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federal register

Friday
February 5, 1982

Highlights

Cumulative List of Public Laws—The final cumulative list of public laws for the first session of the 97th Congress can be found in the Reader Aids Section of this issue.

5401 **American Heart Month, 1982** Presidential proclamation.

5428 **Money Market Funds** SEC seeks comments on valuation of debt instruments, calculation of current net asset value per share and computation of current price per share by certain registered open-end investment companies.

5410 **Mortgages** HUD adopts revised definition of "mortgage loan" to allow Federal National Mortgage Association involvement in second mortgage purchases.

5439 **Vocational Rehabilitation** ED announces availability of draft proposed regulations for Vocational Rehabilitation Service Projects.

5648 **Aid to Families With Dependent Children** HHS/SSA adopts revised eligibility criteria and procedures for program administration. (Part III of this issue)

CONTINUED INSIDE

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

Highlights

5450, 5451 **Grant Programs—Education** ED seeks applicants for noncompeting continuation awards under the Upward Bound Program and Special Services for Disadvantaged Students Program. (2 documents)

5440 **Aged** HHS/HDSO proposes to delete program development and coordination activities as allowable social service costs in grants for State and community programs.

5551 **Nuclear Safety** NRC announces proposed FY 1982 funding to stimulate nuclear power safety research.

5437 **Electric Utilities** DOE/FERC requests comments on reporting of cost of service information.

5688 **Energy Conservation** DOE eliminates certain measures from standby Federal emergency energy conservation plan. (Part IV of this issue)

5694 **Outer Continental Shelf** Interior/MMS seeks comments on tract evaluation procedures for oil and gas exploration and development. (Part V of this issue)

5411 **Prisoners** Justice/PARCOM adopts policy amendments on treatment of parole violators incarcerated with new sentences.

5456 **Toxic Substances** EPA requests comments on Interagency Testing Committee's chemical priority list (ninth report).

5413 **Freedom of Information** HHS amends procurement regulations.

5449 **Countervailing Duty** Commerce/ITA revokes order on steel units for electrical transmission towers from Italy.

5612 **Minimum Wages** Labor/ESA/W&H publishes minimum wages for Federal and federally assisted construction. (Part II of this issue)

5444 **Upland Cotton** USDA/ASCS revises national program acreage and determines allocation factor for 1981 crop.

5571 **Sunshine Act Meetings**

Separate Parts of This Issue

5612 **Part II, Labor/ESA/W&H**
5648 **Part III, HHS/SSA**
5688 **Part IV, DOE**
5694 **Part V, Interior/MMS**

Contents

Federal Register
Vol. 47, No. 25
Friday, February 5, 1982

The President
PROCLAMATIONS
5401 Heart Month, American, 1982 (Proc. 4894)

Executive Agencies

Agricultural Marketing Service
RULES
5404 Lemons grown in Ariz. and Calif.
5403 Oranges (navel) grown in Ariz. and Calif.

Agricultural Stabilization and Conservation Service
RULES
Marketing quotas and acreage allotments:
5403 Acreage determination and compliance
NOTICES
Marketing quotas and acreage allotments:
5444 Cotton, upland; 1981 national program acreage and allocation factor

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Forest Service; Rural Electrification Administration; Science and Education Administration; Soil Conservation Service.

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
5484 Bristol-Myers Co.

Arts and Humanities, National Foundation
NOTICES
Meetings:
5550 Expansion Arts Special Policy Committee

Civil Aeronautics Board
NOTICES
5447 Certificates of public convenience and necessity and foreign air carrier permits
Hearings, etc.:
5447 Alaska Airlines
5448 Commuter fitness determination
5448 Scandinavian Airlines System

Commerce Department
See International Trade Administration; National Bureau of Standards; National Oceanic and Atmospheric Administration.

Customs Service
RULES
Organization and functions; field organization; ports of entry, etc.:
5406 Springfield, Mo.

Economic Regulatory Administration
NOTICES
Electric energy transmission; exports to Canada or Mexico; authorizations, permits, etc.:
5454 New England Electric Transmission Co
5455 Vermont Electric Power Co.
Powerplant and industrial fuel use; prohibition orders, exemption requests, etc.:
5454 Gulf States Utilities Co.
5453 Kissimmee Municipal Electric System

Education Department
PROPOSED RULES
Special education and rehabilitative services:
5439 Vocational rehabilitation service projects; draft availability
NOTICES
Grant applications and proposals, closing dates:
5450 Special services for disadvantaged students program
5451 Upward bound program
Meetings:
5450 Community Education Advisory Council

Employment and Training Administration
NOTICES
Adjustment assistance:
5492 County Fair Toy & Novelty Corp. et al.
5491 West Virginia Malleable Iron Co. et al.

Employment Standards Administration
NOTICES
5612 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions (Ala., Alaska, Calif., Colo., Conn., Ga., Idaho, Kans., Maine, Miss., Mont., Nev., N.J., N. Dak., Oreg., Pa., Wash.)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission.
RULES
Standby Federal emergency plan:
5688 Odd-even motor fuel purchase restrictions, employer-based commuter and travel, speed limit enforcement and reduction, and non-residential building temperature restrictions measures elimination
NOTICES
International atomic energy agreements; civil uses; subsequent arrangements:
5452 European Atomic Energy Community and Switzerland

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
5411 Arizona; withdrawn

Hazardous waste:
5413 Generators; on-site storage; permit requirements; correction
Water pollution; effluent guidelines for point source categories:
5413 Pretreatment standards, general; new and existing industrial users of POTWs; partial deferral of effective date; correction
Water pollution control:
5412 State underground injection control program; New Mexico Oil Conservation Division application approval
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States, etc.:
5439 Arizona
Air quality planning purposes; designation of areas:
5440 Indiana
NOTICES
Environmental statements; availability, etc.:
5456 Agency statements; weekly receipts
Toxic and hazardous substances control:
5456 TSCA Interagency Testing Committee report to EPA; priority list for chemical substances testing; inquiry

Environmental Quality Office, Housing and Urban Development Department
NOTICES
Environmental statements; availability, etc.:
5468 KaKa'aKo Community development district plan, Oahu, Hawaii

Federal Communications Commission
PROPOSED RULES
Communications equipment:
5442 Auditory training devices; assistance services to handicapped; extension of time
NOTICES
5571 Meetings; Sunshine Act

Federal Energy Regulatory Commission
PROPOSED RULES
Public Utility Regulatory Policies Act of 1978:
5437 Collection of cost of service information
NOTICES
5571, 5572 Meetings; Sunshine Act (2 documents)

Federal Maritime Commission
NOTICES
Casualty and nonperformance, certificates:
5463 DFDS Seaways (Bahamas) Ltd. et al.

Federal Reserve Service
NOTICES
Applications, etc.:
5463 Banque Nationale De Paris
5463 Bay-Herman Bancshares, Inc.
5464 Carter Bancshares, Inc.
5464 Inter First Corp.
5464 Met-State Corp.
5464 Republic of Texas Corp.
5465 RLG Bancshares, N.V.
5465 Terre Du Lac Bancshares, Inc.
5465 Western Holding Co. of Wolf Point
Bank holding companies; proposed de novo nonbank activities:
5465 Philadelphia National Corp. et al.
5572 Meetings; Sunshine Act

Fish and Wild Life Service
RULES
Endangered and threatened species:
5425 Hay's Spring amphipod

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
5408 Dexamethasone sodium phosphate injection
5407 Nonensin-mineral granules
5410 Nitrofurazone ointment
5409 Pentazocine lactate injection
NOTICES
Animal drugs, feeds, and related products:
5466 Polystat and polystat-3; approval withdrawn
Food for human consumption:
5467 Food Chemicals Codex; revisions of monographs; inquiry

Forest Service
NOTICES
Environmental statements; availbility, etc.:
5445 Wayne National Forest, land and resource management plan, Ohio
5445 White River National Forest, Adam's Rib Recreation Area, Colo.
Meetings:
5445 Fremont National Forest Grazing Advisory Board

General Services Administration
RULES
Property management:
5416 Document security and declassification; classification authority
NOTICES
Property management:
5466 Real property disposition program, consolidation (FPMR H–38)

Gold Commission
NOTICES
5466 Meetings

Health and Human Services Department
See also Food and Drug Administration; Human Development Services Office; National Institutes of Health; Social Security Administration.
RULES
5413 Freedom of Information Act, implementation; data treatment in contract proposals

Housing and Urban Development Department
See also Environmental Quality Office, Housing and Urban Development Department.
RULES
5410 Federal National Mortgage Association, conduct of secondary market operation; "mortgage loan" definition revised
NOTICES
Authority delegations:
5468 General Counsel; responsibilities under Multifamily Mortgage Foreclosure Act of 1981

Human Development Services Office
PROPOSED RULES
Older Americans programs:
5440 Grants for State and cummunity programs; deletion of program development and coordination activities as allowable social services costs

Interior Department
See Fish and Wildlife Service; Land Management Bureau; Minerals Management Service; Reclamation Bureau.

International Communication Agency
NOTICES
Art objects, importation for exhibitions:
5474 "El Greco of Toledo"

International Trade Administration
NOTICES
Countervailing duties:
5449 Steel units for electrical transmission towers from Italy
Meetings:
5449 President's Export Council; date change
5449 Telecommunications Equipment Technical Advisory Committee

International Trade Commission
NOTICES
5572 Meetings; Sunshine Act

Interstate Commerce Commission
NOTICES
Motor carriers:
5482 Compensated intercorporate hauling operations; intent to engage in
5474, 5475 Permanent authority applications (2 documents)
Rail carriers:
5483 Southern Railway Co.; contract tariff exemption
Railroad operation, acquisition, construction, etc.:
5484 Guilford Transportation Industries, Inc.
5483 Louisville & Nashville Railroad Co.

Justice Department
See Antitrust Division; Parole Commission.

Labor Department
See Employment and Training Administration; Employment Standards Administration; Labor Statistics Bureau; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office.

Labor Statistics Bureau
NOTICES
Meetings:
5491 Business Research Advisory Council
5491 Business Research Advisory Council Committees

Land Management Bureau
RULES
Public land orders:
5417–5425 California (5 documents)
5416, 5421 Colorado (3 documents)
5423 Idaho
5419, 5423, 5424 Montana (3 documents)
5418, 5422 Nevada (2 documents)
5422 North Dakota
5419, 5421, 5422, 5424 Oregon (4 documents)
5423 Washington
5418, 5421, 5424 Wyoming (3 documents)
NOTICES
Applications, etc.:
5471 New Mexico (2 documents)
Classification of lands:
5470 Arizona
5470 Montana
5471 Nevada (2 documents)
Conveyance of lands:
5470 California (2 documents)
Management framework plans, review and supplement, etc.:
5469 Arizona strip planning and wilderness proposal
Meetings:
5471 Lakeview Grazing District Advisory Board
Outer Continental Shelf; oil and gas lease sales:
5472 Gulf of Mexico; tract withdrawal
Withdrawal and reservation of lands, proposed, etc.:
5470 California; correction

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modifications:
5493 Freeman United Coal Mining Co.
5493 G. M. & W. Coal Co., Inc.
5493 Noranda Mining, Inc.

Minerals Management Service
NOTICES
Outer Continental Shalf; oil, gas, and sulphur operations:
5694 Oil and gas leases; tract evaluation procedures to assure receipt of fair market value; inquiry

National Bureau of Standards
NOTICES
Information processing standards, Federal:
5450 American National Standard Code for Information Interchange (ASCII), additional controls

National Institutes of Health
NOTICES
5468 Selenuim sulfide and selsun; bioassay reports; availability

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
5442 Coral and coral reefs fishery management plan; South Atlantic Fishery Management Council; hearing

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
5550 Beaver Valley Power Station Unit 1, Pa.; high head safety injection isolation valve misalignment
Applications, etc.:
5553 Commonwealth Edison Co.
5553 Connecticut Yankee Atomic Power Co.
5554 Duke Power Co.
5554 Florida Power & Light Co.
5554 Power Authority of State of New York
5554 Puget Sound Power & Light Co. et al.
5557 Tennessee Valley Authority
Grants; availability, etc.:
5551 Technology transfer and dissemination of nuclear energy process and safety information
5572 Meetings; Sunshine Act

Parole Commission
RULES
Federal prisoners; paroling, recommitting, and supervising:
5411 Parole violators incarcerated with new sentences; confirmation of final rule

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans; prohibited transaction exemptions:
5494 Alexander & Alexander Services, Inc.
5497 Bee Line Cooling, Ltd.
5498 Boyd, Veigel & Gay, Inc.
5500 CCR Marine, Inc.
5542 C & R Electric, Inc.
5502 Charter Mortgage Co.
5506 Crocker National Bank
5506 East Tennessee Orthopedic Clinic
5507 Ern Construction Co., Inc., et al.
5542 Fowler, White, Gillen, Boggs, Villareal and Banker, P.A.
5510 Frederick E. Fried, M.D., P.C.
5511 Gearhart Employees' Trust Plan
5513 Hinderliter Profit Sharing Plan and Trust
5543 Hub Surgical Co., Inc.
5515 John F. Long Properties, Inc.
5516 John Wieland Homes, Inc., et al.
5544 Littler, Mendelson, Fastiff & Tichy
5545 McGuire Lumber Co., Inc.
5518 Mead Retirement Master Trust
5547 Middlesex Ophthalmologists, Inc.
5520 Mutual Life Insurance Co. of New York
5522 Pezrow Companies Profit Sharing Plan
5526 Retail Clerks Local 212 Western New York Pension Plan
5527 Rex Companies Employees' Profit Sharing Plan & Trust
5528 Riverside Manufacturing Co.
5524 RREEF Mid–America Fund-II
5531 Sheet Metal Workers Pension Plan of Southern California, Arizona, and Nevada et al.
5530 Spreitzer, Inc.
5532 Tech Plastics, Inc.
5534 Tip Top, Inc.
5535 W. A. Tayloe Co., Inc.
5549 W. G. Yates & Sons Construction Co.
5537 Westinghouse Electric Corp. et al.
Meetings:
5494 Employee Welfare and Pension Benefit Plans Advisory Council

Postal Rate Commission
NOTICES
Mail classification schedules:
5557 Express mail flexible acceptance times; waiver, procedural rules, and prehearing conference

Reclamation Bureau
NOTICES
Contract negotiations:
5472 H&RW Irrigation District, Neb.
5472 New Melones Unit, Central Valley Project, Calif.
Environmental statements; availability, etc.:
5473 Douglas County Project, Oreg.

Regulatory Information Service Center
NOTICES
5559 Calendar of Federal regulations; correction

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
5445 Dairyland Power Cooperative
5446 Soyland Power Cooperative, Inc.

Science and Education Administration
NOTICES
Meetings:
5446 National Agricultural Research and Extension Users Advisory Board

Securities and Exchange Commission
RULES
5404 Proxy statements, disclosure; registrants and independent accountants relationships, nonaudit services
PROPOSED RULES
Investment companies:
5428 Valuation of debt instruments and computation of current price per share by open-end companies (money market funds)
NOTICES
Hearings, etc.:
5559 Appalachian Power Co.
5561 Kemper Investors Life Insurance Co. et al.
5563 Money Manager Fund
5565 New England Electric System
5565 Seneca Resources Corp.
5566 Strategic Investments Fund, Inc., et al.
Self-regulatory organizations; proposed rule changes:
5560 Chicago Board Options Exchange, Inc.
5567 National Association of Securities Dealers, Inc.
5567 New York Stock Exchange, Inc.
5569 Options Clearing Corp.

Small Business Administration
NOTICES
Meetings:
5570 Small and Minority Business Owenrship Presidential Advisory Committee

Social Security Administration
RULES
Public assistance programs:
5648 Aid to families with dependent children; final rule

Soil Conservation Service
Environmental statements; availability, etc.:
5447 Pocinto Critical Area Treatment RC&D Measure, Tex.

Treasury Department
See Customs Service.

