(B) Calculate the amount of endowment fund income previously withdrawn from the endowment fund.

(ii) If the value of endowment fund income in the endowment fund exceeds the aggregate amount of previously withdrawn endowment fund income, the institution may withdraw and expend 50 percent of that excess fund income.

(b) Notwithstanding paragraph (a)(1)(ii) of this section, upon request, the Secretary may permit an institution to expend more than 50 percent of the total aggregate endowment fund income earned prior to the date of expenditure if the institution demonstrates that such an expenditure is necessary because of—

(1) A financial emergency such as a pending insolvency or temporary liquidity problem;

(2) A life threatening situation for the institution resulting from a natural disaster or arson; or

(3) Another unusual occurrence or exigent circumstance.

(c) During the grant period, the institution may use the endowment fund income to defray any expenses necessary to the operation of the institution, including general operating and maintenance expenses and administrative expenses necessary to the operation and management of the endowment fund, except that it may not use such funds for—

(1) A school or department of divinity or any religious worship or sectarian activity;

(2) An activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution; or

(3) An activity that is inconsistent with a State plan of higher education applicable to such institution.

(d) At the end of the endowment grant period, the institution may use all of the endowment fund income for any educational purpose.

(e) If, during the grant period, an institution expends more endowment fund income than it is permitted under paragraphs (a) and (b) of this section, or in violation of paragraph (c) of this section, it shall repay to the Secretary an amount equal to 50 percent of the amount improperly expended.

(20 U.S.C. 1065a and 1069b)

§ 628.45 What are the recordkeeping and reporting requirements of the grantee?

(a) A grantee shall keep records and report as frequently as the Secretary requests regarding—

(1) The source, kind, date of donation and amount of matching funds;

(2) The type and amount of investments of the endowment fund corpus and income; and

(3) Expenditures of endowment fund income.

(b) A grantee shall allow the Secretary access to information as may be necessary to audit or examine the records required in paragraph (a) of this section.

(c) A grantee shall carry out the audit required in 34 CFR 74.61(h) and shall provide to the Secretary a copy of the external or internal audit to be performed at least every two years under 34 CFR 74.61(h).

(20 U.S.C. 1065a)

§ 628.46 What may happen if a grantee fails to administer the endowment grant in accordance with the provisions of this part?

(a) In addition to the reimbursement provisions of § 628.43 and § 628.44, after notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this part if the grantee institution—

(1) Expends portions of the endowment fund corpus or expends more than the permissible amount of the endowment fund income as prescribed in § 628.43 or § 628.44;

(2) Expends portions of the endowment fund income in violation of § 628.44(c);

(3) Fails to invest the endowment fund in accordance with the investment standards set forth in § 628.42;

(4) Fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds as required in § 628.40.

(b) If the Secretary terminates a grant under paragraph (a) of this section, the grantee shall return to the Secretary an amount equal to the sum of the original grant or grants under this part plus the income earned thereon.

(20 U.S.C. 1065a)

[FR Doc. 84-5741 Filed 3-2-84; 8:45 am]
BILLING CODE 4000-01-M

federal register

Monday
March 5, 1984

Part IV

Department of Energy

Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978; Notice

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1077]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: February 28, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register**.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd., Springfield, Va. 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102-1: New OCS lease
- 102-2: New well (2.5 Mile rule)
- 102-3: New well (1000 Ft. rule)
- 102-4: New onshore reservoir
- 102-5: New reservoir on old OCS lease

Section 107-DP: 15,000 feet or deeper
- 107-GB: Geopressured brine
- 107-CS: Coal Seams
- 107-DV: Devonian Shale
- 107-PE: Production enhancement
- 107-TF: New tight formation
- 107-RT: Recompletion tight formation

Section 108: Stripper well
- 108-SA: Seasonally affected
- 108-ER: Enhanced recovery
- 108-PB: Pressure buildup

Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS — VOLUME 1077

ISSUED FEBRUARY 28, 1984

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
MICHIGAN DEPARTMENT OF NATURAL RESOURCES									
-SUN EXPLORATION & PRODUCTION CO				RECEIVED:		02/09/84 JA: MI			
8419959		2111336048		103		NORWICH UNIT #4-126	NORWICH	6.0	DOW CHEMICAL CO
8419960		2111336051		103		NORWICH UNIT #4-129	NORWICH	4.0	DOW CHEMICAL CO
8419961		2111336061		103		NORWICH UNIT #4-130	NORWICH	9.0	DOW CHEMICAL CO
8419957		2111336062		103		NORWICH UNIT #4-131	NORWICH	21.0	DOW CHEMICAL CO
8419958		2111336052		103		NORWICH UNIT #4-132	NORWICH	21.0	DOW CHEMICAL CO
8419944		2111336053		103		NORWICH UNIT #4-133	NORWICH	21.0	DOW CHEMICAL CO
8419955		2111336097		103		NORWICH UNIT #4-134	NORWICH	24.0	DOW CHEMICAL CO
8419953		2111336098		103		NORWICH UNIT #4-135	NORWICH	11.0	DOW CHEMICAL CO
8419954		2111336063		103		NORWICH UNIT #4-136	NORWICH	47.0	DOW CHEMICAL CO
8419946		2111336064		103		NORWICH UNIT #4-137	NORWICH	21.0	DOW CHEMICAL CO
8419948		2111336065		103		NORWICH UNIT #4-138	NORWICH	16.0	DOW CHEMICAL CO
8419945		2111336080		103		NORWICH UNIT #4-139	NORWICH	31.0	DOW CHEMICAL CO
8419947		2111336100		103		NORWICH UNIT #4-140	NORWICH	43.0	DOW CHEMICAL CO
8419950		2111336102		103		NORWICH UNIT #4-141	NORWICH	15.0	DOW CHEMICAL CO
8419952		2111336057		103		NORWICH UNIT #4-142	NORWICH	12.0	DOW CHEMICAL CO
8419956		2111336104		103		NORWICH UNIT #5-34	NORWICH	4.0	DOW CHEMICAL CO
8419949		2111336060		103		NORWICH UNIT #5-35	NORWICH	5.0	DOW CHEMICAL CO
8419951		2111336103		103		NORWICH UNIT #5-36	NORWICH	24.0	DOW CHEMICAL CO
8419943		2111336050		103		NORWICH UNIT TR 4 #128	NORWICH	5.0	DOW CHEMICAL CO
8419963		2111336343		103		NORWICH UNIT TRACT 4 #143	NORWICH	1.0	DOW CHEMICAL CO
8419962		2111336345		103		NORWICH UNIT TRACT 4 #145	NORWICH	17.0	DOW CHEMICAL CO
NEBRASKA OIL & GAS CONSERVATION COMMISSION									
-BEREN CORPORATION				RECEIVED:		02/09/84 JA: NB			
8419968		2603321912		102-4		STATE OF NEBRASKA "D" #1	EAST HENDRICKS	9.0	K N ENERGY INC
8419964		2603321972		102-4		STATE OF NEBRASKA "D" #2	EAST HENDRIKS	4.0	K N ENERGY INC
8419965		2603321956		102-4		STATE OF NEBRASKA "E" #1	EAST HENDRICKS	2.6	K N ENERGY INC
-STRIKER PETROLEUM CORP				RECEIVED:		02/09/84 JA: NB			
8419967		2610522108		103		GUNDERSON #1	FARRELL	1.0	CITIES SERVICE CO
-TXO PRODUCTION CORP				RECEIVED:		02/09/84 JA: NB			
8419966		2603322171		103		BEYER #1	WEST SIDNEY	118.0	MARATHON OIL CC
OKLAHOMA CORPORATION COMMISSION									
-ANADARKO LAND & EXPLORATION CO				RECEIVED:		02/08/84 JA: OK			
8419774	25940	3503920954		103		MILLER #1-4	S E THOMAS	547.0	TRANSOK PIPE LINE
-ANADARKO PRODUCTION COMPANY				RECEIVED:		02/08/84 JA: OK			
8419799	26337	3513921783		103		NORTHEAST HARDESTY UNIT #12-4	NORTHEAST HARDESTY	16.0	PHILLIPS PETROLEU
-BOGERT OIL CO				RECEIVED:		02/08/84 JA: OK			
8419801	26341	3509322785		103		FLAMING UNIT #2-26	SOONER TREND	245.0	PHILLIPS PETROLEU
-C & S EXPLORATION INC				RECEIVED:		02/08/84 JA: OK			
8419761	23350	3512121006		103		KIRBY #1-16	NORTH SCIPIO	180.0	ARKANSAS LOUISIAN
8419790	24454	3512121050		103		KIRBY #2-16	NORTH SCIPIO	200.0	ARKANSAS LOUISIAN
-CONOCO INC				RECEIVED:		02/08/84 JA: OK			

