitted through January 4, 1982, to the Public Involvement Coordinator.

**ADDRESSES:** Written comments should be sent to: Donna Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna L. Geiger, Public Involvement Coordinator, P.O. Box 12999, Portland, Oregon 97212, 503-230-4261, or Mr. Michael C. Dotten, Attorney, General Counsel's Office, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208, 503-230-4214. Toll-free numbers for Oregon callers 800-452-8429; for callers from Washington,

<sup>9</sup> Any impact of the proposed rule will fall on FCMs. The Commission has recently published its proposed determination that a registered FCM not be considered a "small entity" within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165, 1166 (5 U.S.C. 601(3) and (6)), 46 FR 23940, 23941 [April 29, 1981].