MEETINGS ANNOUNCED IN THIS ISSUE

AGRICULTURE DEPARTMENT
Forest Service—
5445 Fremont National Forest Grazing Advisory Board, Lakeview, Oreg. (open), 3–5–82
Science and Education—
5446 National Agricultural Research and Extension Users Advisory Board, Washington, D.C. (open), 2–15–82

ARTS AND HUMANITIES, NATIONAL FOUNDATION
5550 Expansion Arts Special Policy Committee, Washington, D.C. (open), 2–12–82

COMMERCE DEPARTMENT
International Trade Administration—
5449 Telecommunications Equipment Technical Advisory Committee, Washington, D.C. (closed), 3–2–82

EDUCATION DEPARTMENT
5450 Community Education Advisory Council, Washington, D.C. (open), 2–25 and 2–26–82

GOLD COMMISSION
5466 Review of the role of gold in the domestic and international monetary systems, Washington, D.C. (open), 2–12–82

INTERIOR DEPARTMENT
Land Management Bureau—
5471 Lakeview Grazing District Advisory Board, Lakeview, Oreg. (open), 3–2–82

LABOR DEPARTMENT
Labor Statistics Bureau—
5491 Business Research Advisory Council, Washington, D.C. (open), 2–23 and 2–24–82 (2 documents)
Pension and Welfare Benefit Programs Office—
5494 Employee Welfare and Pension Benefit Plans Advisory Council, Washington, D.C. (open), 2–17–82

SMALL BUSINESS ADMINISTRATION
5570 Small and Minority Business Ownership Presidential Advisory Committee, Washington, D.C. (open), 2–18–82

RESCHEDULED MEETING

COMMERCE DEPARTMENT
International Trade Administration—
5449 President's Export Council, Export Promotion Subcommittee, Washington, D.C. (open), rescheduled from 2–11 to 2–22–82

HEARING

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration—
5442 South Atlantic Fishery Management Council, Daytona Beach, Fla., 2–25–82

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

February 26, 1852 (Revoked in part by PLO 6120)..... 5423

March 15, 1872 (Revoked by PLO 6125)..... 5425

July 14, 1884 (Revoked in part by PLO 6118)..... 5422

October 12, 1912 (Revoked in part by PLO 6111)..... 5419

January 16, 1913 (Revoked in part by PLO 6108)..... 5418

October 13, 1916 (Revoked in part by PLO 6115)..... 5421

April 30, 1919 (Revoked in part by PLO 6122)..... 5424

March 8, 1920 (Revoked in part by PLO 6110)..... 5419

March 10, 1924 (Revoked by PLO 6105)..... 5417

February 23, 1928 (Revoked by PLO 6105)..... 5417

2029, as amended by EO 3140 (Revoked by PLO 6125)..... 5425

7471 (Revoked by PLO 6109)..... 5419

8124 (Revoked by PLO 6117)..... 5422

Proclamations:

4894..... 5401

7 CFR

718..... 5403

907..... 5403

910..... 5404

10 CFR

477..... 5688

17 CFR

240..... 5404

Proposed Rules:

270..... 5428

18 CFR

Proposed Rules:

290..... 5437

19 CFR

101..... 5406

21 CFR

510..... 5407

520..... 5407

522 (2 documents)..... 5408, 5409

524..... 5410

24 CFR

81..... 5410

28 CFR

2..... 5411

34 CFR

Proposed Rules:

369..... 5439

370..... 5439

371..... 5439

372..... 5439

373..... 5439

374..... 5439

375..... 5439

378..... 5439

379..... 5439

40 CFR

52..... 5411

123 (2 documents)..... 5412, 5413

403..... 5413

Proposed Rules:

52..... 5439

81..... 5440

41 CFR

3-1..... 5413

105-62..... 5416

43 CFR

Public Land Orders:

329 (Revoked by PLO 6114)..... 5421

1835 (Revoked by PLO 6121)..... 5423

1935 (Revoked by PLO 6121)..... 5423

2101 (Revoked by PLO 6116)..... 5422

2656 (Revoked by PLO 6107)..... 5418

3500 (Revoked by PLO 6103)..... 5416

4248 (Revoked by PLO 6124)..... 5424

5109 (Revoked by PLO 6123)..... 5424

6025 (Corrected by PLO 6106)..... 5418

6102..... 5416

6103..... 5416

6105..... 5417

6106..... 5418

6107..... 5418

6108..... 5418

6109..... 5419

6110..... 5419

6111..... 5419

6112..... 5420

6113..... 5421

6114..... 5421

6115..... 5421

6116..... 5422

6117..... 5422

6118..... 5422

6119..... 5423

6120..... 5423

6121..... 5423

6122..... 5424

6123..... 5424

6124..... 5424

6125..... 5425

45 CFR

205..... 5648

206..... 5648

232..... 5648

233..... 5648

234..... 5648

235..... 5648

238..... 5648

239..... 5648

Proposed Rules:

1321..... 5440

47 CFR

Proposed Rules:

15..... 5442

50 CFR

17..... 5425

Proposed Rules:

638..... 5442

Federal Register
Vol. 47, No. 25
Friday, February 5, 1982

Presidential Documents

Title 3—

The President

Proclamation 4894 of February 3, 1982

American Heart Month, 1982

By the President of the United States of America

A Proclamation

Diseases of the heart and circulatory system remain our nation's most serious health problem. These diseases affect at least 40 million Americans, many of whom have been seriously and often permanently disabled. Heart disease causes one million deaths each year and costs the nation more than $60 billion a year in lost wages, productivity, and medical expenses.

However, progress has been made in recent years to substantially reduce illness, disability, and death from heart disease. For most heart and blood vessel diseases, death rates have been declining slowly but steadily since 1950. Over the past decade, death rates have declined in all cardiovascular-disease categories and at a pace double that of the death rate for all other causes.

In human terms, we know that 300,000 Americans who would have died from cardiovascular disease during 1981 are still alive today. This development has been a major contributing factor to the three-year increase in the life expectancy of Americans in the past decade.

We have learned much about averting the onset of cardiovascular disease. Americans are increasingly aware of the crucial role lifestyles play in affecting their risk of these diseases. By recognizing the importance of proper nutrition, reduced smoking, exercise, and prevention of high blood pressure, our citizens are making a major contribution to the fight against heart disease. The role of prevention in cardiovascular diseases is especially vital because the initial symptoms are so frequently lethal or permanently disabling.

While we have made significant progress in the treatment of this group of diseases, they still take an appallingly high toll on our people. Cardiovascular diseases still account for more than 50 percent of the deaths in America; coronary heart disease is the primary cause of death.

Clearly, we must continue our vigorous efforts to stem the great amount of death and disability cardiovascular diseases cause in our nation. To this end, the Congress has requested the President to issue annually a proclamation designating February as American Heart Month.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the month of February, 1982, as American Heart Month. I invite the Governors of the States, the Commonwealth of Puerto Rico, the officials of other areas subject to the jurisdiction of the United States and the American people to join with me in reaffirming our commitment to the resolution of the nationwide problem of cardiovascular disease.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of February, in the year of our Lord nineteen hundred and eighty-two, and of the Independence of the United States of America the two hundred and sixth.

Ronald Reagan

[FR Doc. 82-3294
Filed 2-3-82; 4:12 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 47, No. 25
Friday, February 5, 1982

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 718

[Amdt. 6]

Determination of Acreage and Compliance

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This action adopts as a final rule an interim rule in the **Federal Register** September 25, 1981 (46 FR 47213–47215) which provided for miscellaneous amendments to the regulations governing determination of acreage and compliance (7 CFR Part 718).

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: H. Paul Newhouse, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447–3471.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291, and has been classified as not being a "major rule." It has been determined that these program provisions will not result in (1) an annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not have a significant impact specifically on area and community development. Therefore, review as established by Office of Management and Budget (OMB) circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

On September 25, 1981, there was published in the **Federal Register** (46 FR 47213–47215) an interim rule amending the regulations set forth at 7 CFR Part 718 which govern the determinations of acreage and compliance under the production adjustment and marketing quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS). The interim rule (1) eliminated a provision for a farm visit to check set-aside compliance, (2) defined "program crops" for 1981 and subsequent years, (3) made "tolerance" applicable to program crops and marketing quota crops, and (4) changed the definition of "variance." It also provided for determining compliance by checking selected farms by aerial methods and clarified procedures for adjustment of acreage for ELS Cotton, peanuts and tobacco (other than flue-cured or burley). Comments were solicited for a period of 60 days after publication of the document. No comments were received during the comment period.

Final Rule

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Accordingly, it has been determined that the interim rule published at (46 FR 47213–47215) amending 7 CFR Part 718 is hereby adopted as a final rule without change.

Signed at Washington, D.C., on January 29, 1982.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 82–2893 Filed 2–4–82; 8:45 am]

BILLING CODE 3410–05–M

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 539]

Navel Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period February 5–11, 1982. Such action is needed to provide for orderly marketing of fresh navel oranges for this period due to the marketing situation confronting the orange industry.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202–447–5975.

SUPPLEMENTARY INFORMATION:

Findings

This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on October 6, 1981. The committee met again publicly on February 2, 1982 at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navels deemed advisable to be handled during the specified week. The committee

reports the demand for navel oranges is easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared policy of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 907.839 is added as follows:

§ 907.839 Navel Orange Regulation 539.

The quantities of navel oranges grown in Arizona and California which may be handled during the period February 5, 1982, through February 11, 1982, are established as follows:

(1) District 1: 935,000 cartons;
(2) District 2: 165,000 cartons;
(3) District 3: Unlimited cartons;
(4) District 4: Unlimited cartons.

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

Dated: February 3, 1982.

D. S. Kuryloski,
Deputy, Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 3292 Filed 2-4-82; 0:00 am]

BILLING CODE 3410-02-M

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7 CFR Part 910

[Lemon Reg. 345]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period February 7–13, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: February 7, 1982.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The committee met again publicly on February 2, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues to be easy.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Section 910.645 is added as follows:

§ 910.645 Lemon Regulation 345.

The quantity of lemons grown in California and Arizona which may be handled during the period February 7, 1982, through February 13, 1982, is established at 210,000 cartons.

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

Dated: February 4, 1982.

D. S. Kuryloski,
Deputy, Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 3355 Filed 2-4-82; 12:29 pm]

BILLING CODE 3410-02-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33–6379; 34–18450; 35–22370; IC–12193; AS–304; File No. S7–901]

Relationships Between Registrants and Independent Accountants

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission announces rescission of the rule requiring disclosure in proxy statements about nonaudit services performed by independent accountants for their audit clients. This rule was adopted to facilitate a better understanding by investors of the relationships between registrants and independent accountants at a time when some people were concerned that the performance of nonaudit services might impair accountants' independence. Although information about nonaudit services is important to enable the Commission and others to monitor this activity by accountants, the rule is being rescinded because the Commission has concluded that it is not generally of sufficient utility to investors to justify continuation of the disclosure requirement. In addition, information about nonaudit services performed by accountants will continue to be available to interested persons because a recent revision of the membership provisions of the accounting profession's self-regulatory organization, the SEC Practice Section of the Division for Firms of the American Institute of Certified Public Accountants, requires member firms to disclose additional information about nonaudit service activity in annual reports that cover years ending on or after January 1, 1982.

EFFECTIVE DATE: January 28, 1982.

FOR FURTHER INFORMATION CONTACT: Linda Griggs or Edmund Coulson (202/272–2130) or LeGrand C. Kirby, III (202–272–2051), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is rescinding Item 8(g) of

the proxy rules (17 CFR 240.14a–101). Item 8(g) was adopted by the Commission in Accounting Series Release No. 250 ("ASR 250") (June 29, 1978) (43 FR 18611) at a time when some people were concerned that performance of nonaudit services might impair accountants' independence. Item 8(g) was intended to facilitate a better understanding by investors of the relationships between registrants and accountants by requiring disclosure in proxy statements about the nonaudit services performed by independent accountants for their audit clients.

In Accounting Series Release No. 296 ("ASR 296") (August 20, 1981) (46 FR 43181), the Commission invited public comment on its proposal to rescind Item 8(g). In that release, the Commission also discussed its withdrawal of Accounting Series Release No. 264 ("ASR 264") (June 14, 1979) (44 FR 36156) in Accounting Series Release No. 297 (August 20, 1981) (46 FR 43411).

The Commission received letters of comment from approximately 140 commentators. Over two-thirds of those commentators expressed support for the Commission's proposal. The Commission also received a petition signed by twenty-five persons requesting that the Commission reinstate ASR 264, "keep ASR 250 in place," and "prohibit CPA firms from selling non-audit computer-related products or services." In light of concerns about the withdrawal of ASR 264, the Commission also reviewed that action.

Discussion

The Commission has determined to rescind Item 8(g) for the reasons more fully discussed in ASR 296. It has concluded that the detailed nonaudit service disclosure required by that provision is not generally of sufficient utility to investors to justify continuation of the disclosure requirement. The commentators did not demonstrate investor interest in the disclosure. Indeed, many of the registrants that commented [1] stated expressly that, in their experience, investors had shown little, if any, interest in the disclosure.

Notwithstanding this action, the Commission believes it should continue to monitor the nonaudit service activity by accountants as a part of its oversight of the accounting profession. Other people may also want to monitor this activity. The Commission is satisfied with the information that will be available because of a recent revision of the membership requirements of the SEC Practice Section of the Division for Firms of the American Institute of Certified Public Accountants. The SEC Practice Section responded promptly to the Commission's comment in ASR 296 that the accounting profession's self-regulatory mechanism should be able to generate sufficient information about nonaudit services performed by accountants to enable the Commission, the Public Oversight Board of the SEC Practice Section, and other interested persons to continue to monitor the nonaudit services performed by accountants. The SEC Practice Section revised its membership provisions to require member accounting firms to disclose additional information about their nonaudit service activity for clients that file with the Commission. In annual reports filed with the Section for years ending on or after January 1, 1982, member firms will be required to report the number of such clients from which they receive fees for management advisory services that, when expressed as a percentage of the audit fees for such clients, are in the range of 1 to 25%, 26 to 50%, 51 to 100% and over 100%. In addition, they will be required to state how many of the audit clients in the "over 100%" category fall into that category for three consecutive years, including the current year. The Commission is satisfied that the additional disclosure required by the SEC Practice Section will enable it to adequately monitor trends in aggregate levels of nonaudit services performed by accountants for their registrant clients.

Analysis of Comments

Two-thirds of the commentators on the Commission's proposal to rescind Item 8(g) of the proxy rules expressed support for that action.[2] These supporters claimed that the disclosure does not assure or contribute to accountants' independence, is not indicative of independence or the lack thereof, or misleads readers who think it is indicative of accountants' independence. Others pointed out that the non-audit service disclosure may obfuscate other more important information included in proxy statements. In addition, a number of registrants and accountants stated that the disclosure requirement has inappropriately curtailed the nonaudit services that accountants perform for their clients.

Less than a third of the commentators opposed the proposed rescission of Item 8(g). Only a few of these critics asserted that shareholders need the disclosure to make informed voting decisions on the selection of auditors or to understand the relationships between registrants and their independent accountants.

Most of the critics,[3] however, stated that accounting firms that provide nonaudit services, and particularly computer or actuarial services, to their audit clients cannot be independent because they audit the very systems they design, develop and implement. In addition, they alleged that accounting firms have an unfair competitive advantage which threatens the existence of computer and actuarial services companies because of their inside position and access to top management and their use of unfair marketing practices and discriminatory pricing in offering their nonaudit services. Most of these commentators also expressed concern about the withdrawal of ASR 264. Some of them, and the petition sent to the Commission, requested that accountants be prohibited from performing data processing and actuarial services for their audit clients and that the Commission conduct hearings on or sponsor an investigation of the nonaudit service activity of accounting firms. In addition, two commentators objected that the SEC Practice Section's revised reporting requirement is inadequate for meaningful oversight because of the omission of information by type of management advisory service and size of the client or because the aggregate information will make analyses of accountants' independence as to particular registrants impossible.

The Commission has considered these comments and believes that the commentators' claims of shareholder interest in the nonaudit service disclosure and their allegations about accountants' independence and fair competition are outweighed by the absence of evidence that investors want or use the disclosure or that performance of nonaudit services impairs accountants' independence. In addition, as indicated above, the Commission is satisfied that, notwithstanding rescission of Item 8(g), continued monitoring of the nonaudit service activity of independent accountants will be possible because of the revised annual reporting

[1] A little over half of the commentators were registrants. A significant number of these expressed support for the proposal.

[2] Approximately 10% of the commentators who supported the Commission's proposal were from the accounting profession and approximately four-fifths were registrants or industry associations.

[3] Almost all of the commentators who expressed opposition to the proposal were management consultants, management consulting companies or associations that represent management consultants.

requirements of the SEC Practice Section. Retention of the disclosure requirement to affect competition in the consulting industry would be inappropriate because the Commission does not have a statutory responsibility to assure fair competition within the management consulting industry. Accordingly, the Commission is rescinding Item 8(g) and has rejected the recommendations that it prohibit accounting firms from providing nonaudit services to their audit clients or conduct hearings or sponsor an investigation of the nonaudit service activity of accountants.

The Commission has also rejected suggestions that it reinstate ASR 264 or repeat the substance of that release. The Commission's views on accountants' independence are clearly articulated in ASR 296 and registrants and accountants understand and appreciate the accountants' independence must be carefully evaluated and preserved. Moreover, the Commission is satisfied that the self-regulatory mechanism established by the accounting profession, accountants, audit committees and managements should ensure that adequate consideration is given to the impact of nonaudit services on accountants' independence.

Conclusion

For the reasons more fully discussed in ASR 296, the Commission is rescinding Item 8(g) of the proxy rules. The Commission has the responsibility and authority under the securities laws to assure that accountants who practice before it are independent. Therefore, as the Commission stated in ASR 296, it is prepared to take further action if either the fact or appearance of accountants' independence is questioned in the future.