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8419775	24313	3503920869		102-2		CROSSWHITE #1	E CLINTON	839.5	SOUTHERN NATURAL
-COTTON PETROLEUM CORPORATION				RECEIVED: 02/08/84 JA: OK					
8419804	27134	3501521141		107-DP		RIDLE #1	E GRACEMONT	0.0	UNITED GAS PIPELI
8419787	25862	3500722342		103		TAYLOR "A" #1	NORTH BALKO	0.0	PHILLIPS PETROLEU
-ENERGY RESERVES GROUP INC				RECEIVED: 02/08/84 JA: OK					
8419788	25758	3507300000		108		HILL UNIT #1	SW LACY	11.4	ARKANSAS LOUISIAN
8419789	25757	3507300000		108		POPE UNIT "B" #1	SW LACY	6.0	ARKANSAS LOUISIAN
-ENSERCH EXPLORATION INC				RECEIVED: 02/08/84 JA: OK					
8419791	25356	3514920390		103		R J EVANS #1	BURNS FLAT	0.0	NATURAL GAS PIPEL
-ENTEX PETROLEUM INC				RECEIVED: 02/08/84 JA: OK					
8419786	26154	3508320843		103		DALE #2	WEST LAWRIE	13.0	EASON OIL CO
-FLINT J A				RECEIVED: 02/08/84 JA: OK					
8419769	26288	3506321868		103		BERTHA #3	YEAGER	136.0	MEGA NATURAL GAS
8419771	26286	3506321619		103		HAROLD #1	YEAGER	37.0	MEGA NATURAL GAS
8419770	26287	3506321809		103		HAYES #1	YEAGER	46.0	MEGA NATURAL GAS
8419768	26289	3506321886		103		LOFTIS #1	YEAGER	0.0	MEGA NATURAL GAS
-G & W OIL & GAS INC				RECEIVED: 02/08/84 JA: OK					
8419777	24208	3511124337		102-2		QUAIL CREEK THREE #1 111-24337	MOUNDS DISTRICT	44.5	PHILLIPS PETROLEU
-GOOD D MICHAEL				RECEIVED: 02/08/84 JA: OK					
8419773	26150	3504521182		103		DRAKE "A" #1	E HARMON	0.0	DELHI GAS PIPELIN
8419772	26152	3509322764		103		MCKEE "D" #1	CHEYENNE VALLEY	0.0	DELHI GAS PIPELIN
-GRAHAM-MICHAELIS CORP				RECEIVED: 02/08/84 JA: OK					
8419764		3513900000		108-ER		STATE OF OKLAHOMA #1	GUYMON-HUGOTON	20.5	PHILLIPS PETROLEU
-HAMILTON BROTHERS OIL CO				RECEIVED: 02/08/84 JA: OK					
8419760	24225	3512120988		102-2		INDIAN NATIONS NO 1-29	WILDCAT	964.3	ARKANSAS LOUISIAN
-HARPER OIL COMPANY				RECEIVED: 02/08/84 JA: OK					
8419758	24316	3503920575		102-2		CUSTER #1	WEST CLINTON	185.0	NATURAL GAS PIPEL
-JOHN A KIENZLE				RECEIVED: 02/08/84 JA: OK					
8419793	26285	3511123021		108		C B NICHOLSON #2	HOFFMAN	11.0	PHILLIPS PETROLEU
8419781	26283	3511123422		108		TEDLOCK NO 1	HOFFMAN	15.0	PHILLIPS PETROLEU
-KELLOIL INC				RECEIVED: 02/08/84 JA: OK					
8419766	26299	3515321402		103		DOUBLE "D" #1		167.0	PHILLIPS PETROLEU
-M K W INC				RECEIVED: 02/08/84 JA: OK					
8419802	26361	3510322069		103		HENTGES #2		72.0	ARCO OIL & GAS CO
-MACK OIL CO				RECEIVED: 02/08/84 JA: OK					
8419767	26294	3504922162		103		LILY #1	GOLDEN TREND	300.0	WARREN PETROLEUM
-MAPCO PRODUCTION COMPANY				RECEIVED: 02/08/84 JA: OK					
8419792	24349	3503920533		102-2		V VINEYARD #1-12		144.0	MAPCO FRACTIONATO
-ONYX ENERGY CORP				RECEIVED: 02/08/84 JA: OK					
8419798	26334	3510322049		103		IDA MAE #4-20		36.5	AMINOIL USA INC
-PHILLIPS PETROLEUM COMPANY				RECEIVED: 02/08/84 JA: OK					
8419794	26291	3513920731		108		HERMIT #2	TEXHOMA N MORROW U	0.0	MICHIGAN WISCONSI
-RAMBLER OIL CO				RECEIVED: 02/08/84 JA: OK					
8419778	24205	3504922161		102-4		ROBERTS #1-21	WEST PAULS VALLEY	0.0	WARREN PETROLEUM
-READING & BATES PETROLEUM CO				RECEIVED: 02/08/84 JA: OK					
8419782	26281	3504700000		108		JOHN #1	JOHN	21.0	GRACE PETROLEUM C
-SAMSON RESOURCES COMPANY				RECEIVED: 02/08/84 JA: OK					
8419763	22292	3504320033		108-ER		CLARK UNIT #1		0.0	PANHANDLE EASTERN
8419762	22293	3504320088		108-ER		CLARK UNIT #2		0.0	PANHANDLE EASTERN
-SANTA FE-ANDOVER OIL CO				RECEIVED: 02/08/84 JA: OK					
8419800	26340	3505121408		103		ESTES #28-1		9.0	PHILLIPS PETROLEU
8419765	26307	3501121836		103		JANTZEN #31-1		200.0	OKLAHOMA GAS PIPE
-SENECA OIL CO				RECEIVED: 02/08/84 JA: OK					
8419780	20140	3501768973		102-4	103	DAVE #1-20		101.8	PHILLIPS PETROLEU
-STANTON ENERGY INC				RECEIVED: 02/08/84 JA: OK					
8419759	24226	3514322441		102-4	103	LUVENA #5	KEYSTONE	14.0	COLORADO GAS COMP
-SUN EXPLORATION & PRODUCTION CO				RECEIVED: 02/08/84 JA: OK					
8419785	26277	3504700000		108		HELBERG UNIT #1	N E ENID	15.0	CHAMPLIN PETROLEU
8419795	26311	3504700000		108		LOUGHMAN #1	N E ENID	6.0	UNION TEXAS PETRO
8419784	26278	3515100000		108		M S OLSON #1	WAYNOKA TREND	6.0	NORTHWEST CENTRAL
8419796	26312	3504700000		108		MARIE MEYER #1	S E FLYNN	13.0	CHAMPLIN PETROLEU
8419783	26279	3515300000		108		OKLAHOMA STATE "S" #2	N W QUINLAN	12.0	MICHIGAN WISCONSI
8419805	24252	3512920863		102-2		W F MERRICK #1	WILDCAT (REDFORK)	662.0	
-TENNECO OIL COMPANY				RECEIVED: 02/08/84 JA: OK					
8419797	26333	3510321119		103		ALICE #1-22	SOUTH LONE ELM	1.0	AMINOIL U S A INC
-TOWNER PETROLEUM CO				RECEIVED: 02/08/84 JA: OK					
8419776	24213	3501521519		102-4		IDA EDGE #11-1		0.0	PIONEER GAS PRODU
-TXO PRODUCTION CORP				RECEIVED: 02/08/84 JA: OK					
8419779	24141	3507920483		102-4	103	VIRGINIA ALLEN #1	KINTA	57.0	
-VIERSEN & COCHRAN				RECEIVED: 02/08/84 JA: OK					
8419803	26364	3504321788		103		GOLDIE POLLOCK #1-34	WATONGA TREND	20.0	PHILLIPS PETROLEU
PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES									
-FAIRMAN DRILLING CO				RECEIVED: 02/09/84 JA: PA					
8419857	21987	3703321613		102-2		CONN UNIT #1 F-3782	CUSH CUSHION	20.0	EASTERN SHORE NAT
8419858	21988	3703321657		102-2		CONSOLIDATED RAIL CORP #4 F-3788	CUSH CUSHION	30.0	EASTERN SHORE NAT
-FOX OIL & GAS INC				RECEIVED: 02/09/84 JA: PA					
8419853	21971	3702120171		102-3		M SOWALLA #1 270	SUSQUEHANNA	25.5	COLUMBIA GAS TRAN
-MITCHELL ENERGY CORPORATION				RECEIVED: 02/09/84 JA: PA					
8419842	21877	3703922033		107-TF		J SPECK UNIT #1 CRA-22033	MOSIERTOWN (MEDINA/WH	20.5	COLUMBIA GAS TRAN
8419843	21878	3703922033		103		J SPECK UNIT #1 CRA-22033	MOSIERTOWN (MEDINA/WH	20.5	COLUMBIA GAS TRAN
-NEA CROSS CO				RECEIVED: 02/09/84 JA: PA					
8419832	21777	3704922876		107-TF		ERNEST BLUM/ROBERT TURNER #1	MILL VILLAGE BORO	10.0	NATIONAL FUEL GAS
8419833	21778	3704922876		102-2		ERNEST BLUM/ROBERT TURNER #1	MILL VILLAGE BORO	10.0	NATIONAL FUEL GAS
8419836	21781	3704922872		102-2		IRWIN NATHAN #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8419837	21782	3704922872		107-TF		IRWIN NATHAN #3	LEBOEUF	10.0	NATIONAL FUEL GAS
8419834	21779	3704922684		107-TF		JOSEPH MAJERIK #2	WATERFORD	10.0	NATIONAL FUEL GAS
8419835	21780	3704922684		102-2		JOSEPH MAJERIK #2	WATERFORD	10.0	NATIONAL FUEL GAS
8419830	21775	3704922685		102-2		THOMAS ARNEMAN #1	WATERFORD	10.0	NATIONAL FUEL GAS
8419831	21776	3704922685		107-TF		THOMAS ARNEMAN #1	WATERFORD	10.0	NATIONAL FUEL GAS
-NORTHWEST NATURAL GAS CO				RECEIVED: 02/09/84 JA: PA					
8419838	21821	3704922665		103		CHAMBERLAIN #2	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8419840	21827	3704922665		107-TF		CHAMBERLAIN #2	CONNEAUTVILLE	0.0	NATIONAL FUEL GAS
8419839	21823	3704922289		103		SNODGRASS #1	BEAVER CENTER	0.0	NATIONAL FUEL GAS
8419841	21829	3704922289		107-TF		SNODGRASS #1	BEAVER CENTER	0.0	NATIONAL FUEL GAS
-PACO INC				RECEIVED: 02/09/84 JA: PA					
8419849	21948	3704923246		103		BOSS OILFIELD #1	ALBION WEST	15.0	NATIONAL FUEL GAS
8419850	21949	3704923246		107-TF		BOSS OILFIELD #1	ALBION WEST	15.0	NATIONAL FUEL GAS
8419826	21735	3704923249	D	107-TF		HOLY TRINITY LUTHERAN CHURCH-ALBION	ALBION WEST	16.0	NATIONAL FUEL GAS
8419829	21751	3704923249		103		HOLY TRINITY LUTHERAN CHURCH-ALBION	ALBION WEST	16.0	NATIONAL FUEL GAS
8419827	21736	3704923247		103		J GRAVES SR #1	ALBION WEST	28.0	NATIONAL FUEL GAS
8419828	21737	3704923247		107-TF		J GRAVES SR #1	ALBION WEST	28.0	NATIONAL FUEL GAS
8419851	21950	3704923245		103		JAMIE #1	ALBION WEST	25.0	NATIONAL FUEL GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8419852	21951	3704923245		107-TF		JAMIE #1	ALBION WEST	25.0	NATIONAL FUEL G
8419847	21946	3704923250		103		M FEUERWERKER #2	ALBION WEST	15.0	NATIONAL FUEL G
8419848	21947	3704923250		107-TF		M FEUERWERKER #2	ALBION WEST	15.0	NATIONAL FUEL GAS
8419844	21882	3704923248		103		RODNEY SMOCK #1	ALBION WEST	29.0	NATIONAL FUEL GAS
8419845	21883	3704923248		107-TF		RODNEY SMOCK #1	ALBION WEST	29.0	NATIONAL FUEL GAS
-PETRO EVALUATION SERVICES INC				RECEIVED:		02/09/84 JA: PA			
8419825	21196	3704922536		103		RAMEY #2	EDINBORO	32.0	
8419824	21195	3704922525		107-TF		TYDINGS #3	EDINBORO	31.0	
-PHILLIPS PRODUCTION CO				RECEIVED:		02/09/84 JA: PA			
8419819	20656	3706326819		108		BROCIOUS COAL AUGERING INC #1	RAYNE	7.0	COLUMBIA GAS TRAN
8419821	20662	3706325671		108		JOHN PEELOR #1	GRANT	4.0	COLUMBIA GAS TRAN
8419823	20664	3706325495		108		RALPH RICHARD BROWN #1	CENTER	7.0	COLUMBIA GAS TRAN
8419820	20659	3706326887		108		VAUGHN L MCGAUGHEY #1	CENTER	7.0	COLUMBIA GAS TRAN
8419822	20663	3706326390		108		WALTER J BORK #1	BLACKLICK	7.0	COLUMBIA GAS TRAN
-PIONEER WESTERN ENERGY CORP				RECEIVED:		02/09/84 JA: PA			
8419846	21901	3712922277		103		LOUIS A BOMPIANI #1	SOUTH HUNTINGDON	25.0	
-QUAKER STATE OIL REFINING CORP				RECEIVED:		02/09/84 JA: PA			
8419879	22084	3712301236		108		BRIGHT-WOLFE-#1	GLADE	0.5	NATIONAL FUEL GAS
8419882	22087	3712330849		108		BRIGHT-WOLFE-03	GLADE	0.5	NATIONAL FUEL GAS
8419883	22088	3712327711		108		BRIGHT-WOLFE-037	GLADE	0.5	NATIONAL FUEL GAS
8419881	22086	3712330830		108		BRIGHT-WOLFE-04	GLADE	0.5	NATIONAL FUEL GAS
8419878	22083	3712328081		108		BRIGHT-WOLFE-068	GLADE	0.5	NATIONAL FUEL GAS
8419877	22082	3712328082		108		BRIGHT-WOLFE-069	GLADE	0.5	NATIONAL FUEL GAS
8419876	22081	3712328086		108		BRIGHT-WOLFE-073	GLADE	0.5	NATIONAL FUEL GAS
8419875	22080	3712328087		108		BRIGHT-WOLFE-074	GLADE	0.5	NATIONAL FUEL GAS
8419874	22079	3712328068		108		BRIGHT-WOLFE-075	GLADE	0.5	NATIONAL FUEL GAS
8419873	22078	3712328092		108		BRIGHT-WOLFE-079	GLADE	0.5	NATIONAL FUEL GAS
8419880	22085	3712327710		108		BRIGHT-WOLFE-08	GLADE	0.5	NATIONAL FUEL GAS
8419872	22077	3712328093		108		BRIGHT-WOLFE-080	GLADE	0.5	NATIONAL FUEL GAS
8419871	22076	3712328044		108		BRIGHT-WOLFE-081	GLADE	0.5	NATIONAL FUEL GAS
8419870	22075	3712328098		108		BRIGHT-WOLFE-085	GLADE	0.5	NATIONAL FUEL GAS
8419869	22074	3712328099		108		BRIGHT-WOLFE-086	GLADE	0.5	NATIONAL FUEL GAS
8419868	22073	3712328100		108		BRIGHT-WOLFE-087	GLADE	0.5	NATIONAL FUEL GAS
8419867	22072	3712328104		108		BRIGHT-WOLFE-091	GLADE	0.5	NATIONAL FUEL GAS
8419866	22071	3712328105		108		BRIGHT-WOLFE-092	GLADE	0.5	NATIONAL FUEL GAS
8419865	22070	3712330854		108		BRIGHT-WOLFE-094	GLADE	0.5	NATIONAL FUEL GAS
8419859	22064	3712327400		108		JENKS 020	GLADE	0.5	NATIONAL FUEL GAS
8419860	22065	3712321554		108		JENKS-LOT 448-062	GLADE	0.5	NATIONAL FUEL GAS
8419861	22066	3712328037		108		JENKS-LOT 448-063	GLADE	0.5	NATIONAL FUEL GAS
8419862	22067	3712628138		108		JENKS-LOT 448-064	GLADE	0.5	NATIONAL FUEL GAS
8419863	22068	3712327714		108		JENKS-LOT 448-065	GLADE	0.5	NATIONAL FUEL GAS
8419864	22069	3712328039		108		JENKS-LOT 448-066	GLADE	0.5	NATIONAL FUEL GAS
8419884	22089	3712300000		108		JENKS-LOT 448-072	GLADE	0.5	NATIONAL FUEL GAS
8419854	21984	3712330851		108		PIERCE OZ	GLADE	0.5	NATIONAL FUEL GAS
8419855	21985	3712327107		108		PIERCE- 015	GLADE	0.5	NATIONAL FUEL GAS
8419856	21986	3712331852		108		PIERCE-03	GLADE	0.5	NATIONAL FUEL GAS
UTAH DIVISION OF OIL,GAS, & MINING									
-LOMAX EXPLORATION COMPANY				RECEIVED:		02/08/84 JA: UT			
8419806	K-152-2	4301330691		102-2		STATE #1A-32	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419809	K-152-2	4301330623		102-2		STATE #13-36	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419808	K-152-2	4301330608		102-2		STATE #3-2	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419811	K-152-2	4301330714		102-2		STATE #5-32	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
8419807	K-152-2	4301330713		102-2		STATE #9-32	MONUMENT BUTTE	55.0	MOUNTAIN FUEL SUP
-WAINOCO OIL & GAS CO				RECEIVED:		02/08/84 JA: UT			
8419810	K-137-2	4301330590		103		WAINOCO LINMAR LEBEAU #1-34A1	BLUEBELL	94.0	GARY ENERGY CORP
WEST VIRGINIA DEPARTMENT OF MINES									
-ASHLAND EXPLORATION INC				RECEIVED:		02/09/84 JA: WV			
8419885		4703903769		108		EASTERN GAS & FUEL #62-R - 092202	PAINT CREEK	18.0	COLUMBIA GAS TRAN
8419886		4710900852		108		W M RITTER #221 - 091671	LOGAN-WYOMING	18.0	CONSOLIDATED GAS
-BEREA OIL AND GAS CORPORATION				RECEIVED:		02/09/84 JA: WV			
8419900		4700121958		103		E BENNETT #2	GLADE	21.0	BROOKLYN UNION GA
8419901		4700121958		107-DV		E BENNETT #2	GLADE	21.0	BROOKLYN UNION GA
8419899		4700121960		103		E NELSON #1	VALLEY DISTRICT	33.0	BROOKLYN UNION GA
8419898		4700121963		103		J FERGUSON #2	VALLEY DISTRICT	53.0	BROOKLYN UNION GA
8419909		4700121963		107-DV		J FERGUSON #2	VALLEY DISTRICT	53.0	BROOKLYN UNION GA
-NATIONAL OPERATING INC				RECEIVED:		02/09/84 JA: WV			
8419887		4708506442		103		ARNETT #1	GRANT	10.0	CONSUMERS GAS UTI
8419902		4708506442		107-DV		ARNETT #1	GRANT	10.0	CONSUMER GAS UTIL
-OHIO-WEST VIRGINIA HYDRO CARBON CO				RECEIVED:		02/09/84 JA: WV			
8419891		4708505756		103		ECHARD (WELCH-CRAIG) 1A	MELLIN RIDGE	18.0	CONSOLIDATED GAS
8419907		4708505756		107-DV		ECHARD (WELCH-CRAIG) 1A	MELLIN RIDGE	18.0	CONSOLIDATED GAS
8419890		4708506044		103		HENDRICKSON #1	MELLIN RIDGE	36.0	CONSOLIDATED GAS
8419908		4708506044		107-DV		HENDRICKSON #1	MELLIN RIDGE	36.0	CONSOLIDATED GAS
-OVER-JOHN INC				RECEIVED:		02/09/84 JA: WV			
8419889		4708506311		103		PALMER HILL (HALLMARK) #1	GRANT	36.0	CONSUMERS GAS UTI
8419903		4708506311		107-DV		PALMER HILL (HALLMARK) #1	GRANT	36.0	CONSUMERS GAS UTI
-PEAKE OPERATING CO				RECEIVED:		02/09/84 JA: WV			
8419897		4708100605		103		CRAB ORCHARD #6-AC	(TOWN DISTRICT)	5.0	
8419895		4708100630		103		JONES & GIBSON #7-AJ	(TRAP HILL DISTRICT)	5.0	COLUMBIA GAS TRAN
8419896		4708100630		103		JONES & GIBSON #7-AJ	(TRAP HILL DISTRICT)	5.0	COLUMBIA GAS TRAN
8419892		4708100631		103		JONES & GIBSON #9-AJ	N/A (TRAP HILL DISTRI	5.0	COLUMBIA GAS TRAN
8419893		4708100631		103		JONES & GIBSON #9-AJ	(TRAP HILL DISTRICT)	5.0	COLUMBIA GAS TRAN
8419894		4710900898		103		WELCHLANDS #22-AW	(SLAB FORK DISTRICT)	5.0	CONSOLIDATED GAS
-PENNZOIL COMPANY				RECEIVED:		02/09/84 JA: WV			
8419942		4704301801		108		A D SPURLOCK #5	GRIFFITHSVILLE NE	1.1	CONSOLIDATED GAS
8419910		4704301802		108		A D SPURLOCK #6	GRIFFITHSVILLE NE	1.1	CONSOLIDATED GAS
8419914		4704302304		108		A E SMITH #5	GRIFFITHSVILLE NE	2.2	CONSOLIDATED GAS
8419920		4703302943		108		A STONESTREET #9	WOLF SUMMIT	1.6	CONSOLIDATED GAS
8419912		4704302116		108		CALLIE T ESCUE #3	GRIFFITHSVILLE NE	2.0	CONSOLIDATED GAS
8419933		4704301537		108		E T SPURLOCK #13	GRIFFITHSVILLE NE	0.6	CONSOLIDATED GAS
8419937		4704301624		108		E T SPURLOCK #15	GRIFFITHSVILLE NE	0.6	CONSOLIDATED GAS
8419913		4704302117		108		E T SPURLOCK #16	GRIFFITHSVILLE NE	2.2	CONSOLIDATED GAS
8419922		4704301471		108		E T SPURLOCK #4	GRIFFITHSVILLE NE	0.9	CONSOLIDATED GAS
8419918		4701703260		108		FREEMAN & FOLEY #1	CENTERPOINT - FLINT R	0.3	CONSOLIDATED GAS
8419931		4708504285		108		H M (HOPE) HAMMETT #21	HAMMETT	1.2	CONSOLIDATED GAS
8419932		4708504667		108		HAMMETT - CLARK #13	HAMMETT	0.6	CONSOLIDATED GAS
8419941		4704301737		108		HANNAH A PAUL #2	GRIFFITHSVILLE NE	1.8	CONSOLIDATED GAS
8419928		4704302322		108		HANNAH A PAUL #3	GRIFFITHSVILLE NE	1.8	CONSOLIDATED GAS
8419936		4704301600		108		J A PAULEY #1	GRIFFITHSVILLE NE	1.7	CONSOLIDATED GAS
8419911		4704301838		108		J E KEELING #2	GRIFFITHSVILLE NE	3.9	CONSOLIDATED GAS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8419939		4704301691		108		J V ALFORD HEIRS #1	GRIFFITHSVILLE NE	1.5	CONSOLIDATED GAS
8419940		4704301695		108		J V ALFORD HEIRS #3	GRIFFITHSVILLE NE	1.5	CONSOLIDATED GAS
8419926		4704302320		108		J V ALFORD HEIRS #5	GRIFFITHSVILLE NE	1.4	CONSOLIDATED GAS
8419916		4700501102		108		J W PHIPPS #3	YAWKEY-FREEMAN	0.9	CONSOLIDATED GAS
8419917		4701702224		108		LOUNDS & HART #3	CENTERPOINT - FLINT R	0.3	CONSOLIDATED GAS
8419921		4704301470		108		M A MITCHELL HEIRS #2	GRIFFITHSVILLE NE	1.3	CONSOLIDATED GAS
8419919		4703302942		108		M MATHENY #3	WOLF SUMMIT	1.7	CONSOLIDATED GAS
8419938		4704301676		108		O E ESCUE #5	GRIFFITHSVILLE NE	1.9	CONSOLIDATED GAS
8419930		4704302328		108		R A ESCUE #4	GRIFFITHSVILLE NE	1.2	CONSOLIDATED GAS
8419927		4708504637		108		S C HAMMETT #9	HAMMETT	0.5	CONSOLIDATED GAS
8419935		4704301574		108		SAMUEL BOWMAN #1	GRIFFITHSVILLE NE	1.2	CONSOLIDATED GAS
8419915		4704302317		108		SAMUEL BOWMAN #5	GRIFFITHSVILLE NE	1.2	CONSOLIDATED GAS
8419924		4704301485		108		STOWERS HEIRS #4	GRIFFITHSVILLE NE	0.9	CONSOLIDATED GAS
8419929		4704302326		108		STOWERS HEIRS #6	GRIFFITHSVILLE NE	0.9	CONSOLIDATED GAS
8419923		4704301474		108		W T HARRIS #3	GRIFFITHSVILLE NE	1.6	CONSOLIDATED GAS
8419934		4704301547		108		W T HARRIS #4	GRIFFITHSVILLE NE	0.7	CONSOLIDATED GAS
8419925		4704301508		108		ZONA HUGHES #1	GRIFFITHSVILLE NE	0.6	CONSOLIDATED GAS
-S & S LTD PARTNERSHIP #2				RECEIVED:		02/09/84 JA: WV			
8419888		4703302887		103		SWIGER S & S #2	SALEM-WALLACE FIELD	20.0	CARNEGIE NATURAL
-ST MARYS EASTERN ENERGY INC				RECEIVED:		02/09/84 JA: WV			
8419906		4707301580		107-DV		CUNNINGHAM E E #111	MCKIM	16.0	
8419904		4707301557		107-DV		SPINDLETOP-WETZ E E #103	MCKIM	8.0	
8419905		4707301558		107-DV		SPINDLETOP-WETZ E E #104	MCKIM	11.0	
** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE,NM									
-AMAX PETROLEUM CORPORATION				RECEIVED:		02/09/84 JA: NM 4			
8420050	NM-2264-83PB	3004505914		108-PB		HANSON FEDERAL #1	BASIN DAKOTA	18.0	NORTHWEST PIPELIN
-AMERICAN PETROFINA COMPANY OF TEXAS				RECEIVED:		02/09/84 JA: NM 4			
8420056	NM-2246-83PB	3003906155		108-PB		BOLACK FEDERAL #2	BALLARD	0.0	EL PASO NATURAL G
8420055	NM-2247-83PB	3003906115		108-PB		FOSTER FEDERAL A#1	BALLARD	0.0	EL PASO NATURAL G
-AMOCO PRODUCTION CO				RECEIVED:		02/09/84 JA: NM 4			
8420058	NM-2249-83PB	3004511588		108-PB		GALLEGOS CANYON UNIT #209	BASIN	0.0	EL PASO NATURAL G
8420059	NM-2248-83PB	3004507832		108-PB		GALLEGOS CANYON UNIT COM D #160	BASIN	0.0	EL PASO NATURAL G
8420057	NM-2250-83PB	3004521052		108-PB		HEATH GAS COM O #1	BLANCO	0.0	EL PASO NATURAL G
8420061	NM-2265-83PB	3004521715		108-PB		VANHOOK FEDERAL #1	BLANCO	0.0	EL PASO NATURAL G
8420060	NM-2251-83PB	3004520970		108-PB		W D HEATH B #5	BLANCO	0.0	EL PASO NATURAL G
-ARCO OIL AND GAS COMPANY				RECEIVED:		02/09/84 JA: NM 4			
8420046	NM-2254-83PB	3004511592		108-PB		HAMMOND FED WN #5	SOUTH BLANCO PICTURED	16.0	EL PASO NATURAL G
8420047	NM-2253-83PB	3004520443		108-PB		MARRON WN FED COM #7	SOUTH BLANCO PICTURED	16.0	EL PASO NATURAL G
-BLACKWOOD & NICHOLS CO LTD				RECEIVED:		02/09/84 JA: NM 4			
8420054	NM-1074-83PB	3004521477		108-PB		NORTHEAST BLANCO UNIT #05R	BLANCO MESAVERDE	12.0	EL PASO NATURAL G
-COTTON PETROLEUM CORPORATION				RECEIVED:		02/09/84 JA: NM 4			
8420062	NM-2242-83PB	3003921764		108-PB		APACHE #12	SOUTH BLANCO	0.0	NORTHWEST PIPELIN
-EL PASO EXPLORATION CO				RECEIVED:		02/09/84 JA: NM 4			
8420053	NM-2142-83PB	3004506443		108-PB		SAN JUAN 27-8 B #4	SOUTH BLANCO	0.0	EL PASO EXPLORATI
-EL PASO NATURAL GAS COMPANY				RECEIVED:		02/09/84 JA: NM 4			
8419986	NM-2140-83PB	3004520760		108-PB		ATLANTIC A #11	BLANCO	0.0	EL PASO NATURAL G
8419983	NM-2134-83PB	3004512093		108-PB		ATLANTIC C #8	BLANCO	0.0	EL PASO NATURAL G
8419999	NM-2209-83PB	3004520758		108-PB		ATLANTIC C #9	BLANCO	0.0	EL PASO NATURAL G
8420020	NM-2190-83PB	3004520446		108-PB		BOLACK B #7	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419978	NM-2212-83PB	3004520492		108-PB		DAY #5	BLANCO	0.0	EL PASO NATURAL G
8420028	NM-2230-83PB	3004512192		108-PB		DAY A #8	BLANCO	0.0	EL PASO NATURAL G
8420027	NM-2229-83PB	3004508608		108-PB		FANNIN #1	AZTEC	0.0	EL PASO NATURAL G
8420033	NM-2218-83PB	3004506543		108-PB		FLORENCE D #3	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420024	NM-2151-83PB	3004506332		108-PB		GORDON #5	FULCHER KUTZ	0.0	EL PASO NATURAL G
8419992	NM-2125-83PB	3004520671		108-PB		GRAMBLING C #7	BLANCO	0.0	EL PASO NATURAL G
8419995	NM-2204-83PB	3004507496		108-PB		HARDIE E #1	BLANCO	0.0	EL PASO NATURAL G
8420038	NM-2144-83PB	3003906851		108-PB		HARRINGTON #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420043	NM-2238-83PB	3004520316		108-PB		HEATON #23	AZTEC	0.0	EL PASO NATURAL G
8420011	NM-2164-83PB	3004508920		108-PB		HOWELL #5	BLANCO	0.0	EL PASO NATURAL G
8420012	NM-2163-83PB	3004508920		108-PB		HOWELL #5	BLANCO	0.0	EL PASO NATURAL G
8419987	NM-2141-83PB	3004506069		108-PB		HUERFANITO UNIT #12	BALLARD	0.0	EL PASO NATURAL G
8420016	NM-2187-83PB	3004505743		108-PB		HUERFANO UNIT NP #23	HUERFANO	0.0	EL PASO NATURAL G
8420022	NM-2197-83PB	3004511680		108-PB		HUGHES #22	BLANCO	0.0	EL PASO NATURAL G
8420005	NM-2120-83PB	3003921157		108-PB		JICARILLA C #11	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420039	NM-2232-83PB	3003921158		108-PB		JICARILLA C #13	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419997	NM-2200-83PB	3003906448		108-PB		JICARILLA F #10	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420003	NM-2122-83PB	3003906504		108-PB		JICARILLA F #13	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420013	NM-2161-83PB	3002906359		108-PB		JICARILLA G #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419982	NM-2148-83PB	3003906453		108-PB		JICARILLA G #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420035	NM-2157-83PB	3003906528		108-PB		JICARILLA J #16	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419989	NM-2130-83PB	3003922120		108-PB		JICARILLA 67 #19	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420040	NM-2233-83PB	3004521442		108-PB		KELLY #3	BLANCO	0.0	EL PASO NATURAL G
8420031	NM-2215-83PB	3004509752		108-PB		KELLY B #1	BLANCO	0.0	EL PASO NATURAL G
8420001	NM-2206-83PB	3004520793		108-PB		KELLY B #2	BLANCO	0.0	EL PASO NATURAL G
8420019	NM-2191-83PB	3004513064		108-PB		LACKEY B #18	AZTEC	0.0	EL PASO NATURAL G
8420021	NM-2199-83PB	3003922381		108-PB		LINDRITH UNIT #100	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419980	NM-2146-83PB	3003905519		108-PB		LINDRITH UNIT #48	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420018	NM-2193-83PB	3003920093		108-PB		LINDRITH UNIT #72	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419985	NM-2138-83PB	3003920638		103-PB		LINDRITH UNIT #76	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419996	NM-2203-83PB	3004560060		108-PB		MOORE #3	BLANCO	0.0	EL PASO NATURAL G
8420017	NM-2194-83PB	3004520283		108-PB		MUDGE #29	BLANCO	0.0	EL PASO NATURAL G
8419984	NM-2137-83PB	3004509054		108-PB		MURPHY E #3	AZTEC	0.0	EL PASO NATURAL G
8420006	NM-2119-83PB	3004520675		108-PB		NYE #4	AZTEC	0.0	EL PASO NATURAL G
8420000	NM-2208-83PB	3004520463		108-PB		PIERCE #5	BLANCO	0.0	EL PASO NATURAL [illegible]
8419991	NM-2124-83PB	3004520469		108-PB		PIERCE #6	BLANCO	0.0	EL PASO NATURAL [illegible]
8419981	NM-2147-83PB	3003907009		108-PB		RINCON UNIT #116	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419977	NM-2211-83PB	3003906909		108-PB		RINCON UNIT #39	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419979	NM-2145-83PB	3003906864		108-PB		RINCON UNIT #62	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419998	NM-2201-83PB	3003906822		108-PB		RINCON UNIT #9	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420026	NM-2228-83PB	3004512100		108-PB		ROELOFS A #5	BLANCO	0.0	EL PASO NATURAL G
8420041	NM-2236-83PB	3004520501		108-PB		RUSSELL #8	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420042	NM-2237-83PB	3004508230		108-PB		SAN JACINTO #1	AZTEC	0.0	EL PASO NATURAL G
8420023	NM-2153-83PB	3004508130		108-PB		SAN JACINTO #6	BASIN	0.0	EL PASO NATURAL G
8420008	NM-2126-83PB	3003906937		108-PB		SAN JUAN 27-4 UNIT #21	TAPACITO & BLANCO	0.0	EL PASO NATURAL G
8420014	NM-2189-83PB	3003907109		108-PB		SAN JUAN 27-4 UNIT #28	BLANCO	0.0	EL PASO NATURAL G
8419970	NM-2222-83PB	3003907141		108-PB		SAN JUAN 27-5 UNIT #2	BLANCO	0.0	EL PASO NATURAL G
8419975	NM-2225-83PB	3003907191		108-PB		SAN JUAN 27-5 UNIT #61	BLANCO	0.0	EL PASO NATURAL G
8419969	NM-2223-83PB	3003906847		108-PB		SAN JUAN 27-5 UNIT #68	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8419971	NM-2220-83PB	3003920174		108-PB		SAN JUAN 28-4 UNIT #32	BASIN	0.0	EL PASO NATURAL G
8419993	NM-2196-83PB	3003920106		108-PB		SAN JUAN 28-5 UNIT #77	BASIN	0.0	EL PASO NATURAL G
8420004	NM-2121-83PB	3003920878		108-PB		SAN JUAN 28-5 UNIT #95	TAPACITO	0.0	EL PASO NATURAL G
8419994	NM-2195-83PB	3003982366		108-PB		SAN JUAN 28-6 UNIT #108	SOUTH BLANCO	0.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8420032	NM-2217-83PB	3003920038		108-PB		SAN JUAN 28-6 UNIT #136	BASIN	0.0	EL PASO NATURAL G
8420010	NM-2185-83PB	3003907452		108-PB		SAN JUAN 28-6 UNIT #15	BLANCO	0.0	EL PASO NATURAL G
8420009	NM-2186-83PB	3003907125		108-PB		SAN JUAN 28-6 UNIT #24	BLANCO	0.0	EL PASO NATURAL G
8420034	NM-2155-83PB	3003907167		108-PB		SAN JUAN 28-6 UNIT #26	BLANCO	0.0	EL PASO NATURAL G
8419988	NM-2128-83PB	3003906999		108-PB		SAN JUAN 28-7 UNIT #119	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420036	NM-2158-83PB	3003907163		108-PB		SAN JUAN 28-7 UNIT #67	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420025	NM-2149-83PB	3003907124		108-PB		SAN JUAN 28-7 UNIT #86 PC & MV	BLANCO & SOUTH BLANCO	0.0	EL PASO NATURAL G
8420037	NM-2160-83PB	3003906982		108-PB		SAN JUAN 28-7 UNIT #92	BLANCO	0.0	EL PASO NATURAL G
8419976	NM-2224-83PB	3003907497		108-PB		SAN JUAN 29-7 UNIT #95	BLANCO	0.0	EL PASO NATURAL G
8419990	NM-2131-83PB	3003907813		108-PB		SAN JUAN 30-4 UNIT #21	EAST BLANCO	0.0	EL PASO NATURAL G
8420030	NM-2213-83PB	3003907866		108-PB		SAN JUAN 30-6 UNIT #34	BLANCO	0.0	EL PASO NATURAL G
8419974	NM-2226-83PB	3003907895		108-PB		SAN JUAN 30-6 UNIT #37	BLANCO	0.0	EL PASO NATURAL G
8420007	NM-2127-83PB	3003907858		108-PB		SAN JUAN 30-6 UNIT #39	BLANCO	0.0	EL PASO NATURAL G
8419972	NM-2219-83PB	3004506406		108-PB		SCHWERDTFEGER A #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420029	NM-2231-83PB	3004511705		108-PB		SCHWERDTFEGER A #23	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420015	NM-2188-83PB	3004506766		108-PB		SCHWERDTFEGER A #4	SOUTH BLANCO	0.0	EL PASO NATURAL G
8419973	NM-2227-83PB	3004512079		108-PB		STOREY #5	SOUTH BLANCO	0.0	EL PASO NATURAL G
8420002	NM-2123-83PB	3004507339		108-PB		WHITE KUTZ #2	FULCHER KUTZ	0.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC				RECEIVED:		02/09/84 JA: NM 4			
8420049	NM-2256-83PB	3004505240		108-PB		BRANNON FEDERAL #2	BASIN DAKOTA	10.7	EL PASO NATURAL G
8420048	NM-2255-83PB	3004522234		108-PB		GALLEGOS CANYON UNIT P C #274	WILDCAT	7.5	EL PASO NATURAL G
-JACK A COLE				RECEIVED:		02/09/84 JA: NM 4			
8420044	NM-2244-83PB	3004320228		108-PB		APACHE FLATS #8	BALLARD PICTURED CLIF	12.0	EL PASO NATURAL G
8420045	NM-2243-83PB	3003921908		108-PB		APACHE HILLS #4	BALLARD PICTURED CLIF	13.0	EL PASO NATURAL G
-JEROME P MCHUGH				RECEIVED:		02/09/84 JA: NM 4			
8420063	NM-2241-83PB	3004512080		108-PB		HARDIE #1	BASIN	0.0	EL PASO NATURAL G
8420064	NM-2240-83PB	3004520683		108-PB		NASSAU #1	BASIN	0.0	EL PASO NATURAL G
8420065	NM-2239-83PB	3004520631		108-PB		OXNARD #2	SOUTH BLANCO	0.0	EL PASO NATURAL G
-MARATHON OIL COMPANY				RECEIVED:		02/09/84 JA: NM 4			
8420051	NM-2263-83PB	3003906309		108-PB		JICARILLA APACHE #4	JICARILLA	13.0	EL PASO NATURAL G
-MOBIL PRDG TEXAS & NEW MEXICO INC				RECEIVED:		02/09/84 JA: NM 4			
8420066	NM-2260-83PB	3003907057		108-PB		JICARILLA E #2	BLANCO	0.0	NORTHWEST PIPELIN
8420068	NM-2259-83PB	3003907044		108-PB		JICARILLA E #3	BLANCO	0.0	NORTHWEST PIPELIN
8420067	NM-2261-83PB	3004509323		108-PB		STEPHENS UNIT #1	BASIN	0.0	NORTHWEST PIPELIN
-NORTHERN NATURAL GAS PRODUCING CO				RECEIVED:		02/09/84 JA: NM 4			
8420069	NM-2262-83PB	3004500000		108-PB		NYE FEDERAL TRACT 1 # 2	BASIN	0.0	NORTHERN NATURAL
-NORTHWEST PIPELINE CORPORATION				RECEIVED:		02/09/84 JA: NM 4			
8420052	NM-2132-83PB	3004511231		108-PB		SAN JUAN 32-8 #31	BLANCO MESAVERDE	0.0	NORTHWEST PIPELIN
-R & G DRILLING CO				RECEIVED:		02/09/84 JA: NM 4			
8420070	NM-2257-83PB	3004506765		108-PB		GRAHAM #35	SOUTH BLANCO	0.0	EL PASO NATURAL G
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** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, CASPER,WY									
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-BELCO PETROLEUM CORPORATION				RECEIVED:		02/08/84 JA: WY 5			
8419812	W104-3	4903520630		102-2		FIGURE FOUR FEDERAL 1-I	FIGURE FOUR CANYON	0.0	NORTHWEST PIPELIN
-CONOCO INC.				RECEIVED:		02/09/84 JA: WY 5			
8419813	W724-2-E	4902906068		108-ER		CLOVERLY - MORRISON WELL #7	SOUTH ELK BASIN UNIT	0.0	MONTANA-DAKOTA UT
8419815	W39-3	4902906018		108		SOUTH ELK BASIN UNIT #26	SOUTH ELK BASIN UNIT	18.3	MONTANA-DAKOTA UT
-CORONADO OIL CO				RECEIVED:		02/09/84 JA: WY 5			
8419816	W1-145-3	4901720143		102-4		BROWN-GOVT #1	ENOS CREEK	60.0	MONTANA-DAKOTA UT
-MARATHON OIL COMPANY				RECEIVED:		02/09/84 JA: WY 5			
8419817	W1-146-3	4902921133		103		ATHERLY #10 (EMBAR & TENSLEEP)	OREGON BASIN	30.1	CODY GAS CO
8419818	W1-147-3	4902921163		103		NIELSON #10 (EMBAR AND TENSLEEP)	OREGON BASIN	14.0	CODY GAS CO
-MOBIL OIL CORP				RECEIVED:		02/09/84 JA: WY 5			
8419814	W800-2	4900320571		103		FEDERAL MANDERSON #F24-13G	MANDERSON	0.0	MONTANA-DAKOTA UT