Effective Date

Pursuant to 5 U.S.C. 553(d), the rescission of Item 8(g) is effective on January 28, 1982 for good cause and because it grants or recognizes an exemption or relieves a restriction. Good cause exists because the large number of registrants now using or preparing proxy statements for 1982 annual meetings should be able to exclude the nonaudit service disclosure that the Commission has determined is not generally necessary for investors. Accordingly, proxy statements furnished to security holders on or after January 28, 1982 are not required to include the disclosure previously required by Item 8(g).

Commission Action

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§ 240.14a-101 [Amended]

The Commission hereby amends § 240.14a-101 of 17 CFR Part 240 by removing paragrah (g) from Item 8.

This action is taken pursuant to Sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 781, 78m, 78n, 78o(d) and 78w).

By the Commission.

George A. Fitzsimmons,

Secretary.

January 28, 1982.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the rescission of Item 8(g) of the proxy rules (17 CFR 240.149(a)-101) set forth in Securities Act Release No. 6379 will not have a significant economic impact on a substantial number of small entities. The reason for this conclusion is that the rescission of Item 8(g) is not expected to have a significant economic impact on any entity, since its effect will be limited to the elimination of an unnecessary disclosure requirement currently contained in the Commission's proxy rules.

Dated: January 28, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82-3133 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 82-30]

Change in the Field Organization of the Customs Service

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This notice amends the Customs Regulations to change the field organization of the Customs Service by establishing, on a 2-year experimental basis, a new Customs port of entry at Springfield, Missouri, in the St. Louis, Missouri, Customs district. The change is being made as part of Customs continuing program to obtain more efficient use of its resources and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: March 8, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

Springfield, Missouri, is a community of 165,000 in the southern section of the state. Even though it is served by rail, air, and highway transportation, all imported merchandise destined for Springfield must be entered through distant ports of entry in St. Louis and Kansas City, Missouri, and Peoria, Illinois. The nearest of these, Kansas City, Missouri, is 170 miles away.

On May 7, 1980, the Springfield Chamber of Commerce submitted an application to Customs requesting the establishment of a Customs port of entry in that city. Although data submitted in support of the Chamber's request indicated that Customs-related activity in the area exceeded Customs minimum requirements for establishing ports of entry, it did not include sufficient documentation to permit a fair evaluation of community and business support for the proposal. Accordingly, Customs was reluctant to commit resources to the project until the need for, and potential use of, the port could be shown.

Additional data subsequently forwarded to Customs indicates that strong business support does exist for the establishment of the port of entry and that parties in Springfield are considering the possibility of establishing a foreign trade zone there. In addition, a major national corporation has stated that it is considering radically increasing the production capacity of its Springfield plant.

On the basis of this information, Customs believes that there is potential use for a port of entry at Springfield and that a port of entry should be established there on a 2-year experimental basis. To verify that the projected workload does in fact materialize, Customs will evaluate the activity at Springfield at the end of the 2-year period before making a final determination about the establishment of a permanent port of entry at this location.

Accordingly, to keep pace with the expanding needs of Customs-related activities in the Springfield, Missouri, area, and to provide better service to carriers, importers, and the public, Customs published a notice in the **Federal Register** on October 29, 1981 (46 FR 53448), proposing to establish a new port of entry at Springfield, Missouri, in

the St. Louis, Missouri, Customs district (Region IX).

Three comments were received in response to the notice. One commenter points out that the distance from Peoria is greater than stated in the notice. It is noted that Kansas City, Missouri, which is 170 miles away, is the nearest port of entry to Springfield rather than Peoria, Illinois.

The other two commenters oppose the change because they believe that a detrimental economic impact will occur if the change is implemented, and that a "feasibility study" of the efficiencies of small versus large ports should be conducted.

Further, one of the commenters argues that it is more efficient for Customs to devote its resources (especially commodity specialists) to large "satellite" ports like Kansas City than to establish a number of small ports (like Springfield) having no "direct" international truck or air service.

One aspect of Customs mission is to provide service to the public when and where it is required. The establishment of new ports of entry in various locations throughout the country is a necessary response to the public demand for increased Customs service. Further, Customs does have minimum workload and facility standards for the establishment of new ports of entry which are applied to prevent the unjustified proliferation of new ports. Prior to establishing ports of entry, Customs carefully reviews the data submitted in support of each application to verify that it meets the criteria. The application for Springfield, Missouri, was scrutinized and it appears that Springfield meets the criteria. Further, since the port would be established on a 2-year trial basis, Customs expects that the actual need for Customs service at Springfield will be determined within this 2-year period.

Customs constantly reviews the allocation of its resources to determine how and where it can best serve the importing public as well as meet the goal of fulfulling the mission of the Customs Service. As stated above, this change is being made as part of Customs continuing program to obtain more efficient use of its resources, and to provide better service to carriers, importers, and the public.

Accordingly, Customs has determined to adopt the change as proposed.

Changes in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101–5 (46 FR 9336), a new Customs port of entry is established at Springfield, Missouri, in the St. Louis, Missouri, Customs district. The geographical limits of the Springfield, Missouri, Customs port of entry would encompass all of the territory within Greene and Christian Counties, Missouri.

Amendment to the Regulations

To reflect this change, the list of Customs regions, districts, and ports of entry in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by adding "Springfield, Missouri, including all of the territory within Greene and Christian Counties, Missouri, (T.D. 82–30)" directly below "Kansas City, Mo., including Kansas City, Kans. and North Kansas City, Mo., (E.O. 8528, Aug. 27, 1940) including the territory described in T.D. 67–56," in the column headed "Ports of entry" in the St. Louis, Missouri, district (Region IX).

Executive Order 12291

Because this will not result in a "major rule" as defined in section 1(b) of Executive Order 12291, the regulatory impact analysis and review prescribed by section 3 of the Executive Order is not required.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Secretary of the Treasury has determined that the regulation set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulation is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this amendment may have a limited effect upon some small entities in the St. Louis, Missouri, district area, it is not expected to be significant because the establishment of Customs ports of entry in other locations has not had a significant economic impact upon substantial number of small entities to the extent contemplated by the Regulatory Flexibility Act.

Drafting Information

The principal author of this document was Barbara E. Whiting, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: January 27, 1982.

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 82-3092 Filed 2-4-82; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs, Oral Dosage Form New Animal Drugs Not Subject to Certification; Monensin-Mineral Granules

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Farmers Friend Mineral Co. providing for the safe and effective use of monensin-mineral granules for increased rate of weight gain in pasture cattle, and to add the firm to the list of approved NADA sponsors.

EFFECTIVE DATE: February 5, 1982.

FOR FUTHER INFORMATION CONTACT: William D. Price, Bureau of Veterinary Medicine (HFV–123), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3442.

SUPPLEMENTARY INFORMATION: Farmers Friend Mineral Co., Inc., 1048 E. Main St., Louisville, KY 40206, filed an NADA (119–823) providing for free-choice feeding of mineral granules containing 810 milligrams of monensin per pound for increased rate of weight gain in slaughter, stocker, and feeder cattle weighing more than 400 pounds on pasture. Approval of the NADA partly relies upon safety and effectiveness data contained in Elanco Products Co.'s approved NADA 95–735 and NADA 38–878. The NADA's provide for use of monensin premixes for making finished animal feeds used for increased rate of weight gain. Use of the data in NADA 95–735 and NADA 38–878 to support NADA 119–823 has been authorized by Elanco. Because NADA 119–823 provides for use of the loose mineral

granules as an alternative form for administering monensin that does not involve a change in the route of administration and does not otherwise introduce variables expected to affect residues, the Bureau of Veterinary Medicine concludes that it poses no increased human risk from exposure to residues of the drug nor does it change the conditions of the drug's approved use in the target animal species. Accordingly, under the Bureau's supplemental approval policy (42 FR 64367; December 23, 1977), approval of NADA 119–823 has been treated as would an approval of a Category II supplement and did not require reevaluation of safety and effectiveness data in NADA 95–735 or safety data in NADA 38–878. The NADA is approved.

Farmers Friend Mineral Co., Inc., has not previously been included in the regulations under the list of approved sponsors. The regulations are amended to reflect this approval and to include this firm in the list of sponsors.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. In Part 510, § 510.600 is amended by adding a new sponsor alphabetically to paragraph (c)(1) and numerically to paragraph (c)(2) to read as follows:

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

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Farmers Friend Mineral Co., Inc., 1048 E. Main St., Louisville, KY 40206	030239
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
030239	Farmers Friend Mineral Co., Inc., 1048 E. Main St., Louisville, KY 40206
* * * * *	

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

2. In Part 520, by redesignating existing § 520.1448 as § 520.1448a and by adding new §§ 520.1448 and 520.1448b, to read as follows:

§ 520.1448 Monensin oral dosage forms.

§ 520.1448b Monensin-mineral granules.

(a) *Specifications.* Each pound of loose mineral granules contains 810 milligrams of monensin as monensin sodium.

(b) *Sponsor.* See No. 030239 in § 510.600(c) of the chapter.

(c) *Related tolerances.* See § 556.420 of this chapter.

(d) *Conditions of use.*—(1) *Amount.* 50 to 200 milligrams of monensin (1 to 4 ounces of product) per head per day.

(2) *Indications for use.* Increased rate of weight gain.

(3) *Limitations.* Medicated mineral granules to be fed free choice to pasture cattle (slaughter, stocker, and feeder) weighing more than 400 pounds. Provide enough feeding stations to ensure that all animals have free access at all times. Do not feed additional salt or mineral. Do not mix with grain or other feeds. Monensin is toxic to cattle when consumed at higher than approved levels. Stressed or feed and/or water deprived cattle should be adapted to the pasture and to unmedicated mineral supplement before using the product. Do not allow horses or other equines access to formulations containing monensin (ingestion of monensin by equines has been fatal). Product's effectiveness in cull cows and bulls has not been established.

Effective date. February 5, 1982.

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

Dated: January 29, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82–2995 Filed 2–4–82; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs not Subject to Certification; Dexamethasone Sodium Phosphate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wendt Laboratories, Inc., providing for safe and effective use of a dexamethasone sodium phosphate injection in dogs and horses for its glucocorticoid and anti-inflammatory effect.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Wendt Laboratories, Inc., 100 Nancy Dr., Belle Plaine, MN 56011, filed an NADA (123–815) providing for intravenous use of a dexamethasone sodium phosphate injection in dogs and horses. The product contains 4 milligrams of dexamethasone sodium phosphate per milliliter and is administered for a glucocorticoid and anti-inflammatory effect.

The product is similar to Schering's Azium (dexamethasone sterile injection), a National Academy of Sciences/National Research Council (NAS/NRC) reviewed product which was found effective as an anti-inflammatory agent in dogs, cats, horses, and cattle. Approval of Schering's product is codified in 21 CFR 522.540. Wendt's product is approved based on its being the generic equivalent of the NAS/NRC-reviewed product. The requirement for evidence of in vivo bioavailability has been waived under 21 CFR 320.22(b)(1). NADA 123–815 is approved and the regulations are amended appropriately.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11,

1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.540 by adding new paragraph (e), to read as follows:

§ 522.540 Dexamethasone injection.

* * * * *

(e)(1) *Specifications.* The drug is a sterile aqueous solution. Each milliliter contains 4.0 milligrams of dexamethasone sodium phosphate (equivalent to 3 milligrams of dexamethasone).

(2) *Sponsor.* See No. 015579 in § 510.600(c) of this chapter.

(3) *Conditions of use.* (i) The drug is given for glucocorticoid and anti-inflammatory effect in dogs and horses.

(ii) Administer intravenously as follows: Dogs—0.25 to 1 milligram initially; may be repeated for 3 to 5 days or until response is noted. Horses—2.5 to 5 milligrams. If permanent glucocorticoid effect is required, oral therapy may be substituted. When therapy is to be withdrawn after prolonged use, the daily dose should be reduced gradually over several days.

(iii) Clinical and experimental data have demonstrated that corticosteroids administered orally or by injection may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis.

(iv) Do not use in viral infections. Anti-inflammatory action of corticosteroids may mask signs of infections. Except when used for emergency therapy, the product is contraindicated in animals with tuberculosis, chronic nephritis, cushingoid syndrome, or peptic ulcers.

(v) Not for use in horses intended for food.

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

Effective date: February 5, 1982.

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

Dated: January 8, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82–2863 Filed 2–4–82; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Pentazocine Lactate Injection

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Sterling Drug, Inc., providing for safe and effective use of its injectable analgesic pentazocine lactate in dogs.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Sterling Drug, Inc., 90 Park Ave., New York, NY 10016, filed a supplemental NADA (44–611) providing revised labeling for pentazocine lactate injection to provide safe and effective use of the analgesic in dogs in addition to its use in horses. The sponsor submitted studies supporting safe and effective use in dogs. The supplemental NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1) (ii)(*a*) and (ii)(*e*) (*1T1) and (2*)) which is on file with the Dockets Management Branch (address above).

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052, May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 522 is amended in § 522.1698 by revising paragraph (c) to read as follows:

§ 522.1698 Pentazocine lactate injection.

* * * * *

(c) *Conditions of use.*—(1) *Horses.*—(i) *Amount.* 0.15 milligram of pentazocine base per pound of body weight per day.

(ii) *Indications for use.* For symptomatic relief of pain due to colic.

(iii) *Limitations.* Administer intravenously or intramuscularly. Intravenous injections are given slowly in the jugular vein. In cases of severe pain, a second dose is recommended intramuscularly 10 to 15 minutes after the initial dose at the same level. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Dogs.*—(i) *Amount.* 0.75 to 1.50 milligrams of pentazocine base per pound of body weight.

(ii) *Indications for use.* For amelioration of pain accompanying postoperative recovery, fracture, trauma, and spinal disorders.

(iii) *Limitations.* Administer intramuscularly only. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. February 5, 1982.

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

Dated: January 29, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-2994 Filed 2-4-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification; Nitrofurazone Ointment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Wendt Laboratories, Inc., providing for the use of nitrofurazone ointment as a topical antibacterial on dogs, cats, and horses. The application provides labeling that reflects the conclusions of the National Academy of Sciences/National Research Council (NAS/NRC) review of such products.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

SUPPLEMENTARY INFORMATION: Wendt Laboratories Inc., 100 Nancy Dr., Belle Plaine, MN 56011, is sponsor of an NADA (118-506) providing for use of an ointment containing 0.2 percent nitrofurazone (2 milligrams per gram) as a topical antibacterial on dogs, cats, and horses. This product is the generic equivalent of one codified for animal use in 21 CFR 524.1580b. The regulation provides that because the conditions of use are NAS/NRC reviewed and found effective, applications for these uses need not include certain effectiveness data as specified by 21 CFR 514.111. Evidence of in vivo bioavailability is not required because the product is an ointment intended for local therapeutic effect (21 CFR 320.22(b)(2)). Therefore, NADA 118-506 is approved on the basis of generic equivalence and the regulations are amended to reflect this approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 524 is amended in § 524.1580b by revising paragraph (b) to read as follows:

§ 524.1580b Nitrofurazone ointment.

* * * * *

(b) *Sponsor.* For use in dogs, cats, and horses see Nos. 000149, 000864, 023851, and 015579 in § 510.600(c) of this chapter. For use in dogs and horses see No. 017135 in § 510.600(c) of this chapter.

* * * * *

Effective date. This amendment is effective February 5, 1982.

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

Dated: January 29, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-2996 Filed 2-4-82; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 81

[Docket No. R-82-925]

Regulations Implementing Authority of Secretary of Housing and Urban Development Over Conduct of Secondary Market Operations of Federal National Mortgage Association; Change in Definition

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The Secretary is adopting as final an Interim Rule that revised the definition of "mortgage loan." This revision allows FNMA, in response to increased need for creative financing, to submit for the Secretary's approval conventional loan programs involving the purchase of second mortgages.

EFFECTIVE DATE: March 18, 1982.

FOR FURTHER INFORMATION CONTACT: John A. Maxim, Jr., Associate General Counsel for Finance and Insured Housing, Office of General Counsel, Department of Housing and Urban Development, Room 9252, 451 Seventh, Street, S.W., Washington, D.C. 20410, (202) 755-6274 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 3, 1981, (46 FR 39435), the Secretary published an Interim Rule amending the definition of "mortgage loan" in a manner which would permit FNMA to submit for the Secretary's approval programs involving second mortgages. Provision was made for public comment, and two such comments were received. Both comments were strongly supportive of the Interim Rule and recommended that it become final. One of the comments went beyond the substance of the rule and suggested specific procedures and standards which might be applied in carrying out a second mortgage program. In making the rule final, the Secretary has determined that it is beyond the scope of the regulations to prescribe the procedures and standards recommended by the commentator. In addition, the commentator raised the question whether the purchase of second mortgages by FNMA would create an exemption to state usury laws. The Secretary did not intend that any action he might take under the Charter Act would, at this time, have any effect on state laws. The points raised by the comment are, moreover, matters properly for evaluation by FNMA rather

than HUD and have been forwarded to the Association for further consideration.

A Finding of No Significant Impact with respect to the environment was made on the Interim Rule in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address set forth above. Because this rule is unchanged from its interim version, no further finding is required.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Undersigned hereby certifies that this rule does not have a significant impact on a substantial number of small entities.

This rule does not constitute a "major" rule as defined by Executive Order 12291 because it is not likely to result in: (a) An annual effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as item B.1. (S–4–81) under the Office of the Secretary in the Department's Semi-annual Agenda of Regulations published pursuant to Executive Order 12291 and the Regulatory Flexibility Act on August 17, 1981 (46 FR 41708).

PART 81—REGULATIONS IMPLEMENTING THE AUTHORITY OF THE SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OVER THE CONDUCT OF THE SECONDARY MARKET OPERATIONS OF THE FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA)

The interim amendment to 24 CFR Part 81, published August 3, 1981 (46 FR 39435), is hereby adopted as final without change.

(Sec. 309(h) of the Charter Act (12 U.S.C. 1723a))

Issued at Washington, D.C., January 20, 1982.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 82-3039 Filed 2-4-82; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: Parole Commission, Justice.

ACTION: Confirmation of interim rule as final rule.

SUMMARY: The U.S. Parole Commission is confirming as a final rule its interim rule, 28 CFR 2.47, Warrant Placed as a Detainer and Dispositional Review, published on July 10, 1981 at 46 FR 35635. This rule amends the Parole Commission's policy regarding the treatment of parole violators incarcerated with new sentences. Under the amendment, the Commission will commence the unexpired portion of the original sentence upon release from the confinement portion of the new sentence, except when the Commission selects an earlier date for reparole to the new sentence. The amendment also changes the timing of dispositional revocation hearings for parole violators incarcerated on new sentences in a state/local facility. These violators will be heard after service of 24 (rather than 18) months in custody (if not released before that time). A prisoner in a federal facility, in most cases, will have this hearing in conjunction with the initial parole hearing on the new federal sentence. The amendment for state prisoners is made for budgetary reasons, and the amendment for federal prisoners is to reduce duplication in hearings. No public comment has been received on the interim rule.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Toby D. Slawsky, Staff Attorney Office of General Counsel, (301) 492–5959.

PART 2—PAROLE, RELEASE, SUPERVISION, AND RECOMMITMENT OF PRISONERS, YOUTH OFFENDERS, AND JUVENILE DELINQUENTS.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(1), Title 28 CFR 2.47, published as an interim rule at 46 FR 35635, is made a final rule.

Note.—I certify that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Dated: February 2, 1982.

Cameron M. Batjer,

Chairman, U.S. Parole Commission.

[FR Doc. 82-3131 Filed 2-4-82; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-9-FRL-2033-2]

Approval and Promulgation of State Implementation Plans; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of a final rule.

SUMMARY: On October 30, 1980 the State of Arizona submitted a request to extend the carbon monoxide (CO) attainment date for the Maricopa County Urban Planning Area. On September 14, 1981 (46 FR 45605) EPA approved this revision to; the Arizona State Implementation Plan (SIP) without inviting public comment.

EPA subsequently received a request for an opportunity to submit an adverse or critical comment on this approval action. Accordingly, EPA is today withdrawing its approval of this revision to the Arizona SIP. Elsewhere in today's **Federal Register** EPA is proposing to approve this revision and providing a sixty-day comment period.

DATE: This action is effective on February 5, 1982.

ADDRESSES: Written comments should be addressed to the EPA Region 9 Air Programs Branch (address below). Copies of the revision are available for public inspection during normal business hours at the EPA Region 9 office and the following locations:

Public Information Reference Unit, Environmental Protection Agency, Library, 401 "M" Street S.W., Room 2404, Washington, D.C. 20460

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

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, AZ 85007

Maricopa Association of Governments, 1820 West Washington Street, Phoenix, AZ 85007

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air & Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8222.

SUPPLEMENTARY INFORMATION: On October 30, 1980 the Governor's designee for the State of Arizona submitted a request to extend the CO attainment date for the Maricopa County Urban Planning Area. On

September 14, 1981 (46 FR 45605) EPA announced the availability of this submittal and approved it as a revision to the Arizona SIP. In the same **Federal Register** notice, EPA also approved a request to extend the CO attainment date for the Truckee Meadows Nonattainment Area as a revision to the Nevada SIP. (For further information about these revisions, see 46 FR 45605.)

In the approval notice EPA advised the public that it was deferring the effective date of its approval for 60 days (until November 13, 1981). EPA announced that, if, within 30 days of the publication of the notice of approval EPA received notice that someone wanted to submit an adverse or critical comment, EPA would withdraw its approval and propose the action.

EPA also published a general notice explaining this special procedure on September 4, 1981 (46 FR 44476).

EPA has received notice that a member of the public wishes to submit an adverse or critical comment on the revision to the Arizona SIP for CO. Therefore, in accordance with the procedure described above, EPA is today withdrawing its September 14, 1981 approval of the CO attainment date extension request for the Maricopa County Urban Planning Area in Arizona.

EPA did not receive notice that anyone wished to submit an adverse or critical comment on the approval of the revision to the Nevada SIP. Therefore, approval of the Nevada CO extension is effective on November 13, 1981.

Elsewhere in today's **Federal Register** EPA is proposing to approve the revision to the Arizona SIP for CO and soliciting comment on its proposed approval.

EPA is withdrawing this action for Arizona without providing prior notice and opportunity to comment. EPA finds that it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impracticable because EPA needs to withdraw its approval as quickly as possible in order to consider objectively the comments which members of the public want to submit. Moreover, further notice is not necessary because EPA has already informed the public that it would follow this procedure if it received a request for an opportunity to comment (See 46 FR 45605). For the same reasons, EPA finds it has good cause to make this withdrawal immediately effective under 5 U.S.C. 553(b).

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

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

(Secs. 110, 129, 172 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7401, 7429, 7502 and 7601(a)))

Dated: February 1, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Subpart D—Arizona

1. Section 52.120, paragraph (c) is amended by removing and reserving subparagraph (48) as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(48) [Reserved]

* * * * *

2. Section 52.122 is amended by revising paragraph (d)(1) and removing and reserving paragraph (e) as follows:

§ 52.122 Extensions.

* * * * *

(d) * * *

(1) Maricopa County Urban Planning Area for O_3.

(e) [Reserved]

* * * * *

3. In § 52.131, the entry for the "Maricopa County Urban Planning Area" is revised to read as follows:

§ 52.131 Attainment dates for national standards.

Air quality control region and nonattainment area	Pollutants						
	TSP		SO_2		NO_2	CO	O_3
	Primary	Secondary	Primary	Secondary			
* * *	*	*	*	*	*	*	*
Maricopa Intrastate: Maricopa County urban planning area.	d	d	b	b	c	d	d.
* * *	*	*	*	*	*	*	*
* * *	*	*	*	*	*	*	*

[FR Doc. 82-3042 Filed 2-4-82; 8:45 am]

BILLING CODE 6560-38-M

40 CFR Part 123

[WH-6-FRL-2038-6]

New Mexico Oil Conservation Division Underground Injection Control Program Approval

AGENCY: Environmental Protection Agency.

ACTION: Approval of State Program.

SUMMARY: The State of New Mexico has submitted an application under Section 1425 of the Safe Drinking Water Act for the approval of an Underground Injection Control (UIC) program governing injection wells related to the production of oil or natural gas (Class II wells, as defined by EPA). After careful review of the application and comments received from the public, the Agency has determined that this application meets the requirements of Section 1425 of the Act, and hereby approves it.

EFFECTIVE DATE: This approval is effective February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Julie Coston, Ground Water Protection Section, U.S. Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270, (214) 767-2774. Copies of the responsiveness summary are available from the above address.

SUPPLEMENTARY INFORMATION: Part C of the Safe Drinking Water Act (SDWA or Act) establishes a national program to protect underground sources of drinking water from endangerment by underground injections through wells. Section 1421 of the SDWA requires the Administrator to promulgate minimum requirements for effective State underground injection control (UIC) programs. Section 1422 requires that each State submit an application to administer a UIC program, which must meet the requirements of regulations under Section 1421 to gain EPA approval.

The SDWA was amended on December 5, 1980, to include Section 1425, which establishes an alternative method by which a State may obtain primary enforcement responsibility for those portions of its UIC program related to the recovery and production of oil and natural gas (Class II wells). Specifically, instead of meeting the Consolidated Permits Regulations (40

CFR Parts 122, 123 and 124) and related Technical Criteria and Standards (40 CFR Part 146), a State may demonstrate that its program meets the more general statutory requirements of Section 1421(b)(1) (A) through (D) and represents an effective program to prevent endangerment of underground sources of drinking water.

The State of New Mexico submitted an application under Section 1425 on September 15, 1981, for the approval of a UIC program governing Class II injection wells to be administered by the New Mexico Oil Conservation Division (NMOCD). On October 5, 1981, EPA published notice of its receipt of the application, requested public comments, and scheduled a public hearing on the New Mexico UIC program submitted by the NMOCD (46 FR 48955). A public hearing was held on November 5, 1981 in Santa Fe, New Mexico. After careful review of the application and comments received from the public, I have determined that the New Mexico UIC program submitted by the NMOCD meets the requirements of Section 1425 of the SDWA, and hereby approve it.

In this application, New Mexico chose not to assert jurisdiction over Indian lands or reservations for purposes of this portion of its UIC program. Therefore, the Environmental Protection Agency will, at a future date, prescribe a UIC program governing injection wells related to the production of oil or natural gas on any Indian lands or reservations in New Mexico.

EPA is publishing this approval effective immediately so that New Mexico can begin issuing UIC permits for Class II wells under the UIC program.

OMB Approval

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

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that approval by EPA under Section 1425 of the Safe Drinking Water Act of the application by the New Mexico Oil Conservation Division will not have a significant economic impact on a substantial number of small entities, since this rule only approves State actions. It imposes no new requirements on small entities.

Dated: January 30, 1982.

Anne M. Gorsuch,

Administrator.

[FR Doc. 82-3161 Filed 2-4-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 123

[SW FRL 1970-3]

Hazardous Waste Management System; Standards Applicable to Generators of Hazardous Waste; State Program Requirements

Correction

In FR Doc. 82-656 appearing on page 1248 in the issue of Monday, January 11, 1982, make the following change:

On page 1251, first column, the last line of § 123.34(c), "263.34" should be corrected to read "262.34".

BILLING CODE: 1505-01-M

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40 CFR Part 403

[WEN-FRL-2032-6]

General Pretreatment Regulations for Existing and New Sources; Postponement of Effective Date

Correction

In FR Doc. 82-2637 appearing at page 4518 in the issue of Monday, February 1, 1982, the following errors are corrected:

1. On page 4518, in the second column in the first sentence of the Summary, the reference to the "Clear Water Act" is corrected to read "Clean Water Act".

2. On page 4521, in the second column, the first sentence following the title of Part 403 is corrected to read as follows:

"The effective date for the following amendments to the General Pretreatment Regulations for Existing and New Sources, 40 CFR Part 403 published at 46 FR 9404, January 28, 1981, and codified in the volume entitled 40 CFR Parts 400-424, 1981 edition, pp 60-99 is suspended indefinitely: * * *"

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

41 CFR Part 3-1

Freedom of Information Act, Treatment of Data in Contract Proposals

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Office of the Secretary, Department of Health and Human Services is amending its procurement regulations by adding a new section on the Freedom of Information Act and revising an existing section on the treatment of technical data in contract proposals.

The section implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, provides guidance and procedures to departmental personnel regarding applicability of the Act to procurement records. The section does not elaborate on the entire FOIA process; it provides procedures to be followed relative to the handling of questionable situations concerning the withholding or disclosing of procurement records when a request is received under the FOIA.

The section concerning the treatment of technical data in contract proposals has been revised to reflect the impact of the FOIA, to extend coverage to other data found in contract proposals (not just technical data), and to update the section based on the Federal Procurement Regulations coverage of unsolicited proposals (41 CFR Subpart 1-4.9).

EFFECTIVE DATE: This amendment is effective March 22, 1982.

FOR FURTHER INFORMATION CONTACT: E. S. Lanham, Division of Procurement Policy, OPAP-OPAL-OASMB-OS, Room 539-H, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201 (202-245-8791).

SUPPLEMENTARY INFORMATION: On July 14, 1980, the proposed rule concerning the Freedon of Information Act (FOIA), 5 U.S.C. 552, as amended, and the treatment of data in contract proposals was published in the **Federal Register** (45 FR 47169) and invited public comments by August 25, 1980. As a result, two responses were received—one from a Federal agency and the other from an educational association.

Both respondents were concerned that the Department of Health and Human Services, as a result of the issuance of the regulations, intends to disregard the intellectual property rights of an offeror or contractor by disclosing, upon receipt of a request under the FOIA, any or all information to the requestor. This is not the intent of the regulations. The regulations are intended to assist departmental personnel in making the proper determination regarding the disclosure or withholding of procurement records. In making this determination, it is sometimes obvious that the record being requested under

the FOIA may be disclosed without compromising the position of either the submitter of the record or the Government. In other instances, it may be apparent that disclosure of the record being requested could cause harm to either the submitter or the Government, and, hence, the record would be withheld from disclosure provided it falls within an exemption to the Act. There are other situations, however, when it may not be clear whether a record is to be disclosed or withheld, and the procedures provided in the regulations are intended to assist departmental personnel in making this decision by requiring that they coordinate with the submitter of the record. These procedures allow the submitter an opportunity to provide documentation to demonstrate that the record in question should not be disclosed, thus affording fair treatment to the submitter of the record. The determination to withhold or disclose the record will then be made by departmental personnel based upon the available information and in compliance with the requirements of the Act.

The respondents were also concerned that use of the revised restrictive legend in the section covering treatment of data in contract proposals would be unfair to submitters of proposals because, even if the submitter uses the restrictive legend, there is no assurance that a record requested under the FOIA would be withheld from disclosure by the Department.

The restrictive legend has been revised to inform submitters of contract proposals of the possibility that a record (part of a contract proposal) requested under the FOIA may have to be disclosed in accordance with FOIA requirements if the record cannot be excepted from disclosure under one of the exemptions contained in the Act. This is not a new policy, but it is the formalization of a policy which has been in effect for some time. The legend has also been revised because the Department has experienced problems with some submitters of proposals who misuse the restrictive legend by insisting that it apply to the complete proposal. Under the requirements of the Act and the Department's implementation, some portions of a proposal may be disclosed if such disclosure would not cause harm to the submitter of the proposal, the Government, or the integrity of the competitive procurement process.

As a result of the comments from the respondents, the Department emphasizes that the regulations are intended to assist departmental personnel in arriving at fair and proper determinations regarding the disclosure or non-disclosure of procurement records while fully complying with the requirements mandated by the Freedom of Information Act. In addition, the regulations have been rewritten to simplify and clarify areas where there seem to have been misunderstandings of intent.

The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

Title 41 CFR Chapter 3 is amended as set forth below.

Dated: February 1, 1982.

Matthias Lasker,

Acting Deputy Assistant Secretary for Procurement, Assistance and Logistics.

Under Subpart 3–1.3, General Policies, of Part 3–1, General, §§ 3–1.352 through 3–1.352–4, Freedom of Information Act, are added to 41 CFR Chapter 3, and § 3–1.353, Treatment of data in contract proposals, is substituted for existing § 3–1.353, Treatment of technical data in contract proposals. In addition, the table of contents for Part 3–1 is amended to add the following:

PART 3–1 GENERAL

Subpart 3–1.3—General Policies

* * * * *

Sec.

3–1.352 Freedom of Information Act.
3–1.352–1 General.
3–1.352–2 Applicability.
3–1.352–3 Availability and nonavailability of specific records.
3–1.352–4 Procedures.
3–1.353 Treatment of data in contract proposals.

* * * * *

§ 3–1.352 Freedom of Information Act.

§ 3–1.352–1 General.

The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5. This section implements those aspects of the FOIA and 45 CFR Part 5 that apply to procurement and contract records.

§ 3–1.352–2 Applicability.

(a) The FOIA and 45 CFR Part 5 provide that Government records (see 45 CFR 5.5 for the definition of "records") are generally to be made available to the public after receipt of a request. However, the Department may withhold records if they fall within one or more of the specific categories exempted from disclosure by the FOIA.

(b) The FOIA exemption most often cited to deny disclosure of procurement and contract records is exemption (b) (4) (5 U.S.C. 552(b) (4)), i.e., "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Trade secrets, within the meaning of 18 U.S.C. 1905, are exempt from disclosure. Commercial and financial information can be exempted from disclosure only if it is privileged and confidential and is obtained from a person (source) by the Government. Commercial or financial information is generally considered confidential under exemption (b) (4) if disclosure is likely to have either of the following effects:

(1) It would impair the Government's ability to obtain necessary information in the future; or

(2) It would cause substantial harm to the competitive position of the source from whom the information was obtained.

(c) Use of a restrictive legend on a document by the submitter of the document that purportedly identifies confidential information does not by itself place the document under an exemption. (See § 3–1.352–4 for procedures to be followed by the contracting officer and § 3–1.353 for the treatment of data in proposals.)

§ 3–1.352–3 Availability and nonavailability of specific records.