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federal register

Monday
March 5, 1984

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects To Strengthen and Develop the U.S. Fishing Industry; Notice

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Saltonstall-Kennedy funds notice of availability/instruction to the public.

SUMMARY: For fiscal year 1984, Saltonstall-Kennedy funds are available to assist persons in carrying out research and development projects which address any aspect of a United States fishery (as herein defined) involving the United States fishing industry (recreational or commercial) including, but not limited to, harvesting, processing, marketing, and associated infrastructures. Projects may be funded through either grants, cooperative agreements or contracts. Any individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands, any fishery development foundation or other private non-profit corporation located in Alaska, or any corporation, partnership, association or other entity, non-profit or otherwise, if a citizen of the United States (as defined by Section 2 of the Shipping Act of 1916 (46 U.S.C. 802)), is eligible to apply for funding under this solicitation. The National Marine Fisheries Service (NMFS), NMFS employees, and their immediate relatives are not eligible to apply.

This notice describes the conditions under which applications will be accepted and how NMFS will determine which applications it will fund. State and local Government applicants must comply with Executive Order 12372 regarding Intergovernmental Review of Federal Programs. The Catalogue of Federal Domestic Assistance number and title for this program are 11–427, "Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements." This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily*. Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and have been assigned OMB No. 0648–0135.

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Commerce Department guidelines implementing that Order. This solicitation is not "major" within the context of the Order or its implementing guidelines because the solicitation does not significantly affect the economy, costs or prices, competition, employment, investment, or productivity. Because the solicitation is issued without prior opportunity for public comment, is is not subject to the provisions of the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Hutchinson, Industry Development Division, National Marine Fisheries Service, Washington, D.C. 20235, Telephone No: 202–634–7451.

I. Introduction

The Saltonstall-Kennedy (S–K) Act (15 U.S.C. 713c–2–713c–3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use at least 60 percent of these funds each year to make grants to assist persons in carrying out research and development projects which address any aspect of United States fisheries, including, but not limited to, harvesting, processing, and marketing. There is no guarantee that sufficient funds will be available to make awards for all approved projects. United States fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. For fiscal year 1984, about $10 million of Saltonstall-Kennedy monies are available to fund fisheries research and development projects. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

II. Saltonstall-Kennedy Activities

The Saltonstall-Kennedy grant program constitutes an important part of the NMFS fisheries development and utilization program. Under this program, NMFS will consider funding projects which relate to the development of fisheries within any NMFS Region and national projects which relate to the development of fisheries in two or more Regions.

The NMFS has two objectives for funding projects: (1) To maintain stability in and strengthen traditional fisheries; and (2) to provide for the growth of the fishing industry through increased use of nontraditional resources.

Traditional fisheries are those for which the existing fishing industry has the capability to fully harvest, process and market the available fishery resources as it has done historically. Stability in traditional fisheries can be influenced by resource fluctuations, changing economic conditions, and public perceptions about quality and safety. In order to maintain stability in traditional fisheries, the NMFS will support projects that increase the stability of the fishing industry to ensure that the industry remains competitive in world and domestic markets.

In order to support growth of the fishing industry, the NMFS will target its activities on non-traditional or unused fisheries such as Alaska groundfish, coastal pelagics in the South Atlantic and Gulf of Mexico, squid and mackerel in the North Atlantic, and others where impediments exist to industry use of these resources. The NMFS will support research which will lessen the risks associated with expansion by the present industry or entry by new participants into these fisheries.

NMFS consults with members of the fishing industry in funding fisheries research and development projects which address regional and national concerns involving stability in traditional fisheries and growth in nontraditional fisheries. The areas considered are as follows:

A. *Harvesting activities:* to demonstrate the technical feasibility of commercial or recreational harvesting of fisheries resources; to provide fishermen with information that documents the potential profitability of commercial or recreational harvesting activities; and to identify abundance, location, and seasonal characteristics of stocks of fish;

B. *Quality enhancement and control:* to develop, evaluate or demonstrate handling, sorting, grading, storage, processing, or distribution methods that will enable fishermen, processors, and those in the distribution chain to maintain or improve the quality of fish and fish products marketed commercially or caught by recreational fishermen; and to identify and correct any public health problems which may be impeding domestic and foreign market expansion;

C. *Domestic market development:* to increase domestic consumption of fish by increasing the use of nontraditional fisheries products in traditional markets or expanding the use of all fish in

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of fisheries are: Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

nontraditional markets; in recreational fisheries, to increase use of non-traditional species, to increase awareness of sport-fishing opportunities, and to expand the opportunities for and economic value of marine recreational fishing;

D. *Foreign market development:* to increase U.S. exports of fish and fish products with particular emphasis on the underutilized species and to publicize domestic recreational fishing opportunities for foreign visitors;

E. *Improvement in efficiency and productivity:* to lower the costs of supplying domestic fish and fish products to consumers; to increase the output or value of existing or new methods or techniques for harvesting, processing, distributing or marketing domestic fisheries products; and

F. *Economic and investment studies:* to document the cost and profitability of any activity that would enable the fishing industry to increase use of fisheries resources or to increase the value of fisheries products or to improve upon methodologies for ascertaining the economic value of recreational fisheries.

III. Regional and National Priorities

Fisheries research, development, and utilization applications should relate to one or more of the priority areas. The NMFS will consider other projects; however, funding will be available for exceptionally good projects outside the priority areas only if sufficient projects adequately addressing the specific priorities are not received.

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will *not* be provided for projects primarily involving the following activities: (1) infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to artificial reefs or fish aggregating devices; and (6) extension activities such as newsletters or technology transfer unless identified as a necessary part of a specific project.

The NMFS encourages a regional approach to developing and strengthening U.S. fisheries. "Region" refers to a geographic area encompassed by a NMFS Region, i.e., Northeast, Southeast, Southwest, Northwest and Alaska. Projects addressing Regional fisheries development needs must be consistent with existing fisheries development plans. Projects addressing national concerns are those which require the coordinated participation of members of the fishing industry from more than one Region or involve activities such as generic domestic and export marketing activities or seafood quality and safety research in which results directly affect the fishing industry or consumers on a national scale. The NMFS has identified priorities in conjunction with fishing industry groups, other organizations and local governmental units having an interest in the development and use of fisheries in the region.

The fisheries and the major needs related to their development or full utilization which the NMFS will give priority for funding are:

A. *Northeast Region.* Priority will be given to species-oriented projects which support growth in the squid, mackerel, and hake fisheries or projects that include the following activities:

1. Develop new methods or techniques to process and use fish wastes, particularly dogfish and shellfish wastes. Projects must determine the technical and economic feasibility of the methods or techniques in actual use through in-plant demonstrations.

2. Conduct on-board demonstrations of methods to: (a) Increase the effectiveness of fisheries gear; (b) improve product quality through improved on-board handling and holding procedures; and (c) reduce operating costs of commercial fishing vessels. Projects must determine the technical and economic feasibility of these methods through demonstrations on vessles.

3. Conduct in-plant demonstrations of new or innovative processing equipment to allow processors to evaluate opportunities to make greater use of nontraditional species of fish. Projects must assess the technical and economic feasibility of using the equipment.

4. Conduct training activities for industry personnel in procedures to maintain the quality of fish as it moves through processing and distribution channels.

5. Conduct Regional export and domestic marketing programs which coordinate state, media and industry activities that will increase use of nontraditional species or develop new markets for traditional species. Such projects will be coordinated with other funded Regional or national marketing projects.

6. Develop and implement a plan to revive the shellfish industry in the county of Suffolk, New York with emphasis on clam seeding in sanitary waters, relocating spawner clams, and conducting a public education program to ensure product quality and safety.

7. Conduct activities to promote the stabilization and growth of the marine recreational fishing industry.

B. *Southeast Region.* 1. *Commercial.* Projects should concentrate on shifting current harvesting, processing, and marketing activity from traditional fisheries, such as shrimp, to alternate fisheries, particularly the coastal herrings, large coastal pelagics, and squid. Priority will be given to projects which:

a. Assess the commercial significance of stocks through contracted fishing vessels and spotter aircraft in the Southeast Region;

b. Develop, evaluate, and demonstrate new technology for the harvest of midwater schooling species in deeper offshore waters;

c. Develop, evaluate, and demonstrate new technology for on-board or shoreside handling, grading, and storage systems;

d. Develop new products or processes for underutilized species which provide evidence of consumer/market acceptance and a determination of economic feasibility;

e. Develop export or demestic markets for underutilized species. Proposals in this area will be closely coordinated at the national level. Approved projects will be consistent with national market development projects;

f. Define and resolve technical constraints limiting the effective marketing of wholesome consumer products from molluscan shellfish resources;

g. Demonstrate solutions to remaining problems hindering the use of Southeastern fishery species in the production and marketing of analog fishery products made from surimi; and

h. Provide alternate designs and/or field testing of improved shrimp fishing trawl designs to eliminate the catch of undesirable finfish, jelly fish, turtles, and debris.

2. *Recreational.* Projects are solicited which will either address problems affecting the stability of traditional recreational fisheries or will redirect sport fishing effort to presently underutilized species. Priority funding consideration will be given to projects which:

a. Develop a profile of marine recreational fishing in the Southeast to assist public and private sector organizations (e.g., Chambers of Commerce; recreation, park and tourism planning/administration agencies; financial institutions; and marine recreational fishing-related businesses) in stimulating economic development based on marine recreational fishing.

This profile should synthesize and summarize relevant existing information (e.g., fishing patterns; target species; overview of the recreational fishing industry; social, economic and demographic characteristics of anglers; trip expenditure information; and other pertinent data);

b. Assess access and infrastructure requirements needed to support further development of marine recreational fisheries in the U.S. Virgin Islands and Puerto Rico;

c. Determine and demonstrate the biological, engineering, and economic feasibility of utilizing artificial reefs and fish aggreegating devices to further develop recreational and commercial fisheries in the U.S. Virgin Islands and Puerto Rico; and

d. Develop a guide(s), suitable for use by domestic and foreign travelers, which identifies recreational fishing opportunities in the Southeast and describes how visitors can best take advantage of these opportunities. The guide should describe major target species; angling techniques; location of access facilities (piers, ramps, beach fishing areas, charter/headboat locations, etc.); techniques for handling and preparing catches, applicable fishing laws and regulations; key contacts/sources of additional information; and other pertinent information.

C. *Southwest Region.* The Southwest Region is comprised of two distinct geographic areas—the central and western Pacific Islands and the California coast. The island fisheries differ significantly in many respects from the mainland fisheries.

1. *Central and Western Pacific.* In the central and western Pacific, priority consideration will be given to projects that (a) address problems of tuna harvesting, and (b) contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Marianas Islands and the Trust Territories of the Pacific Islands. All proposals should be consistent with cultural and social attitudes of island people.

Proposals which address problems in the following areas will be given priority for funding.

a. *Industry Development.* Projects to develop Shoreside Fishery Facilities and Seafood Marketing Outlets by providing business management expertise, quality control systems, and marketing assistance will be considered. Projects designed to develop new markets and promote Pacific Island seafood products will also be considered. Such projects should have the ultimate goal of creating self-sustaining business enterprises or creating new marketing opportunities.

b. *Tuna.* Projects which investigate handlining for sashimi grade tuna and pole-and-line bait fishing will be considered. In view of the recent growth in the Western Pacific tuna purse seine fishery, consideration of tuna purse seine charters will be limited.

c. *Other Pelagic Species.* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus upon developing local and overseas market outlets. Particular attention should be focused on maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing and storage methods.

d. *Trochus and Giant Clams.* Proposals will be considered for continued research on trochus and giant clams as well as projects that could transfer trochus and giant clam reseeding technology to other island areas.

e. *Deepwater Shrimp.* Proposals should focus on trap design for small boat fishermen, area surveys, and the development of shrimp marketing outlets.

f. *Bottomfish.* Snappers and groupers exist in considerable abundance in many Pacific Island areas. Projects should expand harvesting opportunities and develop marketing channels (local and export) for these species. Projects for bottomfish development in areas where the resource may be distressed and unable to withstand added fishing pressure will not be funded.

g. *Seamount Groundfish.* Alfonsin and armorhead resources are presently a target of a directed Japanese fishery and are not harvested by U.S. fishermen. Projects to demonstrate the technical and economic feasibility of harvesting and marketing seamount resources will be considered.

h. *Vessel Support Facilities.* Proposals for the design, engineering and construction of vessel support facilities (e.g., boat launch ramps, docks, etc.) will be considered provided that proposals requesting construction funds contribute matching funds equal to the level of requested Federal S–K funding. Proposals for such facilities should be targeted for those areas where these is a demonstrable need by local fishermen.

The National Marine Fisheries Service does not plan to support the use of S–K funds for projects related to baitfish culture or fish aggregation devices with the following exceptions:

a. *Baitfish Culture.* Projects demonstrating use of cultured baitfish in sea trials in order to determine technical and economic feasibility.

b. *Fish Aggregation Devices.* The major problem affecting fish aggregation devices (FAD) throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a recent mooring design study sponsored by the South Pacific Commission, NMFS has recently approved funding for a FAD project in Yap and is reviewing a similar project in American Samoa. Therefore, the NMFS will not fund FAD related research in the Pacific during this year's funding cycle.

2. *California.* Pacific whiting, short-belly rockfish, and jack mackerel are recognized as being the highest priority species for commercial development off California. Projects that demonstrate fishing techniques, on-board handling, processing, and quality technology as applied to these species, and projects that investigate alternative product forms and markets for Pacific albacore will be considered.

Additionally, projects that include the following activities for commercial and recreational fisheries will be considered for funding.

a. *Waste Utilization.* Projects that develop and demonstrate practical solutions to waste disposal or waste utilization problems in all fisheries and determine technical and economic feasibility.

b. *Quality Improvement.* Test the feasibility of developing a seafood quality program for fresh/frozen West Coast fish covering all phases of product handling from on-board the vessel to shoreside processing and distribution.

c. *Consumer Education.* Fixed-term projects with the objective of educating young Americans on the desirability of seafood will be considered for 1-year funding.

d. *Economic Analysis.* Projects that develop economic profiles of business opportunities within the West Coast fishing industry.

e. *Recreational Fisheries.*

(1) Market Research Studies—Emphasis on market research of the marine recreational fishing industry focusing on angler attitudes.

(2) Recreational Fishing Industry Promotion—Projects that coordinate regional tourist industry promotion programs for marine recreational activities.

D. *Northwest Region.* Priority will be given to projects which:

1. Develop new and/or improved harvesting, processing, distribution and marketing techniques or methods to increase use of such nontraditional

species as Pacific whiting, blue shark, saury, squid, short-belly rockfish, dogfish, and other species known to have potential for development. Projects should include on-board or in-plant demonstrations and assess the technical and economic feasibility of the techniques or methods.

2. Demonstrate and instruct in procedures to maintain or improve the quality or fish or fish products as they move from vessels through processing and distribution channels.

3. Develop information or materials to promote greater consumption of fresh and frozen domestic seafood, and conduct consumer and trade education programs using the materials to increase use of nontraditional species or develop new markets for traditional species. Such programs will be coordinated with other Regional and/or national marketing activities. Such activities may include emphasis on the health and nutritional qualities, availability and variety of seafood, and methods of preparation. Activities should be designed to increase consumer awareness.

4. Develop new target markets for seafood harvested in the U.S. fishery conservation zone by the West Coast fishing industry through market research, product testing, and product introduction into specific markets.

5. Conduct surveys to identify and evaluate consumers' preferences and biases for target species, angling methods, and supporting facilities in marine recreational fisheries; and develop a program to coordinate industry efforts with the travel and tourism industry to increase awareness of opportunities and participation in marine recreational fisheries, especially for non-salmonid species.

E. *Alaska Region.* The growing importance of groundfish to the economic health of the west coast fishing industry continues to require that the Alaska development program focus on the Alaska groundfish resource. Industry needs in this fledgling fishery are diverse and substantial. Priority needs have been identified in the areas of maximizing product mix alternatives, increased utilization of existing vessels and processing facilities, and stimulation of domestic and export market opportunities for diverse groundfish products. Pollock, because of the resource size and current utilization by foreign nations, has been identified as the highest priority species for development.

Projects to be given priority for funding should resolve problems associated with the full utilization of groundfish related to the following areas:

1. Improve the quality of fish delivered to processing facilities.

2. Conduct commercial scale processing tests of groundfish products to assess technical and economic feasibility and market acceptability.