Subpart F of 45 CFR Part 5 identifies specific types of records that may or may not be disclosed under the FOIA. Refer to § 5.71(c) and (d) for general guidance and § 5.72(c), (d), and (e) for details on specific procurement records. In addition, the Appendix to 45 CFR Part 5 provides a list of examples of specific records or information concerning contracts which are generally available and those which are not generally available under the FOIA. Note that these are general guidelines and application may vary based upon the circumstances of each individual case.

§ 3–1.352–4 Procedures.

(a) The contracting officer, upon receiving an FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) official and the Office of General Counsel.

(b) When evaluating an FOIA request for a contract or procurement record which was obtained wholly or in part from a source outside the Department, the contracting officer must consider the origin of the record, its subject matter, and whether it was submitted under a restrictive legend. In instances when it is not certain whether a record or a

portion of a record is to be withheld or disclosed under the FOIA, the following procedures shall be followed.

(1) If there is reason to believe the source may object to release of the record or part of the record, the contracting officer or FOI official shall notify the source in writing that a request has been received, and the Department is considering release of the requested material. The written notification must advise the source of the specific requested material and require that the source provide a justification for withholding the material under an exemption of the FOIA if the source objects to its release. The notification must inform the source that the justification should explain in detail how disclosure of the requested material would result in significant harm to the competitive position of the source or benefit its competitors. The notification must also advise the source that the justification must be provided to the contracting officer or FOI official within five (5) working days from the date of the written notification.

(2) Based on the justification submitted by the source in response to the notification described above and any other pertinent information, the contracting officer and the cognizant FOI official, in consultation with the Office of General Counsel, if necessary, shall consider whether to withhold the record or portions of the record from disclosure. Only the FOI official is authorized to make the determination to withhold the record or portions of the record from disclosure.

(3) If the source objects to the release of the information but the FOI official disagrees with the justification for withholding, that official will notify the source and the requestor in writing of the determination. The notification to the source must include a copy of the material marked as the Department proposes to release it and must state that release will be made five (5) working days from the date of that notification.

§ 3–1.353 Treatment of data in contract proposals.

(a) *General.* (1) the term "data," as used in this section, refers to trade secrets, business data, and technical data. Trade secrets, within the meaning of 18 U.S.C. 1905, include, for example, processes, formulas, and chemical compositions. Business data includes, for example, commercial information, financial information, and cost and pricing data. Technical data includes, for example, plans, designs, suggestions, improvements and concepts.

(2) Data received by the Department may have been obtained under conditions which restrict the Department's right to use the data. Therefore, care must be taken when considering the use of data to assure that the Department has sufficient rights to use it in the manner desired.

(3) One of the principal ways in which the Department receives data is by means of proposals. However, some proposals are offered and received under conditions which may prevent the Department from using the data for other than evaluation purposes.

(b) *Types of proposals.* Proposals received by the Department are of two types—unsolicited and solicited.

(1) Essentially, an unsolicited proposal is a written offer to perform work which does not result from a formal written request from the Department for proposals or quotations. Unsolicited proposals are discussed in detail in Subparts 1–4.9 and 3–4.9.

(2) A Solicited proposal is a written offer to perform work which results from a formal written request from the Department for proposals or quotations.

(c) *Policy for unsolicited proposals.* The policy for treatment of data in unsolicited proposals is located in §§ 1–4.913 and 3–4.913.

(d) *Policy for solicited proposals.* (1) The Department recognizes that requests for proposals may require the offeror, including its prospective subcontractor(s), if any, to submit data which the offeror does not want used or disclosed for any purpose other than for evaluation of the proposal. Each proposal containing data which the offeror desires to restrict must be marked on the cover sheet by the offeror with the legend set forth within paragraph (d)(2) of this section. Proposals, or portions of proposals, so marked shall be handled in accordance with the provisions of the legend.

(2) The following provision shall be included in the RFP:

> The proposal submitted in response to this request may contain data (trade secrets; business data, e.g., commercial information, financial information, and cost and pricing data; and technical data) which the offeror, including its prospective subcontractor(s), does not want used or disclosed for any purpose other than for evaluation of the proposal. The use and disclosure of any data may be so restricted; *provided*, that the Government determines that the data is not required to be disclosed under the Freedom of Information Act, 5 U.S.C. 552, as amended, and the offeror marks the cover sheet of the proposal with the following legend, specifying the particular portions of the proposal which are to be restricted in accordance with the conditions of the legend. The Government's determination to withhold or disclose a record will be based upon the particular circumstances involving the record in question and whether the record may be exempted from disclosure under the Freedom of Information Act:
>
> Unless disclosure is required by the Freedom of Information Act, 5 U.S.C. 552, as amended, (the Act) as determined by Freedom of Information (FOI) Officials of the Department of Health and Human Services, data contained in the portions of this proposal which have been specifically identified by page number, paragraph, etc. by the offeror as containing restricted information shall not be used or disclosed except for evaluation purposes.
>
> The offeror acknowledges that the Department may not be able to withold a record (data, document, etc.) nor deny access to a record requested pursuant to the Act and that the Department's FOI Officials must make that determination. The offeror hereby agrees that the Government is not liable for disclosure if the Department has determined that disclosure is required by the Act.
>
> If a contract is awarded to the offeror as a result of, or in connection with, the submission of this proposal, the Government shall have the right to use or disclose the data to the extent provided in the contract. Proposals not resulting in a contract remain subject to the Act.
>
> The offeror also agrees that the Government is not liable for disclosure or use of unmarked data and may use or disclose the data for any purpose, including the release of the information pursuant to requests under the Act.
>
> Offerors are cautioned that proposals submitted with restrictive legends or statements differing in substance from the above legend may not be considered for award. The Government reserves the right to reject any proposal submitted with a nonconforming legend.

(3) Contracting officers receiving proposals which contain restrictive statements or legends not conforming to the above provision must carefully evaluate the form and substance of the restriction before making a determination to reject the proposal. Deviations in form which do not compromise the Government's rights may be accepted if approved by the activity's FOI official and the Office of General Counsel.

(e) *Procedures for handling and disclosing proposals.* (1) The procedures and notice specified in § 1–4.913(c), (d), and (e) shall be used in handling both solicited and unsolicited proposals and for disclosing proposals outside the Government for evaluation purposes.

(2) Decisions to disclose proposals outside the Government for evaluation purposes shall be made by the chief official having programmatic responsibility for the procurement, after consultation with the contracting officer and in accordance with operating division procedures. The decision to

disclose either a solicited or unsolicited proposal outside the Government for the purpose of obtaining an evaluation shall take into consideration the avoidance of organizational conflicts of interest and any competitive relationship between the submitter of the proposal and the prospective evaluator(s).

(3) When it is determined to disclose a proposal outside the Government for evaluation purposes, the following conditions, or similar appropriate conditions, shall be included in the written agreement with the evaluator(s) prior to disclosure (see § 1–4.913(d) and (e)). Also, a review must be made to ensure that the notice required by § 1–4.913(c) is affixed to the proposal before it is disclosed to the evaluator(s).

Conditions for Evaluating Proposals

The evaluator agrees to use the data (trade secrets, business data, and technical data) contained in the proposal only for evaluation purposes.

This requirement does not apply to data obtained from another source without restriction.

Any notice or legend placed on the proposal by either the Department or the submitter of the proposal shall be applied to any reproduction or abstract provided to the evaluator or made by the evaluator. Upon completion of the evaluation, the evaluator shall return the Government furnished copy of the proposal or abstract, and all copies thereof, to the Departmental office which initially furnished the proposal for evaluation.

Unless authorized by the Department's initiating office, the evaluator shall not contact the submitter of the proposal concerning any aspects of its contents.

The evaluator will be obligated to obtain commitments from its employees and subcontractors, if any, in order to effect the purposes of these conditions.

[FR Doc. 82-3040 Filed 2-4-82; 8:45 am]

BILLING CODE 4150-04-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–62

[Adm 7900.8 Chge 1]

Classification Authority; Document Security and Declassification

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: Section 105–62.102 is recaptioned and revised to limit original classification authority within GSA to the Administrator, delegable only to the Director, Information Security Oversight Office.

EFFECTIVE DATE: This regulation is effective February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Joseph R. Neri, Chief, Personnel Security Branch (OI), General Services Administration 20405; telephone (202) 566–1421.

PART 105–62—DOCUMENT SECURITY AND DECLASSIFICATION.

Accordingly, 41 CFR, Part 105–62, is amended as follows:

Section 105–62.102 is recaptioned and revised to read as follows:

§ 105–62.102 Authority to originally classify.

(a) *Top Secret, Secret, and Confidential.* The authority to originally classify information as Top Secret, Secret, or Confidential may be exercised only by the Administrator and is delegable only to the Director, Information Security Oversight Office.

(b) *Limitations on delegation of classification authority.* Delegations of original classification authority are limited to the minimum number absolutely required for efficient administration. Delegated original classification authority may not be redelegated.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c); and Executive Order 12065 dated December 1, 1978)

Dated: January 18, 1982.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 82-3091 Filed 2-4-82; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6102

[C-27445]

Colorado; Powersite Restoration No. 758 Partial Revocation of Powersite Classification No. 359

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes portions of Powersite Classification No. 359, dated August 10, 1944, which withdrew land for water power purpose. This action will permit consummation of a pending exchange between the Forest Service and the Colorado State Board of Agriculture on 200 acres of land. The remaining 40 acres is not part of the exchange and will open to Forest Service management.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2535.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, and the determination of the Federal Energy Regulatory Commission in DA–510–Colorado, it is ordered as follows:

1. Powersite Classification No. 359 dated August 10, 1944, which withdrew national forest land for water power development is hereby revoked as to all of the following decribed land:

Sixth Principal Meridian

Roosevelt National Forest

T. 7 N., R. 73 W.,
Sec. 20, W½NE¼, SE¼NW¼,
Sec. 21, NE¼NW¼, SW¼NW¼,
Sec. 29, SW¼NW¼,

The area described contains 240 acres in Larimer County, Colorado.

2. Effective immediately, the 200 acres of land described in sections 20 and 21 above, shall be open to applications for disposal of the land under the General Exchange Act of March 20, 1922, 44 Stat. 465, as amended, 16 U.S.C. 485, 486, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. The land has been and remains open to mineral leasing but is not open to entry under the U.S. Mining Laws because of the Forest Exchange Application C–24788.

3. At 7:45 a.m. on March 5, 1982 the 40 acres of land described in Section 29 above shall be opened to such forms of appropriation as may by law be made of national forest land, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. This land has been and remains open to mineral leasing and to location and entry under the U.S. Mining Laws.

Inquiries concerning this land should be addressed to the Chief, Withdrawal Section, Bureau of Land Management, 1037 20th Street, Denver Colorado 80202.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-3065 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6103

[C-13275]

Colorado; Partial Revocation of Reclamation Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes portions of three Secretarial orders and a Public Land Order which withdrew 5,744.79 acres of land for reclamation purposes. This action will restore the lands to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2535.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of October 8, 1940, withdrawing lands for the Webster Park Reservoir Site; Secretarial Orders of April 25, 1941, and May 23, 1946, withdrawing lands for the Gunnison-Arkansas Reclamation Project and Public Land Order No. 3500 of December 2, 1964, withdrawing lands for the Fryingpan-Arkansas Project, are hereby revoked as to the following described lands:

Sixth Principal Meridian

T. 16 S., R. 68 W.,
Sec. 6, lots 1 through 3, 9 through 11, NE¼SE¼.
T. 19 S., R. 71 W.,
Sec. 1, lots 1 through 4, S½N½, SW¼;
Sec. 2, S¼;
Sec. 3, lots 1 through 4, S½N½, N½SW¼, SE¼;
Sec. 8, S½NE¼, S½;
Sec. 9, NW¼SW¼, S½SW¼, SW¼SE¼;
Sec. 11, N½, N½S½;
Sec. 12, W½NW¼, SE¼NW¼, N½SW¼, SE¼SW¼, W½SE¼, SE¼SE¼SE¼;
Sec. 15, lots 2, 4 through 9, NE¼, N½NW¼, S½SW¼, W½SE¼;
Sec. 17, All;
Sec. 20, NE¼, S½ exclusive of Mineral Survey 13066;
Sec. 21, All.
T. 18 S., R. 71 W.,
Sec. 33, E½, N½NW¼.

The lands described aggregate approximately 5,744.79 acres in Fremont and Teller Counties.

2. At 7:45 a.m. on March 5, 1982, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 7:45 a.m. on March 5, 1982, the lands will be open to location under the United States mining laws. They have been open to applications and offers under the mineral leasing laws.

Inquiries concerning these lands should be directed to the Chief, Withdrawal Section, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

January 28, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82–3064 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6105

[CA–7519 WR, CA–7049 WR]

California; Revocation of Public Water Reserve No. 90 and No. 114

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two Executive Orders which withdrew land for Public Water Reserve No. 90 and No. 114. This action will restore approximately 13,740 acres to the operation of the public land laws and full operation of the mining laws. Approximately 106,817 acres of land are within an Indian Reservation, other withdrawals, or are patented and will not be subject to disposition under the public land and mineral laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Celia Anderson, California State Office (916) 484–4431.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714), it is ordered as follows:

1. Executive Orders of March 10, 1924, and February 23, 1928, which withdrew lands for Public Water Reserve No. 90 and No. 114, are hereby revoked in their entirety. The majority of the lands revoked by this order are within an Indian Reservation, other withdrawals, or are patented which continue to segregate the lands from all forms of appropriation under the public land laws.

2. At 10:00 a.m. on March 5, 1982, the lands described in Paragraph 3 shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirement of applicable law. All valid applications received at or prior to 10:00 a.m. on March 5, 1982 shall be considered as simultaneouly filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10:00 a.m. on March 5, 1982 the following described lands will be open to nonmetalliferous mineral location under the United States mining laws. The lands have been and will continue to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws:

Public Water Reserve No. 90, Executive Order of March 10, 1924.

San Bernardino Meridian

T. 10 S., R. 12 E.,
Sec. 14, 18, 20, 22, 24, 26, 28, 30, 32, 34, and 36.
T. 12 S., R. 12 E.,
Sec. 10, N½;
Sec. 14, SW¼;
Sec. 20, NE¼NE¼;
Sec. 22, NW¼.
T. 10 S., R. 13 E.,
Sec. 6, lots 2, 11, 13, 14, 15, E½SW¼, and SE¼;
Sec. 8, W½NW¼, SE¼NW¼, and SW¼;
Secs. 18 and 20;
Sec. 28, W½, and SE¼;
Secs. 30 and 32.
T. 11 S., R. 13 E.,
Sec. 10, SW¼NW¼.

The area described above aggregates approximately 11,550 acres in Riverside and Imperial Counties.

Public Water Reserve No. 114, Executive Order of February 23, 1928

San Bernardino Meridian

T. 10 S., R. 10 E.,
Sec. 26, NE¼, and NE¼SE¼.
T. 9 S., R. 12 E.,
Sec. 26, S½NW¼, and S½.
T. 12 S., R. 12 E.,
Sec. 20, NW¼NE¼, S½NE¼, and SE¼;
Sec. 28, W½NE¼, and E½NW¼.
T. 9 S., R. 13 E.,
Sec. 32, SW¼.
T. 10 S., R. 13 E.,
Sec. 4., SW¼;
Sec. 6, lots 3 to 9 inclusive, and lot 12;
Sec. 8, E½, and NE¼NW¼.
T. 11 S., R. 13 E.,
Sec. 2, lots 5 and 6, and S½NW¼.

The area described above aggregates approximately 2,190 acres in Riverside and Imperial Counties.

The remaining lands containing approximately 106,871 acres are either within an Indian Reservation, other withdrawals, or are privately owned.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, Room E–2841, Federal Office Building, 2800

Cottage Way, Sacramento, California 95825.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3055 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6106

[Sac. 077399]

California; Public Land Order No. 6025, Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This document will correct an error in a land description contained in Public Land Order No. 6025 of October 1, 1981.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Evelyn Tauber, Washington, D.C., 202-343-6486.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

The description of a parcel of land in Public Land Order No. 6025 of October 1, 1981, as published in FR Doc. 81-29340 appearing at page 49870 in the issue of Thursday, October 8, 1981, in the third column under T. 31 N., R. 2 W., line 2 reads "sec. 26, N¼;". It is hereby corrected to read "sec. 26, N½;".

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3066 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6107

[W-61130]

Wyoming; Revocation of Public Land Order No. 2656

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order withdrawal affecting approximately five (5) acres of land. The land is in private ownership, therefore, it will not be restored to operation of the public land laws. The land remains open to oil and gas leasing.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307-778-2220, extension 2336.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2656 of April 12, 1962, which withdrew the following described lands for use by the Department of the Navy as an administrative site in connection with Naval Petroleum Reserve No. 3, is hereby revoked in its entirety:

Sixth Principal Meridian

T. 40 N., R. 79 W.,
Sec. 24, beginning at the southeast corner of said section, thence West, 600 feet; North, 175 feet; West, 1,247 feet; South, 175 feet; East, 1,247 feet to the point of beginning.