3. Investigate alternatives for utilizing groundfish processing by-products.

Development proposals which address problems in the traditional segments of the Alaska fishing industry will be considered. Proposed projects in these areas should incorporate solutions that will work in remote geographic areas and should be complementary to state and private sector development activities.

F. *National Priorities.*

1. *Domestic Market Development.* NMFS intends to fund projects which are generic in approach and which will contribute to the increased use of seafood in the U.S. marketplace. Priority will be given to projects which address any of the following:

a. Development and dissemination of consumer education materials using mass media and point of sale presentations. Projects addressing youth education activities are encouraged.

b. Conduct activities to educate the food service industry on fish and shellfish products with an emphasis on providing information related to buying, handling, sanitation, and preparation.

c. Development of a marketing strategy to increase food industry use of domestically produced squid products.

2. *Export Market Development.* The NMFS intends to fund projects which provide direct access for U.S. exporters to buyers in other countries and will give priority to funding:

a. *International Food Shows:*

(1) Management of U.S. Seafood Sales Exhibitions at four key international food shows, including (a) IFE'85 in London, England, (b) ANUGA'85 in Cologne, West Germany, (c) Alimentaria'86 in Barcelona, Spain, and (d) SIAL'86 in Paris, France. If selected, the applicant will be required to work with U.S. Embassy officials and Export Development Office officials overseas to develop cost-effective programs to support each show. The applicant must use existing U.S. Seafood Exhibition structures constructed under previous grants. Funding will be providing for: (a) securing 250 to 500 square meters of floor space at each event, (b) transporting and refurbishing the portable exhibit system, and (c) direct operating costs.

(2) Management of small-scale food shows in various parts of the world during 1985 and 1986. The use of cost effective methods of product presentation must be demonstrated in the application. Funding will be provided for floor space rental, booth construction, the shipment and display of generic products, and direct operating costs. The exhibitor will promote fish and shellfish on a generic basis and prepare and distribute a report on resulting trade leads.

b. *Export Marketing Initiatives:* Perform export market consumer and trade education activities in export markets for which there is sales potential for U.S. products and U.S. industry interest. Focus will be placed on underutilized species and traditional species in new markets.

3. *Improving Quality, Safety, and Use of Fish and Fish Products.* The NMFS is soliciting projects which support its goal of providing consumers with a wide variety of wholesome, nutritious fish and fish products of a good quality. The research priorities for 1984 areas are as follows:

a. *Rapid Methods:* Develop specific cost-effective rapid methods to:

(1) Detect and remove parasites in fish and shellfish.

(2) Objectively determine the quantity of contents of glazed block frozen seafood (shrimp, scallops, crabmeat, fillets) based upon the temperature at which the thermal center of the product passes through decrystallization.

(3) Detect ciguatera in species of Caribbean and Pacific origin including isolation and/or purification of ciguatoxin.

b. *Irradiation Preservation:* Determine the technical and economic feasibility of applying radiation preservation technology to fish and shellfish within the framework of FDA's advance notice of proposed rulemaking published in the March 27, 1981, issue of the **Federal Register**, pp. 18992–18994, and in view of seafood and other food products irradiation research conducted to date.

c. *Seafood Quality/Decomposition:*

(1) Plan, arrange for, conduct, and publish proceedings of an International Symposium to identify and objectively measure quality/decomposition indicators in seafood.

(2) Develop an alternative to the use of bisulfite for the treatment of black spot on shrimp.

(3) Conduct bacterial comparisons over time and various holding temperatures for vacuum tray packed vs. atmosphere packed trayed seafood.

d. *Authentic Pack Studies:* Conduct authentic pack studies according to the FDA standard protocol for authentic pack studies permitting objective and subjective measurements of changes in inherent textural and sensory characteristics at various intervals of storage in Atlantic and Pacific squid, Alaskan pollock, dogfish, and red hake.

e. *Minced Fish Utilization:* Research in this area should be an extension of research currently in process or recently completed which has focused on the technical and economic feasibility of commercial scale production of surimi and minced fish. Priorities identified below relate to areas of work which have not been addressed in previous research but are necessary to ensure product safety and quality as well as consumer acceptability.

(1) Develop experimental fabricated food products having a potential for using large quantities of minced fish meat from mixed species and test market the products for edibility acceptance.

(2) Conduct refrigerated and/or frozen storage studies on surimi and surimi-based products under typical domestic market conditions to determine quality and spoilage indicators and changes in such indicators which occur during storage.

(3) Conduct chemistry and food engineering research to improve textural and other sensory properties of surimi and surimi-based products to suit U.S. taste preferences and then document consumer reaction to the improvements.

(4) Plan, arrange for, conduct, and publish proceedings of an International Symposium on engineered and structured seafoods, their technology, and market potential.

f. *Training and Education:* Develop training materials and conduct seminars for industry inspection personnel to:

(1) Provide instruction in good manufacturing practices for U.S. fishery products; and

(2) Provide instruction in the evaluation of the quality and manufacture of commercially significant fishery products for sale in domestic and export markets.

g. *Imported Product Survey:* Conduct surveys of imported canned tuna, surimi-based products, and fish blocks containing minced fish meat to evaluate elements of public health (e.g., can integrity, bones) and commercial significance (e.g., net weight, species substitution) relative to recognized standards and/or comparable U.S.-produced products.

4. *Developing the Marine Recreational Fishing Industry.* The NMFS is soliciting projects which will remove impediments to development of the Marine Recreational Fishing (MRF) industry. The major impediments, and potential methods for removing these impediments, are identified and discussed in a report recently completed by the Sport Fishing Institute and NMFS titled, "Final Report, Phase II, The Marine Recreational Fishing Industry and Opportunities for Development." This report is available from: Director, Office of Industry Services, National Marine Fisheries Service, Washington, D.C. 20235.

The major impediments to be addressed by the NMFS S–K program are: (a) Lack of sufficient and coordinated marketing of MRF services through the U.S. and international travel and tourism industries; (b) angler biases as to which species are preferable targets; (c) complexity and length of the permitting process for artificial reefs; (d) lack of the export markets for U.S. produced fishing tackle. Projects will be selected only to the extent that solutions to these impediments are national vs. regional in nature.

IV. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;
2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;
3. Any fishery development foundation or other private non-profit corporation located in Alaska;
4. Any corporation, partnership, association, or other entity (including, but not limited to, any fishery development foundation or other private non-profit corporation not located in Alaska), non-profit or otherwise, if such entity is a citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2] No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be funded. The NMFS encourages women and minority individuals and groups to submit applications. NMFS employees (or their immediate families, including full, part-time, and intermittent personnel) and NMFS offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For fiscal year 1984, the NMFS will have an estimated $10 million available to fund the fishery research and development projects solicited herein. Grants or cooperative agreements will generally be awarded for a period of 1 year. Applications will be considered for projects which extend for up to 3 years. Multi-year projects must be resubmitted each year. Continued funding will be contingent on the availability of funds, the extent to which project objectives are met during the prior year, and the continued priority of the project in subsequent years. Publication of this announcement shall not obligate the NMFS to award any specific grant or to obligate the entire amount of funds available or any part thereof.

C. Cost-Sharing Requirements

The amount of a grant must be at least 50 percent of the total cost of the project. The non-Federal share may include funds received from private sources or from State or local Governments or the value of in-kind contributions. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services

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[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (1) the title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

rendered in carrying out functions related to, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the cost of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit, public interest organizations which demonstrate no financial ability to meet cost-sharing requirements and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the U.S. Virgin Islands under the provisions of 48 U.S.C. 1469a. The total project costs and the percentage of cost sharing required will be determined as described below.

1. *Determining Total Project Cost*

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a formal grant, cooperative agreement, or contract between the applicant and an authorized representative of the United States and ends when the applicant submits a final performance report that is accepted by an authorized representative. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations up to the point of formal award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circular A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations." In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated.

2. *Determining the Level of Cost Sharing Required*

The percentage of the total project costs that must be provided from non-Federal sources is as follows:

a. *20 percent.* For projects that benefit the fishing industry and/or the consuming public, but offer no unique advantage to specific industry sectors, the non-Federal cost share shall be no less than 20 percent of the total project cost. These projects would ordinarily be conducted by or for State or local government entities or by non-profit organizations.

b. *30 percent.* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share shall be no less than 30 percent of the total project cost.

c. *40 percent.* For projects which involve significant fishing industry participation, entail a limited risk, and in the prospects for immediate future gain for project are significant, the non-Federal cost share shall be no less than 40 percent of the total project cost.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to developing and strengthening the U.S. fishing industry and cost estimates as they relate to specific aspects of the project. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applicants should contact the appropriate regional office for guidance in preparing project descriptions. Such consultations with NMFS staff will not result in more favorable consideration of any project. Applications shall be submitted in the following format:

1. *Cover Sheet*

An applicant shall use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices or NMFS Washington Office listed in Section IV.E.

2. *Project Summary*

Each project within the application shall contain a summary of not more than one page which provides the following information:

a. Project title.

b. Name of applicant.

c. Primary objective of project.

d. Summary of work to be performed.

e. Principal geographic impact of project (local, statewide, regional, national).

f. Total Federal funds requested; total amount and percentage of total project costs.

g. Project costs to be provided from non-Federal Government sources; total amount and percentage of total project costs.

h. Total project costs.

3. *Project Description*

Each project within the application shall be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, the NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project shall be described as follows:

a. *Identification of Problem(s).* Describe how existing conditions prevent the U.S. fishing industry from developing a fishery or using existing fisheries. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishing resources.

b. *Project Goals and Objectives.* Describe what the project will accomplish and how this will eliminate or reduce the problem(s) described above. In addition, describe the impact of the proposed work in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factor.

c. *Appropriateness and Need for Government Financial Assistance.* Explain why members of the fishing industry are unable to fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe (1) the level of participation by the NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required to ensure the success of the project(s); and (2) the nature of such participation. In addition, list names and addresses of the principal persons or groups consulted during the preparation of the project description.

e. *Federal, State, and Local Government Activities.* List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the application for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons or groups who will be involved in the project, their qualifications, and their level of involvement in the project. Provide copies of any agreements between the applicant and participants who are not directly employed by the applicant which describe the specific tasks they will perform.

h. *Monitoring of Project Performance.* Describe how the progress of the project will be monitored and who will participate in the monitoring. Specify what actions will be taken in the event specific project tasks become unattainable. This is particularly important in demonstration projects that can be affected by factors beyond the control of the applicant.

i. *Project Benefits.* Identify the sectors of the fishing industry that will benefit from the proposed work and how they will benefit. Describe benefits in terms that can be measured. All projects must clearly describe how information gained from the projects will be made known or transferred to the fishing industry.

j. *Evaluation of Project Benefits.* The applicant is required to provide an evaluation of project accomplishments. Describe the methodology or procedures to be followed to determine, as appropriate, technical or economic feasibility, to evaluate consumer acceptability, or to quantify the impact of the project in promoting increased landings, production, sales, exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Provide a detailed budget of project costs, identifying in particular: salaries, fringe benefits, travel costs, equipment rental, supplies, contracts (including project evaluation and final report preparation costs if contracted), overhead, and other administrative and technical costs of the project. Costs must be identified for specific phases of a project. Ordinarily, funds will not be granted for the purchase of capital equipment. NMFS will not consider fees or profits as allowable costs by primary recipients of S–K funds.

l. *Cost Sharing for the Project.* Identify project costs which will be funded from non-Federal sources, including in-kind contributions. Project costs provided by the applicant cannot exceed 50 percent of total project costs.

4. *Project Consolidation*

Applicants may submit two or more projects under one proposal but must identify project costs separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. *Supporting Documentation*

This section shall include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily review material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline*

The NMFS will accept application for funding under this program between March 5, 1984 and May 7, 1984. An application will be considered to be timely filed if (a) the application is in any of the offices listed below on or before May 7, 1984, or (b) the application is postmarked (First Class Mail) no later than May 1, 1984.

2. *Submission of Applications to the NMFS*

Applicants shall submit one signed original and two (2) copies of the complete application. Applications are not to be bound in any manner.

a. Application relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota):

Regional Director, National Marine Fisheries Service, 7 Pleasant Street, Gloucester, MA 01930, Telephone No.: (617) 281–3600.

If delivered by other than the U.S. Postal Service, use the following address: Post Office Bldg., Room 201, 15 Dale Ave., Gloucester, MA 01930.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands):

Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893–3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands):

Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone No.: (213) 548–2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota):

Regional Director, National Marine Fisheries Service, 7600 Sand Point Way NE., Bin C15700, Seattle, Washington 98115, Telephone No.: (206) 527–6150.

Alaska Region (Alaska):

Regional Director, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802, Telephone No.: (907) 586–7221.

b. Applications that do not directly address the development of a particular fishery or region of the country but do address broad national concerns, such as impediments to increased use of fish and fish products both domestically and abroad, impediments to recreational fishing which are national in scope, industry productivity or efficiency, product quality and safety, or consumer welfare identified in Section III, Regional and National Priorities, should be sent to: Director, Office of Industry Services, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C. 20235.

The NMFS shall review all applications to determine the appropriate reviewing office. NMFS determination of this matter shall be final.

V. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which Office should evaluate the proposed work. This will normally be the office where the application is filed. The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and consumer groups. The regional and Washington offices of the NMFS will make project descriptions available for review as follows:

1. *Public review and comment.* Regional projects may be inspected at the office to which they are submitted. All projects will be available for inspection at the NMFS Office of Industry Services, 3300 Whitehaven Street NW., Room 357, Washington, D.C. from May 16, 1984 to May 30, 1984. Written comments will be accepted at the regional or Washington offices until May 30, 1984.

2. *Consultation with members of the fishing industry.* The NMFS shall, in its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government agencies.* Projects will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, NOAA Grants/Contracts Offices and, as appropriate, Department of Commerce and other federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

The NMFS will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following criteria:

a. Adequacy of research/development/demonstration for resolving an impediment and possibilities of securing productive results (20 points).

b. Soundness of design/technical approach for resolving an impediment (20 points).

c. Organization and management of the project, including qualifications and previous related experience of the management team and the personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (20 points).

e. Appropriateness of the budget in terms of the work to be performed (20 points).

After the technical evaluation, each reviewing Office will convene a panel of NMFS, fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. The panel will consider the significance of the problem addressed in the project along with the technical evaluation and will rank each project in terms of importance or need for funding. The panel will make recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated by the reviewing offices, the Regional Directors for regional projects and the Director, Office of Industry Services for national projects will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries for review. The Assistant Administrator for Fisheries will determine the number of projects to be funded based on the recommendations provided to him/her, consistency of projects with national fisheries policy, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in preaward discussions between the applicant and NOAA/NMFS Program and administrative representatives. The Department of Commerce will review all recommended projects and appropriate funding prior to final authority to proceed. The funding instrument will be determined by NOAA Grants Officers.

VI. Administrative Requirements

A. Obligations of the Applicant

An Applicant shall:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is funded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the NMFS.

4. If a project is funded, keep records sufficient to disclose the use made of grant funds, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. NMFS will provide a proportionate share of funds to pay for an audit.

5. If a project is funded, submit quarterly project status reports to the NMFS within thirty days after the end of each calendar quarter within the time frame agreement and to the individual specified as the technical monitor in the funding agreement on the use of funds and progress of the project. The content of these reports shall be determined by the MNFS official assigned to monitor the project activities and shall include, at a minimum:

a. the degree to which goals or objectives were achieved as originally projected;

b. where necessary, the reasons why goals or objectives are not being met; and

c. any change in plans or redirection of resources or activities and the reason therefore.

6. If a project is funded, submit an original and 2 copies of a final report within 90 days after completion of each project. This report shall describe the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable the NMFS to assess the success of the completed project. Results shall be described in relation to the project objectives of resolving specific impediments and be quantified to the extent possible. Potential uses of project results in private industry should be specified. Any conditions or requirements necessary to make

productive use of project results should be identified.

7. If a project is funded by grant or cooperative agreement, comply with Office of Management and Budget Circulars A-102 (for use by states and local governments) and A-110 (for use by universities, hospitals, other non-profit, and profit organizations) which contain terms and conditions of Federal financial assistance awards.

Audits shall be conducted in accordance with either Attachment P of OMB Circular A-102 or Attachment F of OMB Circular A-110 which provides that a single organization wide financial and compliance audit shall be performed on an annual or biannual basis. Such audits shall cover all Federal funds, including Department of Commerce funds, received by the organization during the 1 or 2-year fiscal period. Cost principles for audits are identified in OMB Circular A-87 (State and local governments), OMB Circular A-21 (universities), OMB Circular A-122 (non-profit organizations), and CFR-43 (commercial organizations).

8. Submit 25 copies of any publications printed with grant funds and such additional reports as may be required by the NMFS.

B. Obligations of the National Marine Fisheries Service

The NMFS shall:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects;

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals;

3. Monitor all projects to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

C. Legal Requirements

The applicant shall be required to satisfy the requirements of applicable local, State and Federal Laws.

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Signed at Washington, D.C. this 29th day of February 1984.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

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federal register

Monday
March 5, 1984

Part VI

Commodity Futures Trading Commission

17 CFR Parts 3, 4, and 10

Temporary Licenses; Statutory Disqualification From Registration; Statutory Disqualification and Other Regulatory Requirements; Final Rule

Temporary Licensing of Associated Persons; Notice

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3, 4, and 10

Temporary Licenses; Statutory Disqualification From Registration; Statutory Disqualification and Other Regulatory Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted regulations to implement the registration provisions of the Commodity Exchange Act ("Act") as amended by the Futures Trading Act of 1982 ("1982 Act") to provide the Commission with greater flexibility in the administration of its registration program. The Act, as amended, authorizes the Commission to grant temporary licenses to qualified applicants for a period not to exceed six months and, in addition, establishes a new system of statutory disqualifications, which enumerate the most important bases for finding applicants or registrants unfit for registration. These statutory disqualification standards are particularly important in connection with the temporary licensing program being adopted in that they will permit the Commission staff to determine, generally on the face of an application, whether the applicant qualifies for a temporary license.

In accordance with Congressional expectations, the final rules with respect to the statutory disqualification provisions of the Act promote fairness and uniformity of treatment by providing applicants and registrants with advance notice of the most significant standards for disqualification used by the Commission and the likely regulatory response to the existence of certain disqualifying factors. Moreover, as also intended by Congress, the Commission's staff in most cases will no longer bear the burden of establishing what conditions warrant a Commission finding of unfitness. Therefore, the amount of time and resources which the staff, as well as applicants and registrants, currently devote to registration cases should be correspondingly reduced.

The Commission has also adopted certain technical and conforming amendments to its existing registration rules contained in Part 3, and Part 4 and Part 10 of the Commission's regulations.

Finally, the Commission is publishing as a new Appendix A to Part 3 an interpretative statement with respect to section 8a(2) (C) and (E) and section 8a(3)(M) of the Act in order to provide further guidance to applicants and registrants regarding the Commission's interpretation of those sections of the Act.

EFFECTIVE DATE: Except as specified herein, the rules will become effective on April 4, 1984. Sections 3.40–3.43 and the amendments to §§ 3.12(c)(2) and 3.16(c)(2) will become effective 15 days after further notice of the effective date is published in the **Federal Register.** Such further notice will be published in the **Federal Register** no earlier than 45 days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, or Bruce A. Beatus, Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Futures Trading Act of 1982, Pub. L. No. 97–444, 96 Stat. 2294 (1983), amended the Commodity Exchange Act [1] in several important respects to provide the Commission with greater flexibility in the administration of its registration program. Specifically, the Act was amended to authorize the Commission to grant temporary licenses under certain circumstances [2] and to establish a system of statutory disqualifications from registration.[3] In enacting these amendments, Congress intended to "streamline and simplify the current registration procedures to enable the Commission to register fit persons more expeditiously and to remove unfit persons from the industry more promptly."[4]

On November 2, 1983, the Commission proposed rules and rule amendments to implement these new provisions of the Act. 48 FR 50554. Essentially, the proposed regulations (1) established a procedure for issuing temporary licenses to applicants for registration as associated persons, (2) create procedures for implementing the two-tiered system of statutory disqualifications set forth in the Act and (3) establish procedures to require a registrant to notify the Commission whenever the registrant knows or should know that an associated person whom it has sponsored is subject to a statutory disqualification under section 8a(2) of the Act.

The Commission received twelve comment letters on its proposal. The commentors included the National Futures Association ("NFA"), a registered futures association, the Futures Industry Association, an industry trade association, contract markets, futures commission merchants ("FCMs") and certain members of the Subcommittee on Judicial and Administrative Procedures of the Committee on Futures Regulation, Section of Corporation, Banking and Business Law of the American Bar Association.[5] The Commission has carefully reviewed each of those comments and, based upon that review and its careful reconsideration of its proposal, is now adopting rules and providing further clarification thereto which it believes are not only responsive to the concerns of the commentors but are fully consistent with Congressional intent and the Commission's regulatory objectives in this rulemaking proceeding.

The following is a summary of the administrative procedures which the Commission has adopted to make use of its authority to provide for the granting of temporary licenses to apparently qualified applicants for registration as associated persons and to implement the new system of statutory disqualification from registration established in the 1982 Act. The Commission believes that these procedures fulfill the House Agriculture Committee's expectation that the statutory authority granted in sections 8a(1)–8a(4) of the Act—

> Will permit the Commission to develop an expedited procedure for registration, provide notice of the most important fitness standards which the Commission will apply, and promote uniformity of treatment of applicants and registrants.[6]

II. Temporary Licenses

Section 8a(1) of the Act has been amended by the 1982 Act to authorize the Commission to grant a temporary license to an applicant for registration for a period not to exceed six months, subject to such rules as the Commission may adopt. Pursuant to the provisions of this section of the Act, the Commission

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[1] 7. U.S.C. 1 *et seq.*

[2] Section 8a(1) of the Act, *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, section 223, 96 Stat. 2310 (1983).

[3] Section 8a(2)–8a(4) of the Act, *as amended by* the Futures Trading Act of 1982, Pub. L. No. 97–444, section 224(1)–(4), 96 Stat. 2310–15 (1983).

[4] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 50 (1982).

[5] The Commission notes that comments set forth in the ABA Subcommittee letter do not represent the official position of the American Bar Association, the Section of Corporation, Banking and Business Law or the Committee on Futures Regulation. Nor do they necessarily represent the views of all members of the Subcommittee.

[6] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

proposed procedures to permit an apparently qualified applicant for registration as an associated person ("AP") to begin work prior to completion of a full fitness check. The Commission's proposal, however, would not have extended the applicability of those procedures to an applicant for registration in other capacities (*i.e.*, futures commission merchants ("FCMs"), introducing brokers, commodity pool operators, commodity trading advisors, floor brokers and leverage transaction merchants).