The area described contains approximately five (5) acres in Natrona County.

2. The lands and all interests therein, excepting oil and gas, have been conveyed out of the United States by quitclaim deeds to School District No. 2, Natrona County High School, and Natrona County School District No. 1, Casper, Wyoming. The lands have been and shall remain open to leasing for oil and gas.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3057 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6108

[Nev-051751]

Nevada; Revocation of Executive Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a protective withdrawal made by an Executive order for the purpose of examining and classifying 39,310 acres with respect to potash values. This action will restore the lands to the operation of the public land laws, including location of nonmetalliferous minerals under the mining laws. The lands will remain open to location of metalliferous minerals and to mineral leasing.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702-784-5703.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order dated January 16, 1913 is hereby revoked in its entirety. The following described land is affected:

Mount Diablo Meridian

T. 2 N., R. 35 E.,
Sec. 1, All;
Sec. 2, E½;
Sec. 11, E½;
Secs. 12 and 13, All;
Sec. 14, E½;
Sec. 23, NE¼;
Sec. 24, N½.
T. 2 N., R. 36 E.,
Secs. 1 thru 20, All;
Sec. 21, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 22, all;
Sec. 23, N½, SW¼, N½SE¼;
Sec. 24, N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 27, N½N½;
Sec. 28, NE¼NE¼;
Sec. 29, N½NE¼, NW¼, NW¼SW¼;
Sec. 30, NE¼, E½NW¼, NE¼SE¼.
T. 2 N., R. 37 E.,
Sec. 6, Lots 2 thru 7, SW¼NE¼, SE¼NW¼, E½SW¼, W½SE¼;
Sec. 7, Lots 1 thru 4, E½W½, W½SE¼;
Sec. 18, Lots 1 thru 4, E½W½, W½SE¼;
Sec. 19, Lots 1 thru 4, NW¼NE¼, E½NW¼, NE¼SW¼.
T. 3 N., R. 35 E.,
Sec. 23, SE¼;
Sec. 24, S½;
Sec. 25, All;
Sec. 26, E½;
Sec. 35, E½;
Sec. 36, All.
T. 3 N., R. 36 E.,
Sec. 9, S½NE¼, SE¼SW¼, SE¼;
Sec. 10, All;
Sec. 11, W½NW¼, SE¼NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 13, W½NW¼, SW¼;
Secs. 14 thru 16, All;
Sec. 17, S½NE¼, SE¼NW¼, S½;
Sec. 18, E½SW¼, SE¼;
Sec. 19, NE¼, E½NW¼, S½;
Secs. 20 thru 23, All;
Sec. 24, SW¼NE¼, W½, W½SE¼;
Sec. 25, W½NE¼, NW¼, S½;
Secs. 26 thru 36, All.
T. 3 N., R. 37 E.,
Sec. 30, SW¼, W½SE¼;
Sec. 31, W½E½, W½.

The area described contains 39,309.87 acreas.

2. At 10:00 a.m. on March 5, 1982, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received from the date of this publication until and including 10:00 a.m. on March 5, 1982, shall be considered as simultaneously

filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10:00 a.m. on March 5, 1982, the lands will be open to location for nonmetalliferous minerals under the United States mining laws.

Inquires concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3060 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6109

[CA-8744]

California; Revocation of Executive Order No. 7471

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order which withdrew 40 acres of national forest land for a gaging station in San Diego County. The land will be open to such forms of disposition as may by law be made of national forest lands.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 7471 dated October 15, 1936, withdrawing certain national forest lands for a gaging station site, is hereby revoked.

San Bernardino Meridian

Cleveland National Forest

T. 12 S., R. 2 E.,
Sec. 20, NE¼NW¼.

The area described contains 40 acres in San Diego County.

2. At 10:00 a.m. on March 5, 1982 the land will be open to such forms of disposition as may by law be made of national forest lands.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3059 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6110

[M-40860]

Montana; Partial Revocation of Executive Order Dated March 8, 1920, Public Water Reserve No. 70

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive order as to 80.00 acres withdrawn as a public water reserve. The lands remain segregated from operation of the public land laws, including location for nonmetalliferous minerals under the mining laws, because they remain withdrawn for the Charles M. Russell National Wildlife Refuge and the Fort Peck Reservoir.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior, by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order dated March 8, 1920, which withdrew certain lands for public water reserve purposes is hereby revoked insofar as it affects the following described lands:

Public Water Reserve No. 70

Principal Meridian

T. 20 N., R. 31 E.,
Sec. 30, SE¼NE¼, NE¼SW¼.

The area described contains 80.00 acres in Garfield County.

2. The above described lands are withdrawn as part of the Charles M. Russell National Wildlife Refuge and the Corps of Engineers, Fort Peck Reservoir and remain segregated from operation of the public land laws generally, including nonmetalliferous mineral location under the United States mining laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Land and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82-3058 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6111

[OR-19062]

Oregon; Powersite Restoration No. 695; Partial Revocation of Powersite Reserve No. 294

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive Order in part as to approximately 42,917.83 acres of lands withdrawn for a powersite reserve. The lands remain withdrawn for the Warm Springs Indian Reservation.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503-231-6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA-545-Oregon, it is ordered as follows:

1. The Secretarial Order of October 8, 1912, which created Powersite Reserve No. 294 is hereby revoked insofar as it affects the following described lands:

Willamette Meridian

Powersite Reserve No. 294

T. 7 S., R. 9 E., unsurveyed.
All land within secs. 3, 4, 9, and 10 (as shown on Protraction Diagram No. 41, accepted July 15, 1966) that is within four miles of the east boundary of the township and within one-half mile of the Warm Springs River.

T. 8 S., R. 9 E., unsurveyed.
All lands lying within one-half mile of Mill Creek.

T. 9 S., R. 9 E.,
Sec. 25, SE¼NE¼, SW¼, and SE¼;
Sec. 26, SE¼SW¼ and S½SE¼;
Sec. 34, S½N½ and N½S½;
Sec. 35, N½NE¼, NW¼, and N½SW¼;
Sec. 36, NW¼NE¼.

T. 10 S., R. 9 E., unsurveyed.
All lands lying within three miles of the east boundary of the township that are within one-half mile of Whitewater Creek.

T. 7 S., R. 10 E.,
Sec. 3, SW¼SE¼;
Sec. 4, SE¼SE¼;
Sec. 8, SE¼NE¼;
Sec. 9, NE¼, NE¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼;
Sec. 10, N½NW¼ and SW¼NW¼;
Sec. 11, N½NE¼ and NE¼NW¼.

T. 8 S., R. 10 E.,
Sec. 14, Lots 3 and 4, SW¼NE¼, S½NW¼SW¼, and W½SE¼;
Sec. 15, W½NE¼, SE¼NE¼, NW¼, and S½;
Sec. 16;

Sec. 17;
Sec. 18, E½NE¼, S½SW¼, and SE¼;
Sec. 19, N½NE¼ and N½NW¼;
Sec. 22, NE¼;
Sec. 23, Lots 1, 2, and 3, W½NE¼NW¼, and NW¼SE¼;
Sec. 24, NE¼ and NW¼.
T. 9 S., R. 10 E.,
All lands lying within one-half mile of Shitike Creek.
T. 10 S., R. 10 E.,
All lands lying within one-half mile of Whitewater Creek in the portion of the township that was unsurveyed as of October 8, 1913;
Sec. 21, SE¼.
T. 7 S., R. 11 E.,
Sec. 5, SW¼ and S½SE¼;
Sec. 6, Lots 5, 6, and 7, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, Lots 1 and 2, NE¼, E½NW¼, and N½SE¼;
Sec. 8;
Sec. 9, SW¼NE¼, W½, W½SW¼, and SE¼SE¼;
Sec. 10, S½SW¼;
Sec. 14, SW¼NE¼, W½, and SE¼;
Sec. 15;
Sec. 16, NE¼, E½NW¼, NW¼NW¼, E½SW¼, and SE¼;
Sec. 18, SE¼NW¼;
Sec. 21, NE¼ and NE¼SE¼;
Sec. 22, N½, N½SW¼, and SE¼;
Sec. 23;
Sec. 24, SW¼NW¼, W½SW¼, and SE¼SW¼;
Sec. 25, SW¼NE¼, W½, and SE¼;
Sec. 26;
Sec. 27, NE¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 34, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 35;
Sec. 36.
T. 8 S., R. 11 E.,
Sec. 1, SW¼SW¼;
Sec. 2, Lots 2, 3, and 4, S½N½, and S½;
Sec. 3, Lot 1 and SE¼NE¼;
Sec. 11, NE¼, NE¼NW¼, and SE¼;
Sec. 12, NW¼NW¼, S½NW¼, NE¼SW¼, and SW¼SE¼;
Sec. 13, N½NE¼, SE¼NE¼, W½NW¼, SW¼, and SW¼SE¼;
Sec. 14;
Sec. 15, S½NE¼ and S½;
Sec. 16, SE¼SE¼;
Sec. 19, Lots 1 to 4, inclusive, S½NE¼, SE¼NW¼E½SW¼, and SE¼;
Sec. 20, SW¼NE¼, S½NW¼, and S½;
Sec. 21, NE¼ and S½;
Sec. 22, N½NE¼, NW¼, and W½SW¼;
Sec. 24, N½NE¼ and SE¼NE¼;
Sec. 28, N½NE¼, SW¼NE¼, and NW¼;
Sec. 29, NE¼, N½NW¼, and SE¼NW¼;
Sec. 30, NE¼NE¼.
T. 9 S., R. 11 E.,
Sec. 11, NE¼SW¼, SW¼SW¼, and N½SE¼;
Sec. 12, Lots 12 and 16;
Sec. 13, Lots 10, 15, and 16;
Sec. 14, SW¼NW¼ and NW¼SW¼;
Sec. 15, Lots 4, 5, and Lots 9 to 12, inclusive;
Sec. 16, NE¼, S½NW¼, SW¼, N½SE¼, and SW¼SE¼;
Sec. 17, S½N½, and S½;
Sec. 18, NE¼SE¼ and S½SE¼;
Sec. 19, Lots 2, 3, and 4, NE¼, E½W½, and W½SE¼;
Sec. 20, W½NW¼;
Sec. 21, N½NW¼;
Sec. 24, NE¼NE¼;
Sec. 30, Lots 1 and 2, and NE¼NW¼.
T. 7 S., R. 12 E.,
Sec. 30, Lots 3 and 4, and SE¼SW¼;
Sec. 31, Lots 1 to 4, inclusive, W½NE¼, E½W½, and SE¼.
T. 8 S., R. 12 E.,
Sec. 5, S½NW¼ and SW¼;
Sec. 6;
Sec. 7;
Sec. 8, W½;
Sec. 16, SW¼SW¼;
Sec. 17, S½NE¼, NW¼, N½S½, and SE¼SE¼;
Sec. 18, Lots 1 and 2, NE¼, E½NW¼, and NE¼SW¼;
Sec. 19, Lot 1, N½NE¼, and NE¼NW¼;
Sec. 20, SW¼NE¼, N½NW¼, SE¼NW¼, W½SE¼, and SE¼SE¼;
Sec. 21, E½W½ and SW¼SE¼;
Sec. 23, NW¼SE¼;
Sec. 24, SW¼NW¼ and S½SE¼;
Sec. 25, NE¼NW¼ and W½W½;
Sec. 26, SE¼NE¼, SW¼NW¼, W½SW¼, and E½SE¼;
Sec. 27, S½N½, and NW¼SW¼;
Sec. 28, NE¼, NW¼SW¼, SE¼SW¼, and SW¼SE¼;
Sec. 29, E½NE¼;
Sec. 34, NW¼NE¼, S½NE¼, and N½NW¼;
Sec. 35, NE¼NE¼ and S½N½;
Sec. 36, NW¼NW¼.
T. 9 S., R. 12 E.,
Sec. 17, S½NW¼, SW¼, and SW¼SE¼;
Sec. 18, Lots 2, 3, and 4, S½NW¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, Lot 1, N½NE¼, and NE¼NW¼;
Sec. 20, N½, N½SE¼, and SE¼SE¼;
Sec. 21, Lots 4, 5, Lots 11 through 15, inclusive, and Lots 17 to 32, inclusive;
Sec. 22, Lots 19 to 23, inclusive, and Lots 25 to 32, inclusive;
Sec. 25, Lots 1 to 16, inclusive, N½SE¼, and NW¼SE¼;
Sec. 26, Lots 1 to 24, inclusive;
Sec. 27, Lots 1, 2, 7, 8, 9, 10, 15, and 16, N½NW¼, and NE¼SE¼;
Sec. 28, NE¼NE¼.
T. 8 S., R. 13 E.,
Sec. 17, SW¼SW¼;
Sec. 19, Lot 3, NE¼SW¼, and N½SE¼;
Sec. 20, NE¼NE¼ and N½SW¼;
Sec. 21, S½NE¼.
T. 9 S., R. 13 E.,
Sec. 19, Lot 4.
T. 8 S., R. 14 E.,
Sec. 17, SE¼SW¼ and S½SE¼;
Sec. 18, NE¼SW¼, SW¼SW¼, and N½SE¼;
Sec. 19, S½NE¼ and N½S½;
Sec. 20, N½SW¼.

The area described aggregate approximately 42,917.83 acres in Jefferson and Wasco Counties.

2. The lands described above are included in the Warm Springs Indian Reservation and are not open to operation of the public land laws, including the minimg laws and mineral leasing laws.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
January 28, 1982.
[FR Doc. 82-3063 Filed 2-4-82; 8:45 am]
BILLING CODE 4310-84-M

43 CFR Public Land Order 6112

[R-822]

California; Partial Revocation of Reclamation Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Departmental order which withdrew public lands for the Colorado River Storage Project. Of the lands affected by this order, all are privately owned and not subject to the public land laws except for 37.38 acres which is to be conveyed to the City of Needles, California, pursuant to Pub. L. 87-752.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Departmental Order dated October 16, 1931, withdrawing lands for the Colorado River Storage Project, is hereby revoked insofar as it affects the following described lands:

San Bernardino Meridian

T. 9 N., R. 23 E.,
Sec. 30, lot 2, SE¼NW¼, N½S½ SE¼SW¼, SW¼SW¼SE¼SW¼, SE¼SE¼SE¼SW¼;
Sec. 31, NE¼, NE¼NE¼NE¼NW¼, NW¼NW¼NE¼NW¼;
Sec. 32, SE¼NW¼, SE¼SE¼.

The area aggregates 337.38 acres in San Bernardino County.

2. Of the lands listed in paragraph one, the surface estates of the NW¼NE¼NE¼, NW¼NE¼ sec. 31 have been conveyed from the United States pursuant to the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869, 869-4); and the NE¼NE¼NE¼ sec. 31 has been conveyed from the United States pursuant to the Small Tract Act of June 1, 1938 (43 U.S.C. 682a-682e). Therefore, unless and until appropriate regulations are issued, the lands will not be opened to location under the United States mining laws (30 U.S.C. Ch. 2). The

remainder of the lands described in paragraph 1 are patented and not subject to disposition under the public land laws except for lot 2, sec. 30 which remains segregated from the public land laws, including the mining and mineral laws for disposition to the City of Needles, California, pursuant to Pub. L. 87–752. The N½NE¼NE¼, NW¼NE¼, sec. 31, T. 9 N., R. 23 E., has been and continues to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Room E–2811, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3067 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6113

[C–13057]

Colorado; Partial Revocation of Reclamation Withdrawals, Collbran Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order and certain Bureau of Reclamation orders which withdrew lands for the Collbran Project. A total of 441.47 acres will be open to operation of the public land laws, including the mining laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Richard D. Tate, Colorado State Office, 303–837–2535.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order dated October 14, 1948, and Commissioner's First Form Reclamation Withdrawal Orders dated June 11, 1957, September 15, 1958, and November 10, 1958, are hereby revoked as to the following described public lands:

Sixth Principal Meridian

T. 10 S., R. 94 W.,
Sec. 2, N½NW¼SE¼;
Sec. 16, E½SE¼NE¼, SW¼SE¼NE¼, N½SE¼NW¼;
Sec. 20, S½SE¼NW¼.
T. 10 S., R. 95 W.,
Sec. 33, N½NE¼SW¼, SE¼SE¼.
T. 10 S., R. 96 W.,
Sec. 18, lot 4;
Sec. 33, SE¼SE¼SE¼, W½NE¼SE¼;
Sec. 34, N½NE¼SW¼, N½N½NW¼SW¼, SW¼SW¼, S½SE¼SW¼, N½N½N½SE¼, S½SW¼SE¼, S½S½SE¼SE¼;
Sec. 35, N½SW¼.

The lands described aggregate approximately 441.47 acres in Mesa County.