Under the Commission's proposal, a temporary license would be granted only to AP applicants who contemporaneously file with the Commission: (1) A properly completed Form 8-R which contains no information indicating that applicant may be subject to a statutory disqualification; (2) a legible set of fingerprints on a fingerprint card provided by the Commission (or a copy, in certain cases); and (3) the appropriate sponsor's certification. Proposed § 3.40. The grant of such a temporary license, however, would not constitute registration, or create any inference in favor of registration, nor would denial of a temporary license necessarily mean that ultimately registration would be refused. Proposed § 3.41.

As noted above, section 8a(1) of the Act provides that the term of a temporary license may not exceed six months. As proposed by the Commission, if the applicant were found fit for registration prior to the expiration of the six month period, he would be registered; if he were found to be subject to a statutory disqualification, the applicant would be sent a notice of intent to deny under proposed §§ 3.52 or 3.60 and the temporary license would be terminated immediately. (A temporary license also would terminate whenever the association of the applicant with the registrant which filed the sponsorship certification ceased.) In the event the Commission failed either to register the applicant or to serve notice of its intent to deny registration before the six-month period has expired, the proposed rules would provide that registration be granted automatically.

The Commission is adopting §§ 3.40–3.43 essentially as proposed. The rules, however, will not be made effective until the systems are in place to issue temporary licenses to APs. As the Commission noted in the preamble accompanying the proposed rules, a decision to implement a temporary licensing program was contingent upon the completion of a feasibility study. Although the Commission has determined that such a program is feasible, necessary modifications must be made to the Commission's computer and other systems before the program may be implemented. The Commission has made significant progress in this direction and is moving as expeditiously as possible to complete this task. The Commission intends to publish a notice in the **Federal Register** fifteen (15) days before the effective date of §§ 3.40–3.43 and will also send a letter to all registered FCMs, CPOs and CTAs to notify them of the effective date of the temporary licensing program.

A majority of the commentors addressed the proposed temporary licensing procedures, and most of those commentors generally supported the Commission's proposals for the temporary licensing of AP applicants. In this regard, the Commission notes that four commentors, including the two associations which represent the futures industry generally, agreed with the Commission's proposal to limit the temporary licensing program to APs. One commentor, however, asserted that the Commission's statement that it would not propose regulations to authorize temporary licenses for applicants other than APs is contrary to the intent of Congress. Specifically, the commentor argued that Congress, in enacting section 8a(1), expressly intended that temporary licenses be granted to all classes of registrant without delay.

The Commission is not convinced by this commentor's argument and has determined to limit the granting of temporary licenses to AP applicants. Although section 8a(1) of the Act authorizes the Commission to grant a temporary license to any applicant for registration, this section does not *require* the exercise of such authority. Contrary to the commentor's remarks, the legislative history of section 8a(1) does not contain any statement by Congress that it intended to foreclose the Commission from exercising its discretion in the implementation of this section of the Act.

Moreover, the Commission believes that the reasons for limiting temporary licenses to AP applicants as set forth in the Commission's proposal are still valid. As the Commission has previously stated, the granting of a temporary license is particularly appropriate for an applicant for registration as an AP because such an applicant must be sponsored by another registrant which must conduct a preliminary fitness check of the applicant and must directly supervise the applicant's conduct (48 FR 50555–56).[7] In contrast, other registrants are not subject to such scrutiny or direct supervision. In addition, the Commission is concered that if a temporary license were granted to applicants other than APs, the applicant would be able to commence business, hire employees and, in the case of an FCM, accept customer funds, subject to a subsequent determination by either the Commission or the NFA to deny registration. The Commission, therefore, concludes that the potential disruptions to both customers and employees which might result from interrupting an ongoing business outweigh the benefits which might be achieved by extending the applicability of the temporary licensing provisions to such applicants.

A number of commentors, in addressing the temporary licensing provisions, raised specific issues which the Commission believes warrant clarification at this time. For example, two of the commentors noted that the concept of "derogatory information" as set forth in § 3.40(a) should be more precisely defined to track the specific statutory disqualifications set forth in sections 8a(2)–8a(4) of the Act. The Commission notes that, as proposed, § 3.40(a) required as a condition of obtaining a temporary license that an AP applicant submit a properly completed Form 8-R which contains no derogatory information indicating that the applicant may be subject to a statutory disqualificaton under sections 8a(2)–8a(4) of the Act. In the Commission's discussion of proposed § 3.40 in the preamble to the **Federal Register** release, the Commission expressly pointed out that it is presently revising the Form 8-R so that applicants and Commission staff may more readily identify past conduct which may subject the applicant to a statutory disqualification from registration.[8] The purpose of this statement was to make clear that both applicants and sponsors would be able to ascertain from the Form 8-R itself whether an AP applicant was eligible for a temporary license.

The Commission, however, has modified § 3.40(a) in response to these comments in order to eliminate any potential confusion. Thus, as adopted, § 3.40(a) provides that an AP applicant seeking a temporary license must submit a Form 8-R, "the Disciplinary History portion of which contains no 'Yes' answers indicating that the applicant may be subject to a statutory

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[7] *See, e.g.*, section 4k(5) of the Act, 7 U.S.C. 6k(5) (1982) and Commission rule 166.3, 17 CFR 166.3 (1983).

[8] 48 FR at 50556, n.11.

disqualification under sections 8a(2)–8a(4) of the Act." As noted above, the Form 8–R, as revised, will reflect more accurately the provisions of sections 8a(2)–8a(4) and, therefore, will enable the applicant and sponsor to identify readily whether the applicant may be subject to a statutory disqualification and, thus, ineligible for a temporary license.

Several of the commentors also addressed the Commission's procedures with respect to the processing of applications for temporary licenses. For example, one commentor stated that, since only those applications with no disqualification problems presumably will be submitted by the sponsoring FCM, the "turn-around" period should not encompass an extensive review by the Commission. Therefore, the commentor encouraged the Commission to expedite the temporary licensing procedure by granting a license immediately upon receipt of an eligible application, subject to the Commission's subsequent review. Another commentor suggested that the Commission review such applications within ten days of receipt, while another simply urged the Commission to indicate the time frame contemplated for the issuance of the temporary license.

In this connection, the Commission is mindful of the commentors' general concern that the temporary license be issued promptly upon receipt by the Commission of a satisfactorily completed application. Indeed, the primary purpose of these provisions is to enable apparently qualified applicants to begin work as soon as possible prior to completion of a full fitness check. Nevertheless, prior to granting a temporary license, the Commission will have to collect the registration fee, enter the appropriate data into its computers and, as noted in the preamble to the proposed rules, check its own computer system to determine whether the Commission has any information indicating the applicant may be subject to a statutory disqualification.

In addition, as noted above, the Commission will have to modify significantly its current administrative systems and procedures in order to successfully implement the temporary licensing program.[9] The Commission, therefore, does not believe it would be prudent to establish a specific time frame for the processing of an application for a temporary license. The Commission, however, will endeavor to review such applications as expeditiously as possible and anticipates that, in the absence of exceptional volume, eligible AP applicants should receive notice of the issuance of a temporary license within three weeks from the date of receipt by the Commission of the registration application.

The Commission notes that one commentor expressed the view that persons who receive a temporary license should be subject to the Commission's reparations and enforcement jurisdiction for all acts and omissions engaged in during the period for which the license was operative. Further, should the license be terminated, AP licensees should continue to be subject to the Commission's reparations jurisdiction, notwithstanding the proscription of section 14(a) of the Act which limits such jurisdiction to persons "registered under this Act." In this connection, the Commission wishes to point out that § 3.41(a) of the regulations, both as proposed and adopted, specifically provides that applicants who receive a temporary license are subject to all of the obligations imposed on associated persons registered under the Act "in particular, section 14 thereof."

Another commentor stated that AP applicants who receive a temporary license should be able to transfer among firms as easily as AP registrants. The Commission does not disagree. However, the scope of any temporary licensing program must be defined by the ability of the Commission's registration systems to process applications and amendments thereto. Simply stated, these systems cannot be adapted at this time to accommodate AP applicants who wish to transfer from one firm to another before registration is granted. Therefore, § 3.41(b), which provides that an applicant for registration as an AP who receives a temporary license may be sponsored only by the registrant which initially filed the sponsor's certification on behalf of such applicant, has been adopted as proposed.

In connection with the proposed rules relating to temporary licenses, the Commission proposed to amend §§3.12(c)(2) and 3.16(c)(2) to require that applicants who are seeking a temporary license file the sponsor's certification contemporaneously with the Form 8–R and fingerprint card. In response to its proposal, the Commission received several comments in opposition to these amendments based upon the commentors' concern that this provision would unnecessarily delay the registration process for applicants not qualifying for temporary licenses. The Commission has considered these comments carefully and has determined to adopt the amendments as proposed.

In general, the Commission believes that requiring applicants for AP registration to submit fully completed registration applications will enhance the Commission's ability to process such applications in a timely fashion and avoid unnecessary delays. These amendments also are critical to the Commission's administrative ability to implement temporary licensing provisions. In this connection, the Commission notes that these amendments are also consistent with the Commission's recent adoption of § 3.18(c)(2) which requires a sponsoring leverage transaction merchant to submit the certification required with respect to an applicant for registration as an associated person at the same time as the Form 8–R and fingerprint card are filed. Moreover, as the Commission has previously indicated, this requirement reflects the intent of Congress in enacting section 4k(5) of the Act that registrants make a reasonable inquiry into the background of an individual before permitting that individual to become associated with it as an associated person.[10] The Commission, nonetheless, has determined to defer the effective date of the amendments to §§ 3.12(c)(2) and 3.16(c)(2) until such time as the Commission determines to implement the provisions for temporary licenses (§§ 3.40–3.43).

III. Statutory Disqualifications

The 1982 Act created a two-tiered system of statutory disqualifications. The most egregious bases for disqualification from registration are set forth in section 8a(2) of the Act. Pursuant to such rules, regulations or orders as the Commission may adopt, the registration of an applicant or registrant subject to a section 8a(2) disqualification may be denied, conditioned, restricted or suspended "upon notice, but without a hearing" and may be revoked "with such hearing as may be appropriate."

The disqualification standards set forth in section 8a(3) of the Act, however, are of the type for which additional evidence may be useful. Therefore, if an applicant is subject to a

[9] In this regard, the Commission notes that it has entered into an agreement with the First National Bank of Chicago and the Department of Treasury to authorize the bank to process the collection of registration fees and, contemporaneous with the adoption of these rules, is adopting an order authorizing the National Futures Association to process all applications for a temporary license (although such temporary licenses, with the exception of licenses for APs of introducing brokers, will be granted by the Commission).

[10] 48 FR 50554, 50560 (November 2, 1983).

section 8a(3) disqualification, the Commission may refuse to register such person or, pursuant to section 8a(4) of the Act, may suspend, revoke, condition or place restrictions upon the registration of a disqualified person, but only after the opportunity for a hearing. To implement the provisions of sections 8a(2) through 8a(4) of the Act, the Commission proposed regulations which, *inter alia*, established a strict timetable for the conduct of proceedings under these provisions and which described the type of evidence which the Commission will consider. For the reasons discussed more fully below, the Commission has determined to adopt these regulations essentially in the form proposed.[11]

A. Withdrawal of Application for Registration

Since late 1978, the Director of the Division of Trading and Markets, pursuant to authority delegated by the Commission, has been authorized to send an applicant for registration a so-called "withdrawal" letter under Commission rule 3.20 (formerly rule 1.10e), 17 CFR 3.20 (1983), if it appeared that the applicant would be found unfit for registration after further investigation. Generally, such withdrawal letters are sent in circumstances where the applicant has disclosed disqualifying information on the application or such information has been obtained as a result of the fitness checks conducted by the Federal Bureau of Investigation or the Securities and Exchange Commission. The withdrawal procedure permits applicants who receive such letters to withdraw their applications, in which case the procedures for denial of registration will not be instituted. If the recipient of a "withdrawal" letter wishes to pursue registration rather than to withdraw, the applicant must so notify the Commission within 30 days.

The Commission proposed to adapt this existing withdrawal procedure to the proposed regulations implementing sections 8a(2)–8a(4) of the Act. Proposed § 3.51. The Commission received no comments on this portion of its proposal and has determined to adopt this section as proposed. Thus, as adopted, § 3.51 provides that, whenever the Commission has information which indicates that an applicant may be subject to a statutory disqualification under sections 8a(2) or 8a(3), the applicant may be notified and given the opportunity to withdraw the application. This function is delegated to the Director of the Division of Trading and Markets. If the applicant elects to pursue registration, a denial proceeding under section 8a(2) or section 8a(3), as appropriate, may be instituted.

B. Denial of Registration Pursuant to Section 8a(2)

Under the amendments contained in the 1982 Act, an applicant subject to a statutory disqualification under section 8a(2) of the Act may be denied registration upon notice, but without a hearing. The House and Senate Committee Reports on the 1982 Act make clear that Congress expected the Commission to use the flexibility provided by section 8a(2) to develop procedures which would expedite the processing of registration applications for persons subject to section 8a(2) disqualifications while at the same time satisfying due process requirements.[12]

The Commission proposed procedures that would have provided for written notice to an applicant that the Commission is in possession of information which indicates that such an applicant is subject to a section 8a(2) disqualification, that the applicant may submit evidence in writing challenging the accuracy of the allegations set forth in the notice within a specified period of time and that, if the applicant is subject to the disqualification indicated, the registration will be denied. Proposed § 3.52. A copy of the record establishing the disqualification, *e.g.*, the court order of conviction or injuction upon which the notice is based, would be enclosed therewith.

Under the Commission's proposal, the applicant had twenty days after notice is served to file a written response. If the applicant filed a written submission challenging the accuracy of the allegations against him, the Division of Trading and Markets and the Division of Enforcement would have ten days in which to file a reply. Thereafter, a hearing officer, based upon the written record, would determine whether the applicant is subject to a statutory disqualification. If the hearing officer found that the applicant is subject to a statutory disqualification, the hearing officer would issue an order denying registration which would become effective as a final order of the Commission ten days after it is served on the applicant, unless an appeal were filed with the Commission.[13] Proposed § 3.53.

Consistent with Congressional intent, the type of written submission contemplated under the Commission's proposal did not include the submission of arguments concerning matters other than those directly bearing on the existence of the disqualification. Therefore, evidence establishing, for example, the existence of a clerical error or expungement, conditional discharge, a successful appeal or other post-conviction modification would be permitted.[14] Evidence with respect to mitigation or rehabilitation, however, would not be accepted.

The Commission also notes that Congress granted the Commission greater flexibility in the administration of its registration program by authorizing the Commission to condition as well as deny an application for registration and explicitly recognized the Commission's "wide discretion in the exercise of this authority." [15] At the same time, however, Congress expressed its intent that the procedures adopted by the Commission ensure the uniform treatment of all applicants.[16] In order to ensure such uniformity, and given the nature of the violations set forth in section 8a(2), the Commission proposed not to exercise its authority to grant conditional registrations to persons subject to 8a(2) disqualifications at this time. 48 FR 50557.

Those commentors which addressed the Commission's proposed procedures for the denial of registration under

[11] The Commission notes that, pursuant to section 14(f) of the Act, the registration of any person unable to demonstrate within the time prescribed therein that the full amount of a reparations order has been paid shall be suspended automatically until payment has been made. Because these provisions of section 14(f) are essentially self-executing, these regulations are not applicable to suspensions under that section of the Act.

[12] For example, the House Report provides:

It is contemplated that the Commission will develop procedures pursuant to section 8a(2) that will provide adequate notice to an applicant or registrant that the Commission has information which indicates that he is subject to a statutory disqualification, and which also will afford him an opportunity to reply or explain in writing (e.g., advise the Commission of a clerical error or a case of mistaken identity).

H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96–97 (1982). Similarly, the Senate Report indicates that under section 8a(2) "[t]he Commission could take [action other than revocation] after notice but without giving the affected party a hearing", but also expresses the expectation that "the Commission will develop procedures pursuant to section 8a(2) which will satisfy the constitutional requirements of due process of law." S. Rep. No. 384, 97th Cong., 2d Sess. 36, 92 (1982). *Accord*, 128 Cong. Rec. S13074–75 (daily ed. October 1, 1982) (remarks of Sen. Helms).

[13] If the applicant failed to file a written submission, proposed § 3.54 provided that the applicant would be deemed to be in default and registration would be denied.

[14] *See, e.g.*, H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

[15] Sen. Rep. No. 384, 97th Cong., 2d Sess. 37 (1982).

[16] H.R. Rep. No. 565 (Part 1), 97th Cong., 2d Sess 96 (1982).

section 8a(2) focused primarily on the Commission's determination not to exercise its authority to grant conditional registrations to persons subject to section 8a(2) disqualifications. The Commission has reviewed those comments carefully and, for the reasons explained more fully below, has determined generally to adopt those rules as proposed.[17]

In support of the position that the Commission implement its authority to register conditionally applicants subject to a section 8a(2) disqualification, one commentor cited language in the Senate Report wherein it was stated that the amendment would provide "the Commission greater flexibility in dealing with factual situations in which neither a denial nor full registration is appropriate." S. Rep. No. 384, 97th Cong., 2d Sess. 37 (1982). The commentor therefore concluded that the Commission's proposal provided no such flexibility.

The Commission notes that this commentor essentially contends that the *grant* of authority in section 8a(2) of the Act to refuse to register, to register conditionally, or to suspend or place restrictions upon the registration of persons subject to the disqualifications set forth in that section, *requires* the Commission to exercise such authority. Upon closer examination, however, the legislative history cited by the commentor, as well as the language of section 8a(2), make clear that the authority granted the Commission in section 8a(2) is discretionary and not mandatory. Nevertheless, the commentor goes on to argue that the Commission's tentative decision that persons subject to section 8a(2) disqualifications are *per se* unfit for even conditional or restrictive registration reflects neither Congressional intent nor wise public policy [*citing* former Chairman Johnson in Hearings on S. 2109, 97th Cong., 2d Sess. 310 (1982)].

In this connection, the Commission wishes to point out that the statements of former Chairman Johnson cited by the commentor do not, in fact, support the conclusion that Congress intended the Commission to grant conditional registration to persons subject to section 8a(2) disqualifications. On the contrary, such statements (which refer to the authority to condition registrations under *both* sections 8a(2) and 8a(3) of the Act) merely suggest that there might be some circumstances under which conditional registrations may be granted. Indeed, former Chairman Johnson made clear that the exercise of such authority by the Commission would be discretionary. *See* Hearings on S. 2109, 97th Cong., 2d Sess. 310 (1982).

The commentor provides support for its contention that the Commission's proposal does not reflect wise public policy by noting, *inter alia*, that an applicant that is subject to a section 8a(2) disqualification would be deprived the opportunity to enter the profession of his or her choice. The Commission, however, rejects this argument. "[T]he absence of a statutory disqualification is a precondition to doing business unless the Commission determines otherwise in its discretion." [18] A person has no right, constitutional or otherwise, to be registered if such person is subject to a statutory disqualification.

Finally, this commentor noted that an applicant subject to a section 8a(2) disqualification may submit evidence that is limited to certain information relating to the accuracy of the basis for the disqualification. By contrast, a registrant subject to the same section 8a(2) statutory disqualification may present, in addition to the accuracy information noted above, other evidence such as mitigating or extenuating circumstances, as well as a sponsor's written statement that it is willing to supervise the AP. The commentor stated that, in its opinion, constitutional due process mandates that both an applicant and a current registrant be treated the same.

The Commission disagrees. The two-tiered system of statutory disqualification established in sections 8a(2) through 8a(4) reflects the judgment of Congress that certain disqualifications, *i.e.*, those set forth in section 8a(2), are of such a serious nature that the Commission may deny, condition or restrict the registration of any person subject to a section 8a(2) disqualification "without a hearing".

At the same time, however, Congress recognized that a registrant has a constitutionally protected property interest in his registration which an applicant does not have. Therefore, Congress provided that the Commission could revoke the registration of any person subject to a section 8a(2) disqualification only after "such hearing as appropriate".[19] The distinction between the treatment afforded an applicant subject to a section 8a(2) disqualification and the treatment afforded a registrant subject to the same disqualification, therefore, simply reflects the existence of the registrant's property interest in his registration.

Moreover, the Commission wishes to emphasize that, although a registrant is provided an opportunity to show cause why his registration should not be revoked, the registrant must make a "clear and compelling showing that, notwithstanding the existence of the statutory disqualification, the continued registration of the registrant would be in the public interest." *See* § 3.55(f). Thus, the registrant bears an extremely heavy burden in establishing that his registration should not be revoked. Since revocation prohibits a person from ever being registered with the Commission, while an applicant whose registration is denied may reapply for registration in five years,[20] the limited showing provided registrants under these rules is appropriate. The Commission, therefore, believes that the procedures adopted herein to implement the provisions of section 8a(2) with respect to applicants fully comport with the constitutional requirements of due process and are consistent with Congressional intent.

Based upon the foregoing, and for the reasons set forth in the Commission's proposal (48 FR 50557), the Commission has determined not be exercise its authority and adopt specific provisions to provide for the granting or conditional registrations for persons subject to 8(a)(2) disqualifications. The Commission notes, however, that § 3.75(c) is also being adopted as proposed. Section 3.75(c) reserves to the Commission the decision in any case, *inter alia*, to proceed by order to condition the registration of any person. Thus, although the Commission has determined not to adopt specific provisions providing for conditional registrations under these regulations, the Commission may, in its discretion, offer to grant a conditional registration under the authority the Commission has reserved to itself in § 3.75(c).

The Commission wishes to emphasize, however, that such conditional registrations will be the exception and

[17] The Commission has adopted a technical amendment to change all references to a "hearing officer" to a "presiding officer." A presiding officer is defined at Commission rule 10.2(n) to include a hearing officer.

[18] H. Rep. No. 565 (Part 1), 97th Cong., 2d Sess. 96 (1982).

[19] *See, e.g.,* S. Rep. No. 384, 97th Cong., 2d Sess. 36 (1982) ("The Commission * * * prior to revocation, must give the registrant the opportunity for a hearing and submit evidence forming a basis for the finding that the registrant is subject to a statutory disqualification."); *id.* at 37 ("The Committee expects that the Commission will exercise its discretion judiciously and not use its powers to suspend or restrict a registration, without a hearing, as *de facto* revocation of that registration.") The Commission included a discussion of the relevant constitutional considerations in its proposal. *See* 48 FR 50554, 50558 (November 2, 1982).

[20] *See* section 8a(2) (A) and (B) of the Act.

not the rule. Moreover, a decision to grant a conditional registration will be made only upon the facts set forth in the registration application, and the relevant documents attached thereto, and the Commission will not consider evidence with respect to mitigation or rehabilitation.

As the Commission has previously made clear, it expects that the registration of persons subject to a section 8a(2) disqualification generally should be denied or revoked. Nonetheless, the Commission also recognizes that there may be circumstances in which a conditional registration would be appropriate. For example, if an individual is subject to a disqualification under section 8a(2)(D), having been convicted within the past ten years of a felony involving transactions subject to regulation under the Act, and a period of nine and one half years has passed since the conviction, a conditional registration may be appropriate. Also, if a registrant has been the subject of an administrative proceeding in which revocation of registration was a sanction and, although findings constituting a section 8a(2) disqualification were made, the Administrative Law Judge determined not to revoke the person's registration, a conditional registration, rather than a denial, might be appropriate if the person subsequently applied for registration in a new capacity.

The Commission also reiterates that it intends to monitor closely the effects of its determination not to provide for conditional registration of applicants in these regulations and, as the Commission gains further experience with its implementation of the new system of statutory disqualifications, will assess whether any undue hardship results.

C. Suspension and Revocation Under Section 8a(2).

With respect to registrants subject to a section 8a(2) statutory disqualification, the proposed rules established a two-step procedure pursuant to which the registrant is entitled first to a paper hearing on the fact of the statutory disqualification. The type of evidence which a registrant may present at this first hearing is limited to the type of evidence which an applicant may submit under § 3.53, *i.e.*, evidence challenging the accuracy of the allegations which form the basis for the statutory disqualification. If the registrant is found subject to a statutory disqualification, the Administrative Law Judge would issue an interim order immediately suspending the registrant and requiring the registrant to show cause why registration should not be revoked. The suspension would remain in effect pending completion of the revocation proceeding. Proposed § 3.55 (a)–(d). Thus, this two-step procedure would enable the Commission to remove an unfit registrant from the business expeditiously but, at the same time, grant the registrant an appropriate hearing before registration is revoked.

The Commission also proposed that a registrant be afforded an opportunity for a limited form of hearing in which the registrant may submit in addition to evidence in writing challenging the accuracy of the allegations which form the basis for the statutory disqualification, memoranda, briefs and affidavits in support of the contention that, notwithstanding the existence of a statutory disqualification under section 8a(2) of the Act, the registration of the registrant should not be revoked. The Administrative Law Judge could permit oral hearings, but requests would be granted only under exceptional circumstances. Proposed § 3.55(f)–(h). Based upon the written submission filed by the registrant, any reply filed by the Division of Trading and Markets and the Division of Enforcement and the oral hearing, if granted, the Administrative Law Judge would issue an appropriate order. Proposed § 3.55(i).

The proposed rules provided that the registration of a registrant subject to a section 8a(2) disqualification would be revoked unless the registrant made a clear and compelling showing why continued registration would be in the public interest. If such showing were made, the Administrative Law Judge was authorized in such cases to suspend or, in the case of an associated person, restrict such registration. The registration of an associated person could not be restricted unless the sponsor agreed to supervise such person subject to any conditions the Administrative Law Judge might impose. The proposed rules further provided that a sponsor may not offer to supervise a disqualifed associated person if the sponsor is the subject of a pending administrative action before the Commission or, if the sponsor is an FCM, is subject to the financial reporting requirements of § 1.12(b) of the Commission's regulations. The proposed rules also set forth the circumstances when an associated person's registration could not be restricted and only revocation would be appropriate. Proposed § 3.55 (f) and (i).

The commentors generally supported the Commission's proposed procedures for the suspension and revocation of a registration pursuant to section 8a(2) of the Act. Accordingly, the Commission has determined to adopt § 3.55 as proposed subject to a few minor technical amendments.[21]

Several of the commentors, however, raised two concerns that the Commission believes merit attention. First, the commentors noted that a firm might be held subject to a statutory disqualification under section 8a(2)(E) of the Act,[22] based solely upon a finding that the firm is liable for the acts of its employee under section 2(a)(1)(A) of the Act.[23] For example, if an FCM, because of the acts of an AP, is found under section 2(a)(1)(A) to have violated the Act or any of the various federal and state securities laws and such violations involve fraud, the FCM would be subject to a statutory disqualification and its registration suspended without an opportunity to demonstrate why its registration should not be affected. Therefore, it was recommended that the Commission revise its proposed rules so that they apply only to natural persons and to firms having a principal subject to a statutory disqualification. It also was suggested that the Commission

[21] For example, in order to conform with the provisions of section 6(b) of the Act, § 3.55 has been amended to provide that a period of suspension may not exceed six months. In addition, paragraph (i) has been amended to make more explicit the intent of the Commission that the registration of a registrant subject to a section 8a(2) disqualification should be revoked unless the registrant makes the clear and compelling showing described in paragraph (f)(2).

[22] Section 8a(2)(E) of the Act authorizes the Commission to affect the registration of any person—if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Investors Protection Act of 1970, the Foreign Corrupt Practices Act of 1977, or any similar statute of a State or foreign jurisdiction, or any rule, regulation, or order under any such statutes, or the rules of the Municipal Securities Rulemaking Board where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, bribery, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person.

[23] Section 2(a)(1)(A) provides, *inter alia*, that the "act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission or failure of such individual, association, partnership, corporation, or trust, as well as of such official, agent, or other person." 7 U.S.C. 4 (1982).

should exclude from the operation of the rules all findings of the type specified in section 8a(2)(E) of the Act in proceedings in which the moving party is a private complainant.

Second, one commentor pointed out that under section 8a(2)(C) of the Act, the Commission is authorized to affect the registration of any person if such person is permanently or temporarily enjoined by an order entered pursuant to an agreement of settlement to which the Commission or any federal or state agency or other governmental body is a party from acting in a certain capacity or from engaging in certain transactions concerning futures contracts or securities.[24] It was contended that the exercise of such authority by the Commission would adversely affect the resolution of enforcement proceedings by settlement, since the entry of such an injunction would appear to result in an automatic disqualification from registration.

In response to these comments, the Commission has amended the proposed rules to add a new § 3.57 which essentially provides that, if findings of the type described in section 8a(2)(E) of the Act are entered against a registrant solely because such registrant is responsible for the conduct of its associated persons, the Commission will not exercise its authority under section 8a(2)(E) to affect the registration of such registrant. The Commission has also adopted an interpretative statement to address these and other matters. This interpretative statement is being published with this **Federal Register** notice as a new Appendix A to Part 3 of the Commission's regulations.[25]

As explained more fully in the interpretative statement, the Commission has determined that, with respect to proceedings in which the Commission is a party, it will not exercise its authority to affect the registration of a person subject to a statutory disqualification under section 8a(2) (C)(ii) and (E) if such person has entered into an agreement of settlement which clearly restricts the use of such agreement in subsequent or collateral proceedings. Thus, a provision in the agreement of settlement to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected will preclude a collateral proceeding under section 8a(2) (C)(ii) and (E) where the sole basis for such proceeding is the agreement of settlement.[26] In addition, the Commission has determined that it will not exercise its authority under section 8a(2)(E) if the findings described therein are made in a proceeding initiated by a private party either in a court of law or in a reparations proceeding under section 14 of the Act.[27]

D. Proceedings Under Sections 8a(3) and 8a(4)

Proposed §§ 3.60–3.63 established procedures pursuant to which the Commission could deny, condition, suspend, revoke or place restrictions upon registration pursuant to sections 8a (3) and (4) of the Act. The Commission received no significant comments with respect to this portion of its proposal and is basically adopting these rules as proposed, with the exception of one minor clarifying amendment. In this connection, one commentor stated that the hearing provided in proposed § 3.61 appeared to address only the question of whether the applicant or registrant is subject to a statutory disqualification under sections 8a (3) and (4), whereas proposed § 3.60(c) provides an opportunity to show cause why, notwithstanding the accuracy of the allegations, registration should nevertheless be granted. The Commission wishes to make clear that proposed § 3.61 was intended to refer to the hearing described in § 3.60 and, as such, there is no difference in the kind of evidence that may be presented under these rules. Nevertheless, the Commission has added language to conform § 3.61 and § 3.60, thereby eliminating any potential ambiguity.

IV. Notice Under Section 4k(5)

Ancillary to section 8a(2) is section 4k(5), *as enacted by* the 1982 Act, which provides that it is—

> Unlawful for any registrant to permit a person to become or remain an associated person of such registrant, if the registrant knew or should have known of facts regarding such associated person that are set forth as statutory disqualifications in section 8a(2) of this Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed.

Earlier this year, the Commission adopted interim procedures to implement section 4k(5).[28] The Commission subsequently proposed to require registrants to notify the Commission whenever the registrant knows or should have known that an associated person whom it has sponsored pursuant to §§ 3.12 or 3.16 of the regulations is subject to a statutory disqualification under section 8a(2) of the Act. Proposed § 3.70. Such notice would have to be received within ten business days of the date upon which the registrant knows or should have known that the associated person is subject to a statutory disqualification. Proposed § 3.70(a). Failure to notify the Commission could, under the facts and circumstances of a particular case, constitute a basis for suspending, restricting or revoking the registration of the registrant under section 8a(3)(L) of the Act.

In accordance with the provisions of section 4k(5) of the Act, the Commission further proposed that upon such notification to the Commission, or upon notification by the Commission to the registrant under these regulations that

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[24] Section 8a(2)(C) authorizes the Commission to affect the registration of any person—if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction (except that registration may not be revoked solely on the basis of such temporary order, judgment, or decree), including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under this Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment adviser, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing and activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of this Act, or concerning securities.

[25] In accordance with the Commission's proposal and for the reasons set forth therein, the Commission has determined to delete former Appendix A to Part 3 of the Commission's regulations, which is an interpretative statement regarding the "good cause" standards for denial of registration. 48 FR 50560. As the Commission noted, the statutory disqualifications established in section 8a (2) and (3) of the Act generally are drawn from that statement. Therefore, Appendix A, as written, is no longer necessary. Those provisions of the Appendix which were not incorporated into the Act, however, are included in that portion of the new Appendix A which discusses the "other good cause" standard now set forth in section 8a(3)(M) of the Act.

[26] The Commission wishes to emphasize that its interpretation with respect to section 8a(2)(C) of the Act is limited to clause (ii) thereof, relating to injunctions from engaging in certain conduct. The Commission's authority under section 8a(2)(C)(i) of the Act to affect the registration of a person enjoined from acting in any capacity described therein, even if such injunction is entered pursuant to an agreement of settlement, is not governed by this interpretative statement.

[27] On February 14, 1984, the Commission adopted new regulations governing its reparations program. Section 12.106(b) of those regulations provides that an adverse decision under the voluntary decisional procedure will not serve as a basis for affecting the registration of any person under section 8a(2) or section 8a(3) and 8a(4) of this Act. This interpretative statement, therefore, governs only findings under the summary decisional procedure and the formal decisional procedure under the reparations program.

[28] 48 FR 22779 (May 20, 1983).

the associated person is subject to a statutory disqualification, the registrant may not permit the associated person to act in the capacity as such until the Commission determines that such associated person should nonetheless be registered. Proposed § 3.70(b).

The Commission received several comments on its proposed procedures to implement section 4k(5) of the Act. In general, the commentor's concerns related to matters of interpretation which the Commission wishes to clarify at this time. Therefore, with the exception of the few minor technical changes discussed below, the Commission has determined to adopt § 3.70 as proposed.

Most of the commentors which addressed this portion of the Commission's proposal expressed the view that the notification and suspension provisions should not apply to current AP registrants where the facts which could serve as the basis for the statutory disqualification have been reported to the Commission on the Form 8-R, or any amendment thereto, and the Commission has determined that such person should be registered nonetheless. These commentors stated that it would impose an unnecessary burden on firms if they were required to search their files to determine whether any presently registered AP is subject to a disqualification, especially if the fact of such disqualification has previously been disclosed to the Commission.

The Commission agrees and has determined that the notification requirements of § 3.70 are prospective in application from the effective date of section 4k(5), May 11, 1983. Therefore, pursuant to § 3.70, registrants would be required to notify the Commission only with respect to any events occurring on or after May 11, 1983 which would subject a currently employed AP to a statutory disqualification under section 8a(2). With respect to pending applications for AP registration, the Commission believes that the sponsoring registrant is under a continuing obligation to notify the Commission whenever the registrant knows or should have known that an applicant for registration as an AP whom it has sponsored to §§ 3.12, 3.16 or 3.18 of the regulations is subject to a satutory disqualification under 8a(2), regardless of when such application was submitted, if such facts were not disclosed in the Form 8-R or any amendment thereto.[29]

In this connection, another commentor noted that proposed § 3.70(a) would impose on an FCM registrant the obligation to inform the Commission of facts regarding an existing AP that are set forth as statutory disqualifications in section 8a(2) when the FCM knows or should have known of such statutory disqualification. This commentor asserted that there is no indication in the legislative history that Congress intended to impose this ongoing obligation on a sponsoring registrant. Instead, it was argued, section 4k(5) addresses the issue of the knowledge of the sponsoring registrant at the time the AP's initial registration application is submitted.

The Commission wishes to point out that the plain language of section 4k(5) of the Act makes it unlawful for any registrant to permit a person to become or *remain* an associated person of such registrant, if the registrant knows or should have known of facts regarding such associated person as set forth in section 8a(2) of the Act, unless such registrant has notified the Commission of such facts and the Commission has determined that such person should be registered or temporarily licensed. The Commission observes that inclusion of the word "remain" in section 4k(5) of the Act suggests that the notification duty is a continuous one and does not relate solely to the initial registration application. The Commission further notes that Congress stated that a sponsoring registrant is subject to a duty to make reasonable inquiry into the background of any person who becomes or *remains* associated with it as an associated person. H. Rep. No. 97-565, (Part 1), 97th Cong., 2d Sess. 89 (1982). Such inquiry, however, depends on the particular facts and circumstances. *Id.* Thus, the affirmative steps taken by a sponsoring registrant with respect to an applicant for AP registration may be more rigorous and involved than the steps taken with respect to currently employed APs.

In this connection, however, the Commission also notes that Commission rule 166.3 imposes upon all Commission registrants, except associated persons with no supervisory duties, the duty to supervise diligently the commodity-related activities of persons acting on its behalf. The Commission believes that a registrant properly fulfilling its supervisory responsibilities pursuant to § 166.3 generally should be aware of the fact that one of its currently employed APs has become subject to a statutory disqualification under section 8a(2) of the Act.

Finally, one commentor noted that proposed § 3.70(b) would have made it unlawful for a registrant, after providing notification to the Commission of any facts regarding an AP of the registrant which constitute a statutory disqualification under section 8a(2), to permit the person to work as an AP for that registrant "until the Commission determines that such person should nonetheless be registered." The commentor contended that while it may be clearly unlawful for a registrant to permit a person who is not registered to act as an AP, the proposal would effectively revoke the registration of a currently registered AP without the due process to which that AP would otherwise be entitled.

The Commission wishes to point out that this comment ignores the procedures that follow notification to the Commission under proposed § 3.70. Upon receipt of notification that an associated person may be subject to a section 8a(2) disqualification, the Commission would invoke formal suspension and revocation procedures under proposed § 3.55. Such procedures would provide the notice and hearing required by section 8a(2) of the Act prior to revoking the registration of an AP. Thus, the proposed regulations implement a procedure that precludes action taken under § 3.70 from constituting a *de facto* revocation of an AP's registration.

The Commission, however, has modified § 3.70 by adding a new paragraph (c) in response to those comments in order to eliminate any ambiguity. Thus, as adopted, § 3.70(c) provides that upon notification to the Commission by a registrant pursuant to § 3.70(a), the Commission will promptly issue notice under §§ 3.52 or 3.55, as appropriate, to deny or suspend and revoke the registration of the AP applicant or the AP of the registrant.

V. Reservation of Authority

Proposed § 3.75 would have (1) delegated the authority to perform the functions specified in these regulations to the persons authorized to perform them, (2) reserved to the Commission the authority to exercise the delegated authority if it so desires, (3) reserved to the Commission the authority to proceed by order or to institute a proceeding

[29] In this regard, § 3.31(b) currently requires each applicant or registrant as a floor broker or AP of an FCM, CTA, CPO, introducing broker or leverage transaction merchant to correct promptly any deficiency or inaccuracy in the Form 8-R or supplemental statement thereto which no longer renders accurate and current the information contained in the Form 8-R or supplemental statement. The interpretation of § 3.70 described above is not intended to relieve APs and AP applicants of their obligation under § 3.31. In this connection, the Commission reminds such persons that it is a criminal offense to file a false application with the Commission. *See* 7 U.S.C. 9(b) and 18 U.S.C. 1001.

itself in any case, (4) reserved to the Division of Enforcement the authority to take such other action as may be appropriate in a particular case and (5) reserved to the Commission the authority to delegate its registration functions to a registered futures association. The Commission received no comments on this section and has adopted § 3.75 as proposed.

In addition, pursuant to section 8a(10) of the Act, the Commission has delegated to NFA the authority to register introducing brokers and their APs.[30] This delegation, however, does not include the authority to condition or deny registration. As NFA assumes more of the Commission's registration functions, the Commission expects to delegate to NFA the authority to deny, condition, suspend, restrict or revoke registration, subject to review by the Commission. In performing these functions, NFA will be required to adopt procedures essentially similar to those adopted by the Commission.

VI. Amendments of Existing Regulations and Other Matters

The Commission is adopting as proposed certain amendments to additional rules contained in Part 3 of the Commission's regulations. In general, these amendment conform the existing regulations to the procedures adopted in this notice. The Commission is also adopting, with certain additional changes, the proposed amendments to § 3.32.

A. Changes Requiring a New Registration

The Commission proposed to amend § 3.32, which describes the circumstances under which a new registration is required, to delete the requirement that a new registration be obtained in the event of a change in the name of a registrant. Under the proposal, the registrant would still be required to notify the Commission of any change in the name of the registrant on the Form 3–R pursuant to Rule 3.31, 17 CFR 3.31 (1983) *as amended by* 48 FR at 35297.

The Commission also proposed to amend § 3.32 to require a new registration in the event of a change in the control of a registrant in the case of a corporation. For purposes of this section, proposed paragraph (d) of § 3.32 specified the circumstances which the Commission would deem to constitute a change in the control of a corporation. As the Commission has previously stated, one of the central objectives of registration is to ensure, to the extent reasonably possible, the fitness of all registrants,[31] and, in this connection, § 3.32 already requires a new registration in the event of change in the ownership of the business in the case of a sole proprietorship and in the event of a change in the personnel of a partnership resulting from the addition of a general partner. The proposed amendment, therefore, would merely fill a gap in the existing regulation.

To make certain that an appropriate background check and review of an applicant's or principal's fitness is undertaken whenever a new person intends to assume control of a registrant, the Commission also proposed to require the new principals of a firm to submit a Form 8–R and a fingerprint card in connection with the new registration.[32] It should be noted that the exemption from filing a fingerprint card under § 3.21 was the only exemption applicable under proposed § 3.32.

Those commentors which addressed proposed §3.32 generally supported the Commission's proposal. However, they also recommended that the Commission provide an exemption from registration in those cases where, prior to the admission of a natural person as a principal which would result in a change in control, such person has submitted a Form 8–R containing no self-declared derogatory information and the Commission has found no reason to believe that such person is statutorily disqualified. The Commission believes there is merit to this recommendation and has modified § 3.32 accordingly. Thus, as adopted, § 3.32(e)(1) essentially provides that, in the event a person becomes either a director or the chief executive officer of the registrant, a new registration will not be required if the registrant submits a written notice on the Form 3–R to the Commission at least 45 days prior to the date of the change in control. The registrant must include with the notice a properly completed Form 8–R which must be accompanied by the fingerprints of that individual unless the individual is already registered as an AP of the registrant of which the individual intends to become a principal. Section 3.32(e)(2) provides that such person may not become a principal of such registrant until the registrant receives a written confirmation from the Commission or the NFA that such affiliation has been approved. All documents submitted pursuant to § 3.32 shall be filed with the Commission at its Washington, D.C. headquarters. Section 3.32(f).

The Commission also has amemded § 3.32 to eliminate the requirement that, in the event a new registration is required, APs and AP applicants re-register with the new registrant. As noted in the preamble to the proposed rules, the duration of an AP's registration is coextensive with its association with a particular, sponsoring registrant. Therefore, an AP's registration would terminate automatically whenever a registrant obtains a new registration as a result of a change in control under §3.32. In order to eliminate the need for a registrant to seek an exemption from having to re-register its APs in such circumstances, the Commission has added a new paragraph (g) to § 3.32 which provides that in the event a new registration is required under § 3.32, any AP who is registered, or who has submitted an application for registration, as an AP of the registrant on or prior to the change in control which requires a new registration, shall be deemed to be registered, or to have submitted an application for registration, as an AP of such new registrant.

In connection with the adoption of regulations governing leverage transaction merchants, 49 FR 5498 (February 13, 1984), the Commission adopted a new §3.34 which essentially consolidated in one place the requirements of former §§ 3.10(c), 3.13(c), 3.14(c), and 3.15(c) with respect to the addition of new principals. The Commission has now determined that the provisions of § 3.34 are more appropriately contained in § 3.32. Therefore, § 3.34 has been deleted, and the provisions of that rule are now in § 3.32(h).

Finally, the Commission wishes to note that the provisions of proposed § 3.32(e), premitting persons adversely affected by the operation of this section to petition for an exemption, has been adopted as paragraph (i).

B. Technical Amendments

In view of the Commission's recent adopting of interim final rules to establish a comprehensive regulatory scheme designed to govern the offer and sale to the public of leverage contracts, the Commission has also adopted certain minor amendments to extend these rules to incorporate the new categories of registrant, leverage transaction merchants and associated persons of leverage transaction merchants. *See* §§ 3.32, 3.40, 3.50, 3.55 and 3.70. The Commission has

[30] 48 FR 35158 (August 3, 1983).

[31] *See* 45 FR 80485, 80489 (December 5, 1980).

[32] If the person assuming control of a registrant is not a natural person, the Commission has the authority under § 3.22(b) of the regulations to require the principals of that controlling person to file a Form 8–R and fingerprint card.

dertermined that no further amendments are necessary to extend the temporary licensing and statutory disqualification provisions to leverage transaction merchants and their APs.

The Commission also has adopted certain other technical and conforming amendments to Part 3 and Part 4 of the Commission's regulations. For example, as proposed, the Commission has amended § 3.2 to authorize the National Futures Association to grant temporary licenses to eligible APs of introducing brokers. The Commission also has amended § 3.21(a) to include reference to proposed §§ 3.32 and 3.40. This amendment will expand the exemption from the Commission's fingerprinting requirement in certain cases to incorporate the rules proposed herein which also require the submission of a fingerprint card.