2. At 7:45 a.m. on March 5, 1982, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 7:45 a.m. on March 5, 1982, the lands will be open to location under the United States mining laws. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning these lands should be directed to the Chief, Withdrawal Section, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3047 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6114

[W–71338]

Wyoming; Revocation of Public Land Order No. 329

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Public Land Order No. 329, dated October 17, 1946, affecting 156.32 acres of public land withdrawn for use as a Bureau of Land Management administrative site. This action will restore the lands to the operation of the public land laws generally, including the mining laws. They have been and will continue to be open to mineral leasing.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307–778–2220, extension 2336.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 329 of October 17, 1946, which withdrew the following described public land for use by the Bureau of Land Management as an administrative site is hereby revoked insofar as it affects the following described lands:

Sixth Principal Meridian

T. 47 N., R. 93 W.,
Tract 63 A, lot 51,
Tract 63 D, lot 53,
Tract 63 E, lot 54,
Tract 63 F, lot 55,
Tract 63 G, lot 56,
Tract 63 H, lot 50.

The area described contains approximately 156.32 acres in Washakie County.

2. At 10 a.m. on March 5, 1982, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands will be open to location under the United States mining laws at 10 a.m. on March 5, 1982. They have been and will continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82001.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3062 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6115

[OR–19082]

Oregon; Powersite Restoration No. 695; Partial Revocation of Powersite Reserve No. 561

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order in part as to 40 acres of land withdrawn for a powersite reserve. This action will restore the public land involved to operation of the public land laws generally.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, and pursuant to the determination by the Federal Energy Regulatory Commission in DA–545–Oregon, it is ordered as follows:

1. The Executive Order of October 13, 1916, which created Powersite Reserve No. 561 is hereby revoked so far as it affects the following described land:

Willamette Meridian

Powersite Reserve No. 561

T. 3 S., R. 15 E.,
Sec. 18, SW¼NE¼.

The area described contains 40 acres in Sherman County.

2. The State of Oregon has waived its preference right for highway rights-of-way or material sites as provided by the Federal Power Act of June 10, 1920, 16 U.S.C. 818.

3. At 10 a.m., on March 5, 1982, the public land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. The land has been open to applications and offers under the mineral leasing laws and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955, (69 Stat. 682; 30 U.S.C. 621).

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3061 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6116

[Nev–045177]

Nevada; Revocation of Public Land Order No. 2101

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order which withdrew lands for use by the Federal Aviation Administration and restores 72 acres of public land to operation of the public land laws generally, including the mining and mineral leasing laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Nevada State Office, 702–784–5703.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 2101 of May 24, 1960, withdrawing land for use of the Federal Aviation Administration as a remote control air-to-ground communication facility is hereby revoked:

Mount Diablo Meridian

T. 1 N., R. 66 E.,
Sec. 33, In SW¼SE¼SE¼ and SE¼SW¼SE¼.
T. 1 S., R. 66 E., unsurveyed.
Sec. 3;
All lands within a 1,000 foot radius of the center of a parcel described as follows:
Beginning at a point which is 1,300 feet west and 210 feet south of the south corner common to secs. 33 and 34, T. 1 N., R. 66 E., thence south 230 feet; thence west 170 feet; thence north 230 feet; thence east 170 feet to the point of beginning. The southeast corner of this site is 110 feet north of USC & GS BM, elevation 9,395 feet, on a summit of Highland Peak.

The area described aggregates approximately 72 acres in Lincoln County.

2. At 10:00 a.m. on March 5, 1982, the land will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received from the date of this publication until and including 10:00 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10:00 a.m. on March 5, 1982, the land also will be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, Nevada 89520.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3053 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6117

[M–8099(ND)]

North Dakota; Revocation of Executive Order No. 8124, Dated May 10, 1939

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Executive Order No. 8124, establishing Lake Oliver Migratory Waterfowl Refuge. As Federal interest in the land was through a revokable easement, this action will have no effect on the surface or mineral estates which have been and remain in private ownership.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406–657–6291.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 8124 of May 10, 1939, which established the Lake Oliver Migratory Waterfowl Refuge is hereby revoked. The effect of this action is record clearing only insofar as it affects the following described lands:

Fifth Principal Meridian

T. 141 N., R. 85 W.,
Sec. 36, All.

The area described contains 640.00 acres in Oliver County.

2. This action will not restore the above described lands to operation of the public land, mining or mineral leasing laws as the surface and mineral interests are in private ownership.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3056 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6118

[OR–4011]

Oregon; Partial Revocation of Executive Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive order as to a 0.774 acre of land withdrawn for use by the U.S. Coast Guard as an administrative site. The land is excess property and will not be restored to operation of the public land laws, including the mining laws and mineral leasing laws.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by Section 205 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of July 14, 1884, which withdrew certain lands for use by the War Department, is hereby revoked insofar as it affects the following described land which was transferred to the U.S. Coast Guard for use as an administrative site:

Willamette Meridian

T. 26 S., R. 14 W.,
Sec. 2, that portion of lot 2 and unsurveyed accretions thereto described as follows:
Beginning at the center of said Section 2, thence North 19° 58′ West, 1307.0 feet to a point and; thence North 11° 43′ West, 775.0 feet to the true point of beginning; thence South 78° 17′ West, 150 feet to a point; thence South 11° 43′ East, 225 feet to a point; thence North 78° 17′ East, 150 feet to a point; thence North 11° 43′ West, 225 feet to the point of beginning.

The area described contains 0.774 of an acre in Coos County.

2. The above described land has been reported to the General Services Administration for disposition as excess property and will not be restored to operation of the public land laws, including the mining laws and mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3054 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6119

[M 29832]

Montana; Withdrawal of National Forest Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 170 acres of national forest lands from mineral location and entry and reserves them for the protection of the Big Ice Cave and its water supply.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Edgar D. Stark, Montana State Office 406–657–6291.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest lands are hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2) for the Big Ice Cave:

Principal Meridian—Custer National Forest

Unsurveyed, but which probably will be when surveyed:
T. 8 S., R. 27 E.,
Sec. 3, SE¼;
Sec. 10, N½N½NW¼NE¼.

The area described contains 170 acres in Carbon County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3051 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6120

[WASH–04791]

Washington; Partial Revocation of Executive Order

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order in part as to 10.95 acres of land withdrawn for use by the U.S. Coast Guard as a light station. The land is excess property and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Executive Order of February 26, 1852, which originally withdrew certain lands for military purposes and transferred in part for use by the U.S. Coast Guard for lighthouse purposes is hereby revoked insofar as it affects the following described land:

Willamette Meridian

T. 9 N., R. 11 W.,
Sec. 5, lot 7.

The area described contains 10.95 acres in Pacific County.

2. The above described land has been reported to the General Services Administration for disposition as excess property and will not be restored to operation of the public land laws, including the mining and mineral leasing laws.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82–3050 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–84–M

43 CFR Public Land Order 6121

[I–010254, I–09455]

Idaho; Revocation of Public Land Order Nos. 1835 and 1978

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes two withdrawals affecting 83.98 acres of public lands withdrawn for use by the Bureau of Land Management as fire lookout and radio communication sites. This action will restore the lands to operation of the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: William E. Ireland, Idaho State Office 208–334–1597.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order Nos. 1835 of April 16, 1959, and 1978 of September 11, 1959, which withdrew the following

described lands, are hereby revoked in their entirety:

Boise Meridian, Idaho

(I-010254, PLO 1978)

T. 14 S., R. 34 E.,
Sec. 23, S½SW¼NE¼SW¼.

(I-09455, PLO 1835)

T. 6 S., R. 35 E.,
Sec. 33, SE¼SE¼.
T. 7 S., R. 35 E.,
Sec. 4, lot 1.

The areas described contain 83.98 acres in Bannock County.

2. At 8:00 a.m. on March 5, 1982, the lands will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:00 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands also will be open to applications and offers under the mineral leasing laws, and to location under the United States mining laws, at 8:00 a.m. on March 5, 1982.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3048 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6122

[M-40873]

Montana; Partial Revocation of Executive Order Dated April 30, 1919, Public Water Reserve No. 63

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive order as to 40.00 acres of land withdrawn as a public water reserve. This action will restore the land to operation of the public land laws generally, including nonmetalliferous mineral location under the mining laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Roland F. Lee, Montana State Office, 406-657-6291.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Exective Order dated April 30, 1919, which withdrew certain lands for public water reserve purposes is hereby revoked insofar as it affects the following described lands:

Public Water Reserve No. 63

Principal Meridian

T. 21 N., R. 32 E.,
Sec. 24, NE¼SW¼.

The area described contains 40.00 acres in Garfield County.

2. At 8 a.m. on March 5, 1982, the land shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

3. The land will be open to nonmetalliferous mineral location under the United States mining laws at 8 a.m. on March 5, 1982. The land has been and continues to be open to metalliferous mineral location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3049 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6123

[W-27005]

Wyoming; Revocation of Public Land Order No. 5109

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes the South Pass Administrative Site withdrawal affecting 75.90 acres of national forest lands withdrawn for use by the Bureau of Land Management. The action will open the lands to such forms of disposition as may be made of national forest lands under the public land laws, including mining.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: W. Scott Gilmer, Wyoming State Office, 307-778-2220, extention 2336.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 5109 of August 20, 1971, which withdrew the following described national forest lands for use by the Bureau of Land Management as an administrative site is hereby revoked.

Shoshone National Forest

Sixth Principal Meridian

T. 30 N., R. 100 W.,
Sec. 36, lots 9 and 17.

The area described contains 75.90 acres in Fremont County.

2. At 10:00 a.m. on March 5, 1982, the lands shall be open to such forms of disposition as may by law be made of national forest lands

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3052 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6124

[ORE-015491, ORE-016677]

Oregon; Revocation of Public Land Order No. 4248

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order which withdrew 82.91 acres of land for material site purposes. This action will restore the lands to operation of the public land laws generally, including the mining laws.

EFFECTIVE DATE: March 5, 1982.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office 503-231-6905.

By virture of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Public Land Order No. 4248 of July 6, 1967, which withdrew the following described lands for material site purposes is hereby revoked:

Willamette Meridian

Revested Oregon and California Railroad Grant Land

T. 30 S., R. 6 W.,
Sec. 31, S½ of unnumbered Lot (S½SW¼SW¼).
T. 30 S., R. 7 W.,
Sec. 35, N½S½NW¼.
T. 31 S., R. 7 W.,

Sec. 1, W½ of Lot 5 (formerly W½NE¼NW¼).

The areas described aggregate 82.91 acres in Douglas County.

2. At 10 a.m., on March 5, 1982, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described above will be open to such forms of disposition as may by law be made of revested Oregon and California Railroad Grant Land.

3. At 10 a.m., on March 5, 1982, the lands described above will be open to location under the United States mining laws. The lands have been and continue to be open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3046 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6125

[CA 7533, CA 8745]

California; Revocation of Withdrawals Affecting Deadman's Island, Los Angeles Harbor

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes in their entirety two Executive orders affecting Deadman's Island, public land once located in Los Angeles Harbor. As a result of improvement to the main navigational route of the harbor, the island no longer exists. This action is taken primarily for record clearing purposes.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, 916-484-4431.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751; 43 U.S.C. 1714), it is ordered as follows:

1. Executive Order of March 15, 1872, which withdrew the following described land from sale or grant for use of the War Department for public purposes, is hereby revoked in its entirety:

San Bernardino Meridian

T. 5 S., R. 13 W.,
Sec. 19, lot 1.

The area described contains 2 acres in Los Angeles County.

2. Executive Order No. 2029 of August 26, 1914, as modified by Executive Order No. 3140 of August 6, 1919, which transferred the following described portion of the Military Reservation of Deadman's Island to the Treasury Department for use of the Public Health Service, is hereby revoked in its entirety:

San Bernardino Meridan

T. 5 S., R. 13 W.,
Sec. 19, a portion described as follows:

The point of beginning is S. 12 degrees 13' E. 100.4 feet from U.S. Station "R", which is U.S. Coast and Geodetic Survey Station "Deadman's Island"; thence N. 72 degrees 25' E. 522.72 feet to a point; thence S. 17 degrees 35' E. 500 feet to a point; thence S. 72 degrees 25' W. 522.72 feet to a point; thence N. 17 degrees 35' W. 500 feet to the point of beginning.

3. All of the above described land comprising Deadman's Island no longer exists. The island, once situated in Los Angeles Harbor, was removed in 1928 to make way for improving the main navigational route of the harbor. Since the land originally withdrawn is now nonexistent, this action is taken primarily to clear the records of withdrawals that are no longer serving a useful purpose.

Inquiries concerning the above should be addressed to the State Director, Bureau of Land Management, Room E-2841, Federal Building, 2800 Cottage Way, Sacramento, California 95825.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

January 28, 1982.

[FR Doc. 82-3045 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Listing Hay's Spring Amphipod as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines Hay's Spring amphipod *(Stygobromus hayi)* to be an endangered species. Survival of this aquatic crustacean is endangered by threatened modification of its habitat by flooding and construction activities and by overcollection for scientific purposes. Hay's Spring amphipod occurs only in a single spring within the National Zoological Park in Washington, D.C. The rule provides protection for wild populations of this species.

DATE: This rule becomes effective on March 8, 1982.

ADDRESSES: Questions concerning this action may be addressed to Director (OES), U.S. Fish and Wildlife Service, Department of Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For further information on the final rule, contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

On January 12, 1977 (42 FR 2507-2515), the Service proposed Endangered status for *Stygobromus (-Synpleona, -Stygonectes) hayi* (Hubricht and Mackin, 1940) under the common name "Hay's Spring scud". This proposal was withdrawn on December 10, 1979 (44 FR 70796-70797), following expiration of a time limit on pending proposals which was imposed by the 1978 Amendments to the Endangered Species Act of 1973. Endangered status was reproposed for Hay's Spring amphipod on July 25, 1980 (45 FR 49850-49851), following a re-examination of its habitat. A complete summary of the status of this species and comments on the original proposed listing of this species were summarized in the reproposal.

The reproposal advised that sufficient evidence was on file to support a determination that Hay's Spring amphipod was an endangered species pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.).* That proposal summarized the factors thought to be contributing to the likelihood that the species could become endangered within the foreseeable future. Hay's Spring amphipod is found only in a small Spring within the National Zoological Park. The spring emerges from the rocky western wall of Rock Creek Valley and flows about 35 m into Rock Creek. The portion of the spring inhabited by Hay's Spring amphipod is less than 1 meter wide. The extremely small size of this habitat makes the species exceptionally vulnerable to construction activities, which have drastically reduced the number of springs in Washington (Williams, 1977). The proposed rule also specified the prohibitions which would be applicable if such a determination were made; and solicited comments,

suggestions, objections, and factual information from any interested person.

A letter was sent to Mayor Barry of the District of Columbia on July 30, 1980 notifying him of the proposed rulemaking for Hay's Spring amphipod. On July 3 and July 30, 1980, letters were sent to appropriate Federal agencies and other interested parties notifying them of the proposal and soliciting their comments and suggestions. Comments were received from Mr. S. Dillon Ripley, Secretary of the Smithsonian Institution; and from the National Park Service, National Capital Region.

Summary of Comments and Recommendations

In the July 25, 1980, **Federal Register** proposed rule (45 FR 49850–49851), all interested parties were invited to submit factual reports or information which might contribute to the formulation of a final rule.

Public comments received from July 25, 1980, through October 23, 1980, were to be considered. However, no public comments were received.

Mr. S. Dillon Ripley, Secretary of the Smithsonian Institution, commented that Smithsonian Institution staff had reviewed the Draft Environmental Assessment on this proposal and have no objections or comments on the biological conclusions. Mr. Ripley stated that the Smithsonian Institution will continue its efforts to protect the species and that there are no plans to modify the area near the spring habitat at this time.

The National Park Service commented that they supported the proposed listing of Hay's Spring amphipod as Endangered and offered their cooperation in the protection of this and other species in the Rock Creek watershed.

After a thorough review and consideration of all the available information, the Director has determined that Hay's Spring amphipod is in danger of becoming extinct throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

The summary of factors affecting the species, as required by Section 4(a) of the Act and published in the **Federal Register** of July 25, 1980 (45 FR 49850–49851), are reprinted below. These factors are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Usually high flood levels from Rock Creek reach the level of the spring habitat of Hay's Spring amphipod. This level has been flooded with increasing frequency in recent years (CHM Hill, 1979). Flood waters may adversely affect the spring habitat by removing individual amphipods, as well as the leaves and soft bottom sediments that form their microhabitat, from the spring.

Construction activities, if not carefully carried out, could adversely affect or eliminate the spring habitat. Such activities have eliminated most of Washington's springs during the last 100 years (Williams, 1977). Possible use of the level are just below the spring for parking or equipment storage is now in advanced planning. Although a small fence now surrounds the spring, the significance of this structure could easily be overlooked during parking lot construction. The spring is so small that careless movement of equipment slightly onto the hillside from which the spring flows could have a catastrophic effect on the habitat.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Only a few scientific specialists are potential collectors of Hay's Spring amphipod. Dr. John R. Holsinger (unpublished report; May 11, 1978) has expressed concern about future collecting. Even this modest collecting pressure presents a danger to this extremely rare species.