Finally, the Commission has amended the definition of the term "principal" §§ 3.1(a) and 4.10 to conform those sections to the definition of the term "principal" in section 8a(2)(H) of the Act.[33] The only significant change resulting from this amendment is that the "more than ten percent" threshold figures used in those sections has been changed to "ten percent or more." Thus, certain persons who formerly held exactly ten percent of the outstanding shares of any class of stock, or contributed exactly ten percent of the capital, would now be required to be listed on the Form 7-R as a principal of the registrant.

In this connection, any such person who, by virtue of these amendments, becomes a principal of an applicant or registrant subsequent to the filing of a Form 7-R must comply with the notification, and filing requirements if applicable, set forth in § 3.31(b). The Commission believes that these amendments will affect only a relatively small number of persons. In order to minimize any unnecessary burdens on registrants affected by this change, the Commission has determined that commodity pool operators and commodity trading advisors need not amend their Disclosure Documents at this time to reflect the addition of such new principals. Rather, this information may be included in the Disclosure Document at such time as the Document is otherwise required to be amdended.[34]

VII. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. As stated in the notice of proposed rulemaking, 48 FR 50560, the Commission previously determined that neither FCMs nor registered commodity pool operators should be considered small entities for purposes of the RFA.[35] More recently, the Commission also determined that leverage transaction merchants are not small entities for purposes of the RFA.[36] Accordingly, the requirements of the RFA do not apply to those entities. With respect to the remaining entities, the Commission stated that it believed that the proposed rules would not impose any additional burdens upon such parties since all registrants are already subject to the registration requirements of the Act and Part 3 of the Commission's regulations. To the contrary, the proposed rules would streamline and simplify the current registration procedures. In certifying pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any firms or other persons who believe that the promulgation of these rules might have an impact upon their activities. No such comments were received.

B. Section 15 of the Act

Section 15 of the Act requires the Commission to—

> Take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive competitive means of achieving the objectives of this Act, as well as the policies and purposes of this Act, in issuing any order or adopting any Commission rule or regulation * * *.

The Commission has taken into consideration the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Act. To the extent the rules adopted herein raise competitive concerns, the Commission has determined that such rules are necessary and appropriate.

List of Subjects

17 CFR Part 3

Commodity futures, Reporting and recordkeeping requirements, Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants.

17 CFR Part 4

Commodity futures, Commodity pool operators, Commodity trading advisors, Reporting and recordkeeping requirements.

17 CFR Part 10

Administrative practice and procedure.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a) (1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 thereof, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

Subpart A—[Redesignated From §§ 3.1 Through 3.3]

1. Sections 3.1 through 3.3 are redesignated as *Subpart A—Registration.*

2. Section 3.1 is amended by revising paragraph (a) to read as follows:

§ 3.1 Definitions.

* * * * *

(a) Principal. Principal means, with respect to an applicant for registration, a registrant or a person required to be registered under the Act or these regulations: (1) Any person including, but not limited to, a sole proprietor, general partner, officer, director, branch office manager or designated supervisor, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over its activities which are subject to regulation by the Commission; (2) any holder or beneficial owner of ten percent or more of the outstanding shares of any class of stock;

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[33] Section 8a(2)(H) provides, *inter alia*, that for the purposes of sections 8a(2) and 8a(3):

"principal" shall mean, if the person is a partnership, any general partner or, if the person is a corporation, any officer, director, or beneficial owner of at least 10 per centum of the voting shares of the corporation, and any other person that the Commission by rule, regulation, or order determines has the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of such person which are subject to regulation by the Commission.

[34] Generally, a Disclosure Document may only be used for a six month period. *See* §§ 4.21(e)(2) and 4.31(e)(2), 17 CFR §§ 4.21(e)(2) and 4.31(e)(2) (1983).

[35] *See* 47 FR 18618 (April 30, 1982).

[36] 49 FR 5498, 5520 (February 13, 1984).

or (3) any person who has contributed ten percent or more of the capital.

* * * * *

3. Section 3.2 is amended by revising paragraphs (a) and (c) to read as follows:

§ 3.2 Registration processing by the National Futures Association; notification and duration of registration.

(a) With respect to the registration of introducing brokers and the associated persons of introducing brokers, the registration functions of the Commission set forth in this section and in §§ 3.12, 3.15, 3.21, 3.31, 3.32, and 3.40 shall be performed by the National Futures Association.

* * * * *

(c) Upon receipt of an application for registration or renewal thereof, the Commission or the National Futures Association will, if registration is granted, notify the registrant, or the sponsor in the case of an application for registration as an associated person, that registration has been granted under the Act. If an applicant for registration as an associated person receives a temporary license in accordance with § 3.40 of this part, the Commission or the National Futures Association will notify the sponsor only that a temporary license has been granted.

* * * * *

4. Section 3.12 is amended by revising paragraphs (c)(2) and (d)(1)(iv) to read as follows:

§ 3.12 Registration of associated persons of futures commission merchants and introducing brokers.

* * * * *

(c) * * *

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8–R.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or § 3.20 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §§ 3.51 or 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

5. Section 3.16 is amended by revising paragraphs (c)(2) and (d)(1)(iv) to read as follows:

§ 3.16 Registration of associated persons of commodity trading advisors and commodity pool operators.

* * * * *

(c) * * *

(2) The certification required by paragraph (c)(1) of this section must be submitted concurrently with the Form 8–R.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or § 320 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §§ 3.51 or 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

6. Section 3.18 is amended by revising paragraph (d)(1)(iv) to read as follows:

§ 3.18 Registration of associated persons of leverage transaction merchants.

* * * * *

(d) * * *

(1) * * *

(iv) Whether there is a pending proceeding under sections 6(b) or 8a of the Act or §§ 3.52, 3.55 or 3.60, or 3.20 or former § 1.10e, to deny, suspend, revoke, condition or restrict such person's registration in any capacity or if, within the preceding twelve months, the Commission has permitted the withdrawal of an application for registration in any capacity after instituting the procedures provided in §§ 3.51 or 3.20 and, if so, that the sponsor has been given a copy of the complaint or letter issued by the Commission in connection therewith; and

* * * * *

7. Section 3.20 is amended by adding a new paragraph (j) to read as follows:

§ 3.20 Delegation of authority to deny registration.

* * * * *

(j) Notwithstanding the provisions of §§ 3.51, 3.55 and 3.60, pending proceedings brought under this section shall continue to completion.

8. Section 3.32 is revised to read as follows:

§ 3.32 Changes requiring new registration; addition of principals.

(a) If the registrant is a futures commission merchant, introducing broker, commodity pool operator, commodity trading advisor to leverage transaction merchant, a new registration is required in the event of a change:

(1) In the form of organization of the registrant;

(2) In the ownership of the business of the registrant in the case of a sole proprietorship;

(3) In the personnel of a partnership resulting from the addition of a general partner; and

(4) In the control of the registrant in the case of a corporation or other form of association.

(b) Application for a new registration required under paragraph (a) of this section must be on Form 7–R, completed and filed with the Commission in accordance with the instructions thereto.

(c) Notwithstanding any other provision of this part, each Form 7–R filed in accordance with paragraph (b) of this section must be accompanied by a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who is a principal of the registrant and who was not listed on the registrant's initial application for registration or any amendment thereto. The Form 8–R for each such principal must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission for that purpose.

(d) For purposes of this section, a change in the control of a corporation shall be deemed to occur whenever a person not listed on the corporate registrant's initial application for registration:

(1) Acquires the right to vote, or becomes the beneficial owner of, ten percent or more of that registrant's voting securities;

(2) Becomes entitled to receive ten percent or more of that registrant's net profits;

(3) Has contributed ten percent or more of that registrant's capital;

(4) Becomes a director of that registrant; or

(5) Becomes the chief executive officer of that registrant or occupies a position of similar status or performs a similar function.

(e)(1) In the event of a change in control as described in paragraphs (d)(4) and (5) of this section, a new registration will not be required if the registrant submits a written notice on Form 3–R to the Commission, at least 45 days prior to the date of such change in control, and includes with such notice a Form 8–R, completed in accordance with the instructions thereto and executed by each natural person who thus will become a principal of the registrant. The Form 8–R for each such individual must be accompanied by the fingerprints of that individual on a fingerprint card provided by the Commission, or the National Futures Association if the registrant is an introducing broker, for that purpose: *Provided, however,* That a fingerprint card need not be provided under this paragraph for any individual who is registered with the Commission as an associated person of the registrant of which the individual intends to become a principal.

(2) No person who submits written notification in accordance with the provisions of paragraph (e)(1) of this section may become a principal of such registrant until that registrant receives a written confirmation from the Commission or the National Futures Association that such affiliation has been approved.

(f) All documents submitted pursuant to this section shall be filed with the Commission at its Washington, D.C. office (Attn: Assistant Director for Registration, Division of Trading and Markets, 2033 K Street NW., Washington, D.C. 20581).

(g) Notwithstanding the provisions of §§ 3.12 (a) and (b), 3.16 (a) and (b) and 3.18 (a) and (b), if a new registration is granted under this section, any person who is registered, or who has submitted an application for registration, as an associated person of the registrant on or prior to the date of any event described in paragraph (a) of this section, shall be deemed to be registered, or to have submitted an application for registration, as an associated person of such new registrant.

(h) Except as otherwise provided in this section, within twenty days after any natural person becomes a principal of an applicant or registrant subsequent to the filing of a Form 7–R in accordance with the requirements set forth in §§ 3.10 (a) or (b), 3.13 (a) or (b), 3.14 (a) or (b), 3.15 (a) or (b), or 3.17 (a) or (b) of this chapter, the applicant or registrant must file a Form 8–R with the Commission. The Form 8–R must be completed by such principal in accordance with the instructions thereto and must be accompanied by the fingerprints of that principal on a fingerprint card provided by the Commission, or the National Futures Association if the applicant or registrant is an introducing broker, for that purpose. This filing need not be made for any such principal who: (1) Has a current Form 8–R or Form 94 on file with the Commission; or (2) has otherwise submitted or caused to be submitted a Form 8–R and a fingerprint card in accordance with the requirements of this part: *Provided, That* the applicant or registrant must notify the Commission, or the National Futures Association if the applicant or registrant is an introducing broker, within twenty days of the name of such added principal on Form 3–R.

(i)(1) Any person adversely affected by the operation of this section may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that it should be exempted from the requirements of this section and why such an exemption would not be contrary to the public interest and the purposes of this section. The petition will be granted or denied by the Commission on the basis of the papers filed. The Commission may grant such a petition if it finds that the exemption is not contrary to the public interest and the purposes of this section. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(2)(i) Until such time as the Commission orders otherwise, the Commission hereby delegates to the Director of the Division of Trading and Markets or the Director's designee the authority to grant or deny petitions filed pursuant to paragraph (i) of this section.

(ii) The Director of the Division of Trading and Markets may submit to the Commission for its consideration any matter which has been delegated to the Director pursuant to paragraph (i)(2)(i) of this section.

§ 3.34 [Removed]

9. Section 3.34 is removed.

10. Subparts B through E are added to 17 CFR Part 3 to read as follows:

* * * * *

Subpart B—Temporary Licenses

Subpart C—Denial, Suspension or Revocation of Registration

Subpart D—Notice Under Section 4k(5) of the Act

Subpart E—Delegation and Reservation of Authority

* * * * *

Authority: 7 U.S.C. 244a, 6c, 6d, 6e, 6f, 6k, 6m, 6n, 6p, 16a, 13c, 16a, 23.

Subpart B—Temporary Licenses

§ 3.40 Temporary licensing of applicants for associated person registration.

Notwithstanding any other provision of these regulations and pursuant to the terms and conditions of this subpart, the Commission may grant a temporary license to any applicant for registration as an associated person upon the contemporaneous filing with the Commission of:

(a) A Form 8–R, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(b) The fingerprints of the applicant on a fingerprint card provided by the Commission for that purpose; and

(c) The sponsor's certification required by §§ 3.12(c), 3.16(c), or 3.18(c) as appropriate.

§ 3.41 Restrictions upon activities.

(a) Subject to the provisions of § 3.42 and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an associated person who has received written notification that a temporary license has been granted may act in the capacity of an associated person.

(b) Until registration has been granted, an applicant for registration as an associated person who has received a temporary license may not be sponsored by any registrant other than the registrant which has filed the certification described in § 3.40(c).

§ 3.42 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the Commission pursuant to §§ 3.52 or 3.60 that the applicant for registration may be found subject to a statutory disqualification from registration; or

(2) Immediately upon termination of the association of the applicant with the registrant which filed the sponsorship certification described in §3.40(c).

(b) Upon termination, the applicant may not engage in any activity which requires registration with the Commission as an associated person.

§ 3.43 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated pursuant to § 3.42, a temporary license shall become a registration with the Commission upon the earlier of:

(1) A determination by the Commission that the applicant is qualified for registration as an associated person; or

(2) The expiration of six months from the date of its issuance.

§§ 3.44–3.49 [Reserved]

Subpart C—Denial, Suspension or Revocation of Registration

§ 3.50 Service.

(a) For purposes of this subpart, service upon an applicant or registrant will be sufficient if mailed by registered mail or certified mail return receipt requested properly addressed to the applicant or registrant at the address shown on his application or any amendment thereto, and will be complete upon mailing.

(b) A copy of any notice served in accordance with paragraph (a) of this section shall also be served upon:

(1) Any registrant sponsoring the applicant or registrant pursuant to the provisions of §§ 3.12, 3.16, or 3.18 if the applicant or registrant is an individual registered as or applying for registration as an associated person; or

(2) Any futures commission merchant which has entered into a guarantee agreement in accordance with § 1.10(j) of this chapter, if the applicant or registrant is registered as or applying for registration as an introducing broker.

(c) Documents served upon the Division of Trading and Markets or upon the Division of Enforcement or filed with the Commission under this subpart shall be considered served or filed only upon actual receipt at the Commission's Washington, D.C. office, 2033 K Street NW., Washington, D.C. 20581.

(d) Except for the documents which may be served under § 3.51, any documents served upon an applicant or registrant or upon the Division of Trading and Markets or the Division of Enforcement or filed with the Commission under this subpart shall be concurrently filed with the Hearing Clerk, together with proof of service, in accordance with the provisions of § 10.12 (d) and (e) of this chapter.

§ 3.51 Withdrawal of application for registration.

(a) *Notice.* Whenever information comes to the attention of the Commission that an applicant for initial registration in any capacity under the Act may be found subject to a statutory disqualification under sections 8a(2) or 8a(3) of the Act, the Director of the Division of Trading and Markets or the Director's designee may serve written notice upon the applicant, which notice shall specify the statutory disqualifications to which the applicant may be subject and advise the applicant that:

(1) The information, if true, is a basis upon which the applicant's registration may be denied;

(2) Unless the applicant voluntarily withdraws the application, it may be necessary to institute the denial procedures described in this subpart; and

(3) If the applicant does not confirm in writing that the applicant wishes to have the application given further consideration, the application of the applicant will be deemed to have been withdrawn.

(b) The applicant must serve the written confirmation referred to in paragraph (a)(3) of this section upon the Director of the Division of Trading and Markets or the Director's designee on or before twenty days after the date the notice described in paragraph (a) of this section is served.

§ 3.52 Notice of intent to deny registration pursuant to section 8a(2) of the Act.

On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time serve a notice upon any applicant for registration in any capacity under the Act that:

(a) The Commission alleges and is prepared to prove that the applicant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(b) The allegations set forth in the notice, if true, constitute a basis upon which registration can be denied;

(c) The applicant is entitled to have a presiding officer make a determination, based upon written evidence submitted in accordance with the procedure set forth in § 3.53, as to whether the applicant is subject to such statutory disqualification; and

(d) If the applicant does not timely submit such evidence in accordance with the procedure set forth in § 3.53, registration will be denied as provided in § 3.54.

§ 3.53 Determination by presiding officer.

(a) If the applicant wishes to have a presiding officer make a determination as to whether the applicant is subject to a statutory disqualification under section 8a(2) of the Act, the applicant may submit evidence in writing limited to challenging the accuracy of the allegations set forth in the notice, including evidence as to (1) the applicant's identity, (2) the existence of a clerical error in any record documenting the statutory disqualification, (3) the nature or date of the statutory disqualification, (4) the post-conviction modification of any record of conviction or (5) the favorable disposition of any appeal. Such written submission must be served upon the Division of Trading and Markets and the Division of Enforcement and filed with the Hearing Clerk within twenty days after the date of service upon the applicant of the notice under § 3.52.

(b) Within ten days after receipt of any written submission filed by the applicant, the Division of Trading and Markets and the Division of Enforcement may serve upon the applicant and file with the Hearing Clerk a reply. Thereafter, a presiding officer will determine whether the applicant is subject to a statutory disqualification under section 8a(2) of the Act. Such determination must be based upon the application, the evidence of the statutory disqualification, the notice with proof of service, the written submission filed by the applicant in response thereto, any written reply submitted by the Division of Trading and Markets or the Division of Enforcement and such other papers as the presiding officer may require or permit.

(c) Within thirty days after receipt of the applicant's written submission, and any reply thereto, the presiding officer must issue an order, pursuant to section 8a(2) of the Act, granting or denying registration, which shall be deemed a final order of the Commission fifteen days after the date it is served upon the applicant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (d) of this section is filed. A copy of such order shall be served upon the Division of Trading and Markets and the Division of Enforcement.

(d) *Appeal to the Commission.* (1) Within fifteen days of service of the presiding officer's order under paragraph (c) of this section, the applicant or the Division of Enforcement may file with the Commission an application for review thereof, together with supporting argument and proof of service on the other party.

(2) Within ten days after service of the application, the other party may file a response opposing the application.

(3) Based upon the application and any response thereto, the Commission may in its discretion grant review of the presiding officer's order. Should the Commission grant review, the Commission shall thereafter issue an order establishing a schedule for the filing of any additional briefs.

(4) Should the Commission refuse to grant review, the presiding officer's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in accordance with the provisions of § 3.50(a).

§ 3.54 Default.

(a) *Failure to timely file a submission.* If the applicant fails to file a timely written submission in accordance with § 3.53:

(1) The applicant will be deemed to have waived the right to submit evidence in writing on all issues and the facts stated in the notice shall be deemed to be true for the purpose of finding that the applicant is subject to a statutory disqualification under section 8a(2) of the Act; and

(2) Twenty days after the date the notice of intent to deny provided under § 3.52(a) is served upon the applicant, such notice shall be effective as a final order of the Commission denying registration. The Director of the Division of Trading and Markets or the Director's designee shall serve written confirmation upon the applicant in accordance with the provisions of § 3.50(a) that such registration has been denied.

(b) *Vacating of order.* Notwithstanding the foregoing, an applicant for registration against whom an order referred to in paragraph (a)(2) of this section is effective may file a petition and supporting affidavit with the Director of the Division of Trading and Markets if the notice under § 3.52 was not timely received by the applicant. Upon receipt of such a petition, such order shall be vacated, and the Director of the Division of Trading and Markets shall serve upon the applicant the written notice required under § 3.52. The procedures set forth in this paragraph shall be available only once to an applicant.

§ 3.55 Suspension and revocation of registration pursuant to section 8a(2) of the Act.

(a) *Notice.* On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time serve notice upon a registrant in any capacity under the Act that:

(1) The Commission alleges and is prepared to prove that the registrant is subject to one or more of the statutory disqualifications set forth in section 8a(2) of the Act;

(2) An Administrative Law Judge shall make a determination, based upon written evidence, as to whether the registrant is subject to such statutory disqualification; and

(3) If the registrant is found to be subject to a statutory disqualification, the registration of the registrant shall be suspended and the registrant ordered to show cause why such registration should not be revoked.

(b) *Written Submission.* If the registrant wishes to challenge the accuracy of the allegations set forth in the notice, the registrant may submit written evidence limited to the type described in section 3.53(a). Such written submission must be served upon the Division of Enforcement and filed with the Hearing Clerk within twenty days of the date of service of notice to the registrant.

(c) *Reply.* Within ten days of receipt of any written submission filed by the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(d) *Determination by Administrative Law Judge.* A determination by the Administrative Law Judge as to whether the registrant is subject to a statutory disqualification must be based upon the evidence of the statutory disqualification, notice with proof of service, the written submission, if any, filed by the registrant in response thereto, any written reply submitted by the Division of Enforcement and such other papers as the Administrative Law Judge may require or permit.

(e) *Suspension and order to show cause.* (1) If the registrant is found to be subject to a statutory disqualification, the Administrative Law Judge, within thirty days after receipt of the registrant's written submission, if any, and any reply thereto, shall issue an interim order suspending the registration of the registrant and requiring the registrant to show cause within twenty days of the date of the order why, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked. The registration of the registrant shall be suspended, effective five days after the order is served upon the registrant in accordance with § 3.50(a), until a final order with respect to the order to show cause has been issued: *Provided, That* if the sole basis upon which the registrant is subject to a statutory disqualification is the existence of a temporary order, judgment or decree of the type described in section 8a(2)(C) of the Act, the order to show cause shall not be issued and the registrant shall be suspended until such time as the temporary order, judgment or decree shall have expired: *Provided, however, That* in no event shall the registrant be suspended for a period to exceed six months.

(2) If the registrant is found not to be subject to a statutory disqualification, the Administrative Law Judge shall issue an order to that effect which shall be effective as a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (k) of this section is received. A copy of such order shall be served upon the Division of Trading and Markets and the Division of Enforcement.

(f) *Response.* Within twenty days of the date of the order to show cause, the registrant shall file a written response which may include briefs, affidavits and supporting memoranda, but in any event shall be limited in content to:

(1) Evidence, not previously set forth in any written submission filed under paragraph (b) of this section, challenging the accuracy of the allegations establishing the statutory disqualification;

(2) The existence of any facts which constitute a clear and compelling

showing that, notwithstanding the existence of the statutory disqualification, the continued registration of the registrant would be in the public interest; or

(3) In the case of an associated person, written confirmation by the registrant's sponsor that, notwithstanding the existence of the statutory disqualification, the sponsor is willing to supervise the activities of the registrant subject to such restrictions as the Administrative Law Judge shall impose: *Provided, That,* with respect to such sponsor, (i) an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of section 6(b), 6(c), 6d or 8a of the Act is not pending, and (ii) in the case of a sponsor which is a futures commission merchant or leverage transaction merchant, the sponsor is not subject to the reporting requirements of §§ 1.12(b) or 31.7(b) of this chapter, respectively.

(g) *Reply.* Within ten days after receipt of the response of the registrant, the Division of Enforcement may serve upon the registrant and file with the Hearing Clerk a reply.

(h) *Oral hearings.* Oral hearing shall not be granted except under extraordinary circumstances and upon written request, which shall include the issues to be addressed, the evidence to be adduced and a showing of compelling need. If the Administrative Law Judge determines to grant a request for oral hearing, such hearing shall be conducted pursuant to such sections of the Commission's Rules of Practice, 17 CFR Part 10, as the Administrative Law Judge deems necessary and in a manner which shall ensure that the proceeding is resolved expeditiously.

(i) *Order.* (1) Upon receipt of a response, and any reply thereto, the Administrative Law Judge shall within thirty days, upon consideration of the record as a whole, make a finding as to whether the registrant has shown cause why his registration should not be revoked and shall issue an order accordingly, which shall be deemed to be a final order of the Commission fifteen days after the date it is served upon the registrant in accordance with the provisions of § 3.50(a), unless a timely application for review under paragraph (k) of this section is filed. If the Administrative Law Judge, on the basis of the showing described in paragraph (f)(2) of this section, finds that, notwithstanding the existence of the statutory disqualification, the registration of the registrant should not be revoked, the Administrative Law Judge may issue an order further suspending, for a period not to exceed six months, or, in the case of an associated person, restricting the registration of the registrant. Any such order shall be served upon the registrant, the Division of Enforcement and the Division of Trading and Markets in accordance with the provisions of § 3.50(a).

(2) Notwithstanding the sponsor's written confirmation under paragraph (f)(3) of this section, the Administrative Law Judge may issue an order revoking or further suspending for a period not to exceed six months the registration of an associated person and, in any event, may not issue an order restricting such registration if:

(i) The associated person is subject to a statutory disqualification under section 8a(2) of the Act as a result of his conviction of a felony or misdemeanor under section 9 of the Act; or

(ii) The associated person has been the subject of more than one proceeding in which findings of fact constituting a statutory disqualification under section 8a(2) of the Act have been entered against the associated person; or

(iii) The associated person is subject to an adjudicatory proceeding brought by or before the Commission pursuant to the provisions of section 6(b), 6(c), 6d or 8a of the Act; or

(iv) The associated person was previously granted a conditional or restricted registration and was found to have failed to conform to such condition or restriction; or

(v) The associated person willfully made any material false or misleading statement or willfully omitted to state any material fact in any written submission filed under this section as to any facts which would constitute statutory disqualifications under section 8a(2) of the Act; or

(vi) The registrant with whom the associated person is associated willfully made any false or misleading statement of a material fact in the confirmation referred to in paragraph (d)(3) of this section or willfully failed to state any material fact that was required to be stated therein.

(j) *Default.* (1) If the registrant fails to file a timely response to the order to show cause, the registrant shall be deemed in default, and the Administrative Law Judge shall within fifteen days thereafter, upon a finding that service was effected pursuant to § 3.50(a), enter an order revoking the registrant's registration based upon the evidence of the statutory disqualification, any written submission filed by the registrant in response to the notice provided in accordance with paragraph (a) of this section and any written reply submittted by the Division of Trading and Markets or the Division of Enforcement. Any such order shall be served upon the registrant in accordance with the provisions of § 3.50(a) and shall be deemed a final order of the Commission five days after the date it is served upon the registrant.

(2) Notwithstanding the foregoing, if the Administrative Law Judge issues an order under paragraph (j)(1) of this section revoking the registration of the registrant, the registrant may file a petition and supporting affidavit with the Administrative Law Judge setting forth the reasons the registrant failed to file a response to the order to show cause. Such petition must be accompanied by the response. Upon receipt of such a petition, the Administrative Law Judge may, for good cause shown, vacate such order.

(k) *Appeal to the Commission.* (1) Within fifteen days of service of the Administrative Law Judge's order under paragraph (e)(2), paragraph (i) or paragraph (j)(2) of this section, the registrant or the Division of Enforcement may file with the Commission an application for review thereof, together with supporting argument and proof of service on the other party.

(2) Within ten days after service of the application, the other party may file a response opposing the application.

(3) Based upon the application and any response thereto, the Commission may in its discretion grant review of the Administrative Law Judge's order. Should the Commission grant review, the Commission shall thereafter issue an order establishing a schedule for the filing of any additional briefs.

(4) Should the Commission refuse to grant review, the Administrative Law Judge's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in accordance with the provisions of § 3.50(a).

§ 3.56 Applicability of the Rules of Practice.

With the exception of §§ 10.2, 10.4–10.11, and 10.12(a)(2)–10.12(g), or unless otherwise provided in §§ 3.52–3.55 herein, the provisions of the Commission's Rules of Practice, 17 CFR Part 10, shall not apply in any proceeding to deny, suspend, revoke or restrict registration pursuant to section 8a(2) of the Commodity Exchange Act.

§ 3.57 Proceedings under section 8a(2)(E) of the Act.

The Commission will not initiate a proceeding under section 8a(2)(E) of the Act, if *respondeat superior* is the sole basis upon which the registrant may be found subject to a statutory disqualification.

§§ 3.58–3.59 [Reserved]

§ 3.60 Authority to deny, condition, suspend, revoke or place restrictions upon registration pursuant to section 8a (3) and (4) of the Act.

On the basis of information obtained by the Commission, the Director of the Division of Trading and Markets or the Director's designee, with the concurrence of the Director of the Division of Enforcement and the General Counsel or their designees, may at any time give written notice to any applicant for registration or any registrant in any capacity under the Commodity Exchange Act that:

(a) The Commission alleges and is prepared to prove that the registrant or applicant is subject to one or more of the statutory disqualifications set forth in sections 8a(3) or 8a(4) of the Act;

(b) The allegations set forth in the notice, if true, constitute a basis upon which registration may be denied, conditioned, suspended, revoked or restricted. If the notice proposes conditioning or placing of restrictions upon registration, the notice shall specify these conditions or restrictions;

(c) The applicant or registrant is entitled to a hearing at which the applicant or registrant may challenge the accuracy of the allegations set forth in the notice or show cause why, notwithstanding the accuracy of those allegations, registration should nevertheless be granted or should not be conditioned, suspended, revoked or restricted;

(d) A hearing for these purposes may be obtained by filing a written request with the Hearing Clerk, Office of Hearings and Appeals, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, within twenty days after the date the notice is served on the applicant or registrant, which shall state whether the applicant or registrant admits or denies or does not have and is unable to obtain sufficient information to admit or deny each allegation set forth in the notice; and

(e) If the applicant or registrant does not timely request a hearing:

(1) The applicant or registrant will be deemed to have waived his right to a hearing on all issues and the facts stated in the notice shall be deemed to be true for the purpose of finding that the applicant or registrant is subject to a statutory disqualification under section 8a (3) or (4) of the Act; and

(2) A presiding officer may thereafter decide whether to deny, condition, suspend, revoke, or place restrictions upon registration based upon the facts set forth in the notice.

§ 3.61 Request for hearing.

(a) If an applicant or registrant should request a hearing, an adjudicatory proceeding on the question of whether the applicant or registrant is subject to a statutory disqualification under section 8a (3) or (4) of the Commodity Exchange Act, or whether, notwithstanding the existence of the statutory disqualification, registration should nevertheless be granted or should not be conditioned, suspended, revoked or restricted, shall thereafter be conducted and concluded in accordance with the Commission's Rules of Practice, 17 CFR Part 10.

(b) For purposes of that proceeding:

(1) The notice given in accordance with § 3.60 shall be treated as a duly authorized complaint by the Division of Enforcement seeking the relief specified therein; and

(2) The request for hearing shall be treated as an answer.

§ 3.62 Waiver of hearing.

If no request for a hearing is received by the Hearing Clerk within twenty days after a notice has been given in accordance with § 3.60, the Hearing Clerk shall transmit the record to a presiding officer who shall determine whether the applicant or registrant is subject to a statutory disqualification and thereafter issue an order under section 8a(3) or 8a(4) of the Act denying, suspending, revoking, conditioning or placing restrictions upon registration based upon the notice with proof of service, an appropriate showing that a hearing has not been requested, and the evidence of the statutory disqualification.

§ 3.63 Service of order issued by a presiding officer.

(a) A copy of any order issued pursuant to § 3.62 shall be served promptly upon the applicant or registrant, the Division of Trading and Markets and the Division of Enforcement in accordance with the provisions of § 3.50(a) and shall be deemed a final order of the Commission fifteen days after the date of such service, unless a timely application for review under paragraph (b) of this section is filed.

(b) Within fifteen days after such service, the applicant, the registrant or the Division of Enforcement may file with the Commission a petition for review setting forth the grounds in support thereof. The petition for review of an applicant or registrant shall not be based upon any matter other than those as to which the applicant or registrant had notice and opportunity for hearing under § 3.60. Should the Commission refuse to grant review, the presiding officer's order shall be deemed a final order of the Commission five days after service upon the registrant of notice of such refusal in a manner in accordance with the provisions of § 3.50(a).

§§ 3.64–3.69 [Reserved]

Subpart D—Notice Under Section 4k(5) of the Act

§ 3.70 Notification of certain information regarding associated persons.

(a) *Notice.* A registrant must notify the Commission under section 4k(5) of the Act of any facts regarding an associated person of the registrant or an applicant for registration as an associated person whom it has sponsored pursuant to the provisions of §§ 3.12, 3.16 or 3.18 or whom it intends to hire or otherwise employ as an associated person which are set forth as statutory disqualifications in section 8a(2) of the Act within ten business days of the date upon which the registrant first knows or should have known such facts. Notice to the Commission shall be sufficient if the registrant gives notice to the Director of the Division of Trading and Markets or the Director's designee by telephone and confirms such notice in writing by certified or registered mail or equivalent means to the Commission at its Washington, D.C. office (Attn: Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581).

(b) *Unlawful to act as an associated person.* Upon the earlier of notification to the Commission by the registrant pursuant to paragraph (a) of this section, or actual receipt of notice to the registrant pursuant to § 3.50(b)(1) of this part, that an associated person of the registrant or an applicant for registration as an associated person may be subject to a statutory disqualification as set forth in section 8a(2) of the Act, it shall be unlawful for the registrant to permit such person to act in the capacity of an associated person of the registrant until the Commission determines that such person should nonetheless be registered.

(c) *Proceedings under subpart C.* Upon notification to the Commission by the registrant under paragraph (a) of this section, the Commission will promptly issue notice under §§ 3.52 or 3.55, as appropriate, to deny or suspend and revoke the registration of the applicant for registration or the associated person of the registrant.

§§ 3.71–3.74 [Reserved]

Subpart E—Delegation and Reservation of Authority

§ 3.75 Delegation and reservation of authority.

(a) The Commission hereby delegates, until such time as it orders otherwise, the authority to perform all functions specified in subparts B through D to the persons authorized to perform them thereunder.

(b) Nothing in this subpart shall prevent the Commission from exercising the authority delegated therein.

(c) The Commission reserves to itself the decision in any case to proceed by order, upon notice but without a hearing, to deny, suspend, condition or restrict the registration of any person pursuant to section 8a(2) of the Act.

(d) Nothing in this part shall affect the authority of the Commission to institute a proceeding pursuant to section 6(b) of the Act.

(e) The Commission may, by order of delegation, authorize a futures association registered pursuant to section 17 of the Act to perform all or any portion of the registration functions under subparts B through D in accordance with rules or procedures adopted by such futures association and submitted to the Commission pursuant to section 17(j) of the Act and subject to the applicable provisions of the Act.

11. Part 3 is amended by revising Appendix A to read as follows:

Appendix A—Interpretative Statement With Respect to Section 8a(2) (C) and (E) and Section 8a(3) (J) and (M) of the Commodity Exchange Act

Section 8a(2) (C) and (E)

The provisions of sections 8a(2)–8a(4) of the Commodity Exchange Act ("Act") establish a system of statutory disqualifications pursuant to which the Commission may find an applicant or registrant unfit for registration and vest the Commission with wide discretion to deny, condition, suspend, restrict or revoke the registration of any person subject to one or more of the disqualifications set forth therein. The Commission recognizes that the full exercise of its authority under these provisions of the Act may have unintended results. In particular, the exercise of such authority may, in certain cases, impede the efficient enforcement of the Act and the various federal and state securities acts.

At this time, the Commission cannot anticipate all of the circumstances under which it may elect not to exercise its authority under sections 8a(2)–8a(4). Until the Commission has gained experience with these provisions of the Act, such determinations generally must be made on a case-by-case basis. Nonetheless, the Commission has identified two paragraphs of section 8a(2) of the Act which it has determined to interpret more narrowly than required.

Section 8a(2)(C). Section 8a(2) of the Act authorizes the Commission to deny, condition, suspend or restrict the registration of any person "upon notice, but without a hearing" and to revoke the registration of any person "with such hearing as may be appropriate," if such person is subject to one or more of the disqualifications described in paragraphs (A)–(H). Section 8a(2)(C) authorizes the Commission to affect the registration of any person—

"if such person is permanently or temporarily enjoined by order, judgment, or decree of any court of competent jurisdiction . . ., including an order entered pursuant to an agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, from (i) acting as a futures commission merchant, introducing broker, floor broker, commodity trading advisor, commodity pool operator, associated person of any registrant under the Act, securities broker, securities dealer, municipal securities broker, municipal securities dealer, transfer agent, clearing agency, securities information processor, investment advisor, investment company, or affiliated person or employee of any of the foregoing or (ii) engaging in or continuing any activity involving any transaction in or advice concerning contracts of sale of a commodity for future delivery, concerning matters subject to Commission regulation under section 4c or 19 of the Act, or concerning securities;"

The Commission believes that a person enjoined from acting in a certain capacity as described in section 8a(2)(C)(i), even if the order of injunction is entered into pursuant to an agreement of settlement, similarly should be prohibited from acting in any other capacity which requires registration with the Commission. Therefore, the Commission does not intend to limit its authority under section 8a(2)(C)(i) of the Act.

However, the Commission is also aware that it has often initiated proceedings in which the sole relief sought was an injunction from engaging in certain conduct. In such circumstances, the Commission has accepted offers of settlement which provide that the findings set forth in the settlement will not form the sole basis for the denial, suspension or revocation of such person's registration with the Commission. The Commission does not wish to impede the resolution by negotiated settlement of such proceedings. Therefore, the Commission has determined that it will not exercise its authority under section 8a(2)(C)(ii) of the Act with respect to any person temporarily or permanently enjoined by agreement of settlement from engaging in any conduct described in that paragraph, if the agreement of settlement clearly restricts the use of such order of injunction or any findings set forth therein in subsequent or collateral proceedings.

Thus, a provision in the agreement of settlement to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected will preclude a collateral proceeding under section 8a(2)(C)(ii) where the sole basis for such proceeding is the agreement of settlement. Unless otherwise precluded in the agreement of settlement, however, the person will be collaterally estopped from denying the findings set forth therein, whether or not admitted, in any other subsequent or collateral proceeding and such findings may, in conjunction with the findings in such subsequent or collateral proceeding, form a basis for affecting the registration of that person or imposing such other sanctions as may be deemed appropriate.

Section 8a(2)(E). Section 8a(2)(E) of the Act authorizes the Commission to affect the registration of any person—

"if such person, within ten years preceding the filing of the application or at any time thereafter, has been found by any court of competent jurisdiction, by the Commission or any Federal or State agency or other governmental body, or by agreement of settlement to which the Commission or any Federal or State agency or other governmental body is a party, (i) to have violated any provision of this Act, [the securities acts], or any similar statute of a state or foreign jurisdiction, or any rule, regulation, or order under such statutes . . . where such violation involves embezzlement, theft, extortion, fraud, fraudulent conversion, misappropriation of funds, securities or property, forgery, counterfeiting, false pretenses, burglary, or gambling, or (ii) to have willfully aided, abetted, counseled, commanded, induced, or procured such violation by any other person;"

As in section 8a(2)(C)(ii), the Commission will not exercise its authority under section 8a(2)(E) of the Act with respect to any person subject to a statutory disqualification thereunder, if the findings are part of an agreement of settlement which clearly restricts the use of such findings by inclusion of a provision to the effect, *inter alia*, that the findings set forth in the agreement will not form the *sole basis* upon which the registration of such person may be affected.

Section 2(a)(1)(A) of the Act, *inter alia*, codifies the legal concept of *respondant superior* by providing that a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator or leverage transaction merchant may be held liable for the conduct of an associated person sponsored by such registrant. * Thus, findings of the type described in paragraph (E) may be entered against a registrant solely because such registrant is responsible, under section 2(a)(1)(A) of the Act, for the conduct of its associated persons. As prescribed in § 3.57 of the Commission's regulations, however, the Commission will not exercise its authority under section 8a(2)(E) to affect the

* Specifically, section 2(a)(1)(A) of the Act provides in part, that the "act, omission or failure of any official, agent, or other person acting for any individual, association, partnership, corporation, or trust within the scope of his employment or office shall be deemed the act, omission, or failure of such individual, association, partnership, corporation, or trust as well as of such official, agent, or other person." 7 U.S.C. 4 (1982).

registration of such registrant, if *respondant superior* is the sole basis for finding that the registrant is subject to a statutory disqualification.

The Commission notes that section 8a(3)(C) and 8a(4) authorize the Commission to affect the registration of a person if it is found, after notice and opportunity for a hearing, that such person "failed reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act or [the securities acts], or of any of the rules, regulation or orders thereunder, and the person subject to supervision committed such a violation * * *" In this connection, the Commission believes that any proceeding to affect the registration of a registrant against which findings have been made solely pursuant to section 2(a)(1)(A) of the Act is more appropriately initiated under the provisions of section 8a(3)(C) and 8a(4).

Section 8a(2)(E) may also be interpreted to authorize the Commission to affect the registration of any person if the findings described therein are made in a proceeding initiated by a private party either in a court of law or in a reparations proceeding under section 14 of the Act. At the present time, however, the Commission does not intend to exercise its authority under section 8a(2)(E) on the basis of such findings. The Commission believes that such proceedings are intended primarily to provide restitution to the customer and are not intended to be punitive in nature. Therefore, it may not be appropriate to use findings in such proceedings to affect the registration of any person under section 8a(2)(E).

At the same time, however, such findings may form the basis of a proceeding against a person under the provisions of section 8a(3)(M) and 8a(4), which authorize the Commission, after notice and opportunity for a hearing, to deny, condition, suspend, restrict or revoke the registration of any person if "there is other good cause." Similarly, such findings may form the basis for a proceeding against a registrant under sections 8a(3)(C) and 8a(4) for the failure of such registrant "reasonably to supervise another person, who is subject to such person's supervision, with a view to preventing violations of this Act * * * or of any of the rules, regulations or orders thereunder * * *" Moreover, because the Commission views actions by private parties as an important adjunct to the Commission's own enforcement proceedings, the Commission intends to monitor carefully decisions in such proceedings and may amend this interpretation if deemed appropriate.

Section 8a(3) (J) and (M)

Section 8a(3) authorizes the Commission to refuse to register an applicant for registration if, after notice and opportunity for a hearing, the applicant is found subject to one or more of the disqualifications described in paragraphs (A)-(M). Section 8a(4) authorizes the Commission, after notice and opportunity for a hearing, to condition, suspend, restrict, or revoke the registration of any person subject to a disqualification under section 8a(3).

Section 8a(3)(J). Section 8a(3)(J) authorizes the Commission to affect the registration of any person if—

"such person is subject to an outstanding order denying, suspending, or expelling such person from membership in a contract market, a registered futures association, or any other self-regulatory organization, or barring or suspending such person from being associated with any member or members of such contract market, association, or self-regulatory organization."

The Commission interprets the term "self-regulatory organization" to include, in addition to a contract market and a registered futures association, any self-regulatory organization as defined in section 3(a)(26) of the Securities Exchange Act of 1934. Thus, a self-regulatory organization includes any national securities exchange, any registered securities association, any registered clearing agency and the Municipal Securities Rulemaking Board.

Section 8a(3)(M). Section 8a(3)(M) authorizes the Commission to affect the registration of any person if "there is other good cause". Specifically, the Commission interprets paragraph (M) to authorize the Commission to refuse to register such person in any new capacity, if such person, or any principal of such person, is the subject of an administrative proceeding brought by the Commission to revoke the existing registration of such person in any other capacity, pending a final decision in such administrative proceeding. The Commission believes it would be inconsistent to register a person in a new capacity, thereby determining that such person is qualified to be registered, while simultaneously seeking to revoke such person's registration in a different capacity because such person's conduct disqualifies him from registration.

Good cause to affect a person's registration also exists: (1) If the operations of such person disrupt or would tend to disrupt orderly market conditions, or cause or would tend to cause sudden or unreasonable fluctuations or unwarranted changes in the price of commodities or contracts for future delivery of commodities or commodity options; (2) if such person has used or is using in its name a term such as "board of trade", "clearing corporation" or "exchange" in a misleading context, or uses any terms in its representations to the public which may indicate that the person is a contract market or a member of a contract market when such is not the case, or has used or is using a misleading name which would tend to suggest to the public that the person is affiliated with another person when that is not the case or that the person is engaged in a commodity-related business when the person is not in fact substantially so engaged, or has failed to disclose to the public an agency relationship with another person when such failure could mislead the public; (3) if such person is subject to an outstanding order denying, suspending or revoking the license of such person by a licensing authority, such as a state real estate or insurance commission; and (4) if such person has failed to answer the inquiries or requests for further information concerning an application for registration filed with the Commission.

This listing, of course, is not exclusive. In general, the Commission interprets paragraph (M) to authorize the Commission to affect the registration of any person if, as a result of any act or pattern of conduct attributable to such person, although never the subject of formal action or proceeding before either a court or governmental agency, such person's potential disregard of or inability to comply with the requirements of the Act or the rules, regulations or order thereunder, or such person's moral turpitude, or lack of honesty or financial responsibility is demonstrated to the Commission.

Any inability to deal fairly with the public and consistent with just and equitable principles of trade may render an applicant or registrant unfit for registration, given the high ethical standards which must prevail in the industry.

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

12. Section 4.10 is amended by revising paragraphs (e) (2) and (3) to read as follows:

§ 4.10 Definitions.

* * * * *

(e) * * *

(2) Any holder or any beneficial owner of ten percent or more of the outstanding shares of any class of stock of the entity; and

(3) Any person who has contributed ten percent or more of the capital of the entity.

* * * * *

PART 10—RULES OF PRACTICE

13. Section 10.1 is amended by revising paragraph (a) to read as follows:

§ 10.1 Scope and applicability of rules of practice.

* * * * *

(a) Denial, suspension, revocation, conditioning or restricting of registration as a futures commission merchant, introducing broker, or associated person, floor broker, commodity pool operator, commodity trading advisor or leverage transaction merchant pursuant to sections 6(b), 8a(3) and 8a(4) of the Act, 7 U.S.C. 9, 12a(3), 12a(4), or denial, suspension, or revocation of designation as a contract market pursuant to sections 6 and 6(a) of the Act, 7 U.S.C. 8;

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Jane K. Stuckey,

Secretary of the Commission.

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