3. *Disease and predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* Although the National Zoological Park has voluntarily fenced the habitat of this species and alerted personnel to its significance, there is no legal protection for the species.

5. *Other natural or man-made factors affecting its continued existence.* Not applicable.

Critical Habitat

Designation of Critical Habitat for Hay's Spring amphipod would not be prudent. Publication of a map and description of the exact locality, which is required for Critical Habitat designation, could expose the species to destruction of its habitat by vandalism and unauthorized taking. The habitat is within a densely populated urban area. The small size of the species' population and habitat, as well as the fragile nature of the habitat, makes the species vulnerable to isolated acts of vandalism.

Effects of the Rule

Endangered species regulations already published in Title 50 § 17.21 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import, or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

This rule requires Federal agencies to insure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of Hay's spring amphipod. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. (703/235–1975).

Note.—The Department of the Interior has determined that this rule is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12291 and 43 CFR Part 14.

References

CH2M Hill. 1979. *Draft* Rock Creek Watershed Conservation Study. Prepared for Department of the Interior, National Park Service.

Holsinger, J. R. 1977. A review of the systematics of the holarctic amphipod family Crangonyctidae. Proceedings of the 3rd International Colloquium on *Gammarus* and *Niphargus*, Schlitz, West Germany, 1975. Crustaceana (supplement), 4: 244–281.

Holsinger, J. R. 1978. Systematics of the subterranean amphipod genus

Stygobromus (Crangonyctidae), Part II: Species of the Eastern United States. Smithsonian Contributions to Zoology No. 266. 144 pp.
Hubricht, L. and J. G. Macklin. 1940. Descriptions of nine new species of freshwater crustaceans, with notes and new localities for other species. American Midland Naturalist 23: 187–218.
Williams, G. P. 1977. Washington, D.C.'s vanishing springs and waterways. Geological Survey Circular 752.

Regulations Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subpart B, Title 50 of the Code of Federal Regulations is amended as set forth below:

1. Section 17.11(h) is amended by adding in alphabetical order under "Crustaceans", the following to the List of Endangered and Threatened Wildlife:

§ 17.11 [Amended]

* * * * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Stygobromus hayi	Amphipod, Hay's spring.	USA (DC)	E	March 8, 1982	NA	NA.

Dated: January 28, 1982.

F. Eugene Hester,
Acting Director, Fish and Wildlife Service.

[FR Doc. 82-3149 Filed 2-4-82; 8:45 am]
BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 47, No. 25
Friday, February 5, 1982

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-12206, File No. S7-920]

Valuation of Debt Instruments and Computation of Current Price per Share by Certain Open-End Investment Companies (Money Market Funds)

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission today is releasing for public comment a proposed rule regarding the valuation of debt instruments, the calculation of current net asset value per share and the computation of current price per share by certain registered open-end investment companies, commonly referred to as "money market funds." The proposed rule would permit such investment companies, subject to enumerated conditions either: (1) To value portfolio instruments by use of the amortized cost valuation method; or (2) to compute current price per share by rounding the net asset value per share to the nearest one cent, based on a share value of one dollar. The rule would obviate the necessity for money market funds to apply for, and the Commission to issue, individual orders of exemption to permit use of those valuation or pricing methods.

DATE: Comments must be received by April 5, 1982.

ADDRESS: Interested persons wishing to submit their views and comments on the proposed rule should file four copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7-920 and will be made available for public inspection at the commission's Public Reference Section, Room 6101, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Arthur J. Brown, Chief, Investment Company Act Study, (202) 272-2048, or Cathy G. Douglas, Special Counsel, (202) 272-2024, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is publishing for public comment proposed rule 2a-7 under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) ("Act") which would allow, subject to specified conditions, certain open-end investment companies, known as "money market funds," to compute their current price per share for purposes of distribution, redemption and repurchase by using either: (1) The "amortized cost" method of valuation to value their portfolio instruments for purposes of calculating their current net asset value per share; or (2) the "penny-rounding" method of computing their current price per share. Under the amortized cost method of valuation, money market funds may calculate their current net asset value for use in computing the current price of their redeemable securities by valuing all portfolio securities and assets, regardless of whether market quotations are readily availble, at the acquisition cost as adjusted for amortization of premium or accumulation of discount rather than at current market value as would be required by rule 2a-4 (17 CFR 270-2a-4).

Under the penny-rounding method of computation, money market funds calculate their current net asset value in conformance with rule 2a-4 by valuing portfolio securities for which market quotations are readily available at current market value, and other securities and assets at fair value as determined in good faith by the board of directors. However, they may then compute the current price of their redeemable securities by rounding the net asset value per share to the nearest one cent on a share value of one dollar.

The proposed rule provides that to use either of the above valuation or pricing methods a money market fund must comply with certain conditions. Those conditions basically: (1) Limit the types of investments that the money market fund can make to short-term, high quality debt instruments; (2) impose on the board of directors (trustees in the case of a trust; hereinafter referred to as "board of directors" or "board") of the money market fund a special obligation to ensure that a stable price per share of one dollar is maintained; and (3) require that the board of directors of the money market fund, in good faith, determines that the valuation or pricing method selected pursuant to this rule will reflect fairly the value of each shareholder's interest in the money market fund and that the money market fund will discontinue its use of such method if such method ceases to reflect fairly each shareholder's interest. In addition, a money market fund using the amortized cost method of valuation must monitor the deviation between the price of its shares computed from a net asset value per share calculated using amortized cost values for its portfolio instruments and the net asset value of such shares calculated using values for portfolio instruments based upon current market factors. If such deviation exceeds one-half of one percent of the price per share or if the amount of deviation may result in material dilution or other unfair results to shareholders, the proposed rule would impose specific obligations on the board of directors to respond to the situation. Likewise, a money market fund using the penny-rounding method to compute its price per share may have to monitor in a similar fashion the valuation of those portfolio instruments (with remaining maturities of sixty days or less) [1] that are valued at amortized cost in order to assess the fairness of that valuation method.

The proposed rule generally codifies the standards that have developed for granting the applications filed by money market funds for exemption from the pricing and valuation provisions of the Act. As described more fully below, the rule expands slightly the scope of the exemption to permit the purchase of additional instruments. In addition, the rule has been fashioned to outline more clearly the obligations of money market funds and their boards of directors when relying on the exemption. In this regard, the rule is not intended to expand the responsibilities and liabilities imposed upon directors beyond those imposed under the exemptive orders.

Background

Section 2(a)(41) of the Act (15 U.S.C. 80a-2(a)(41)), in conjunction with rules 2a-4 and 22c-1 under the Act (17 CFR

[1] *See* footnote 36, *infra.*

270.2a–4 and 270.22c–1), requires a registered investment company to calculate its current net asset value per share, for purposes of distribution, redemption, and repurchase, by valuing (1) its portfolio securities with respect to which market quotations are readily available at current market value, and (2) its other securities and assets at their fair value as determined, in good faith, by the board of directors. Such "fair value" has been interpreted to mean the value that would be received upon the current sale of a security or asset. (Investment Company Act Release Nos. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) and 6295 (December 23, 1970), 35 FR 19986 (December 31, 1970)). On May 31, 1977, the Commission issued an interpretive release (Investment Company Act Release No. 9786 ("Release 9786"), 42 FR 28999 (June 7, 1977)), expressing the view that money market funds, defined as open-end investment companies which invest primarily in short-term debt instruments, and other open-end investment companies that hold a significant amount of debt securities should: (1) Determine the fair value of short-term debt portfolio securities for which market quotations are not readily available with reference generally to current market factors; and (2) calculate their price per share to an accuracy of within .1%, or $.01 based on a share value of $10.00. Release 9786 indicated further that, because the amortized cost method of valuation would not take market factors into account, the use of that method under all but very limited circumstances would be inconsistent with the provisions of rule 2a–4 under the Act.

Subsequent to the issuance of Release 9786, several applications were filed by money market funds requesting orders of exemption from the appropriate provisions of the Act and the rules thereunder, which applications, if granted, would have permitted the use of amortized cost valuation under certain specified conditions and circumstances. In response to requests for a hearing on the applications, the Commission issued an order for a consolidated hearing on such applications. (Investment Company Act Release No. 10201 (April 12, 1978), 43 FR 16830 (April 20, 1978).)

Prior to the commencement of the evidentiary portion of the administrative proceeding, certain of the applicants and the Division of Investment Management reached a partial agreement regarding the manner of valuing assets and pricing shares. As a result of that agreement, a number of the applicants amended their respective applications. Based on the amended applications, the Commission granted an order, Investment Company Act Release No. 10451 (October 26, 1978), 43 FR 51485 (November 3, 1978), which, subject to certain conditions, permitted those applicants to compute their current price per share by rounding the net asset value per share to the nearest one cent on a share price of $1.00 ("penny-rounding"); however, the fair value of the portfolio securities used to determine net asset value was to be assessed in compliance with the views expressed in Release 9786, which required debt securities with more than 60 days remaining until maturity to be valued based on market factors. The conditions of the penny-rounding orders, in general, required: (1) A special undertaking by the board of directors of each applicant to supervise operations of the money market fund in such a manner as to assure, to the extent reasonably practicable, that the share price would not deviate from $1.00; (2) that the dollar weighted average portfolio maturity of the applicant's portfolio would not be in excess of 120 days and no instrument with a maturity of greater than one year would be purchased; and (3) that purchase of portfolio instruments would be limited to those high quality instruments that were specified in each application. Numerous other money market funds subsequently filed applications seeking orders of exemption for penny-rounding subject to conditions which are in substantial conformity with the above mentioned conditions, and the Division has granted the requested orders pursuant to its delegated authority.[2]

The applicants that continued to seek permission to use the amortized cost method of valuation participated in the evidentiary portion of the above administrative hearing, which commenced on November 20, 1978, and concluded on March 26, 1979. Following such proceedings, most applicants submitted Offers of Settlement ("Offers") which provided for the use of the amortized cost method of valuation subject to certain conditions. On August 8, 1979, the Commission issued an order (Investment Company Act Release No. 10824) granting exemptive relief to enable those applicants to use the amortized cost method of valuation, subject to the conditions specified in the Offers, and cancelling as to them the administrative hearing.[3]

The conditions is that order included the same conditions set forth in the original penny-rounding exemptive orders with the following modifications. The obligation imposed upon the board of directors was modified to require that the board undertake to establish procedures reasonably designed, taking into account current market conditions and the fund's investment objectives, to stabilize the fund's net asset value per share at one dollar. The quality of the instruments which could be purchased was changed to the general standard of those instruments which the board determines present minimal credit risks, and which are the high quality as determined by any major rating service or, if unrated, of comparable quality. In addition, the amortized cost exemptive order included three new conditions which basically: (1) Set forth the minimal procedures that a board must adopt to stabilize the fund's net asset value per share at one dollar, which included monitoring the deviation between the net asset value per share using amortized cost values for portfolio instruments and the net asset value per share using market values for those instruments, as well as setting forth when the board would be required to take action to stabilize the fund's net asset value per share; (2) required the fund to maintain a record of the procedures established by the board and any actions taken pursuant to those procedures; and (3) required the fund to file quarterly, as an attachment to Form N–1Q (17 CFR 274.106), a statement as to whether any action had been taken pursuant to those procedures.

Subsequently, more than 90 money market funds have requested, and the Division pursuant to delegated authority has granted, exemptive relief to permit the use of amortized cost valuation, subject to substantially the same conditions as those contained in the original order settling the hearing. Certain minor changes were made in subsequent orders to reflect technical corrections. In addition, subsequent orders permitting amortized cost valuation as well as penny-rounding were issued based upon applications that reflected a broader range of

[2] The changes in the subsequent orders were related primarily to eliminating the condition that the funds would purchase only those specified portfolio instruments of the specified quality set forth in the application and substituting therefor an overall requirement that the portfolio instruments purchased present minimal credit risks and be of high quality as determined by any major rating service, or, if not rated, of comparable quality.

[3] The proceeding was dismissed as to the only remaining applicant, First Multifund for Daily Income, Inc., by the Commission on May 2, 1980 (Investment Company Act Release No. 11152). The Court of Appeals for the District of Columbia upheld that decision on June 16, 1981 (*First Multifund for Daily Income, Inc.* v. *SEC*, No. 80–1568, (D.C. Cir. 1981)).

permissible portfolio investments. Those orders were designed to permit money market funds to utilize newly developed or newly available money market instruments, which were not included explicitly in the original applications and orders, and to remove some of the restrictions on the existing types of instruments.[4]

Most money market funds have sought exemptive relief to enable them to employ either penny-rounding or the amortized cost method of valuation in order to facilitate their ability to provide: (1) A steady flow of investment income at an interest rate comparable to those available by direct investment in money market instruments and (2) a stable share price. Each of the procedures, if properly utilized, has been determined by the Commission under the exemptive standard set forth in section 6(c) of the Act (15 U.S.C. 80a–6(c)) to be appropriate in the public interest and consistent with the protection of investors and the policy and provisions of the Act. Accordingly, the Commission has determined to release for public comment proposed rule 2a–7, which would generally codify the exemptive relief granted permitting money market funds to employ either penny-rounding or the amortized cost method of valuation to achieve a stable price per share.

Discussion

The Commission believes that the proposed rule would obviate the need or certain investment companies to file exemptive applications for relief that is routinely granted. The proposed rule would also allow the investment company to select the manner of computing its price per share which it believes best serves the interests of its shareholders while imposing such conditions as would render the use of such method appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. The rule would further benefit shareholders by facilitating the ability of certain investment companies to fulfill their shareholders' investment objectives.

Under proposed rule 2a–7, investment companies that have investment portfolios consisting entirely of U.S. dollar-denominated short-term debt obligations ("money market funds") may use either penny-rounding or the amortized cost valuation method for purposes of computing their price per share, provided that they comply with the conditions enumerated in the rule.[5] Those conditions are designed to ensure that any money market fund that adopts one of the procedures under discussion in an effort to maintain a stable price per share will be able to maintain that stable price per share. The rule also provides, under both methods, for the computation of a share price that will represent fairly the current net asset per share value of the investment company, thus reducing any possibility of dilution of shareholders' interests or other unfair results.[6]

Permissible Portfolio Investments

The rule, like the previously granted exemptive orders, is designed to limit the permissible portfolio investments of a money market fund seeking to use either penny-rounding or the amortized cost valuation method to maintain a stable price per share to those instruments that have a low level of volatility [7] and thus will provide a greater assurance that the money market fund will continue to be able to maintain a stable price per share that fairly reflects the current net asset value per share of the fund. Accordingly, money market funds relying on the rule may purchase only those portfolio instruments which meet the quality and maturity requirements of the rule.[8] The proposed rule, however, would not prohibit a money market fund from holding cash reserves. It should be noted that the proposed rule does not speak to the acquisition or valuation of puts or stand-by commitments by a money market fund wishing to use the subject valuation methods. The Commission is currently considering applications for exemptive orders to permit money market funds using either the amortized cost valuation method or penny-rounding to acquire puts or stand-by commitments. The Commission has granted exemptive orders to permit the acquisition of puts, but only under limited circumstances and subject to certain conditions.[9] At some future time the proposed rule may be amended to include a resolution of the issues concerning the acquisition of puts.

Maturity of Portfolio Instruments

A money market fund would be able to rely on the rule only if its entire investment portfolio consisted of instruments with a remaining maturity of one year or less. As prescribed in the proposed rule, which is generally a codification of positions taken by the Commission regarding the conditions contained in the exemptive orders, the maturity of an instrument generally is deemed to be its stated maturity, with a special exception provided for certain variable and floating rate paper. Accordingly, an instrument is deemed to satisfy the requirement of having a remaining maturity of one year or less for purposes of the rule if, on the date of purchase [10] by the money market fund: (i) The instrument, regardless of the length of maturity when originally issued, currently has no more than 365 days remaining until the principal amount owed is due to be paid or, when originally issued, the principal amount

[4] For example, many of the original applications limited the funds' investments in the securities of banks to those banks with assets or capital exceeding a set amount.

[5] Under the proposed rule, a money market fund that elects to use one of the permitted methods for determining its price per share is not foreclosed from switching to another method. So long as the enumerated conditions for the particular method are fulfilled, a fund may rely on the exemptions provided in paragraphs (a)(2) or (3). However, the proposed rule would not allow a fund to rely on both exemptions at the same time. Therefore, if a fund is using the amortized cost valuation method to calculate its net asset value per share when computing its price, it may not then round its per share net asset value to the nearest cent on a share value of one dollar. Such a fund may round its per share net asset value only to the extent that such rounding would not be deemed to be material, which the Commission believes to be one-tenth of one cent on a share value of one dollar.

[6] If shares are sold based on a net asset value which turns out to be either understated or overstated in comparison to the amount at which portfolio instruments could have been sold, then either the interests of existing shareholders or new investors will have been diluted.

[7] There are basically two types of risks which cause fluctuations in the value of money market fund portfolio instruments: the market risk, which primarily results from fluctuations in the prevailing interest rate, and the credit risk. In general, instruments with shorter periods remaining until maturity and which are of higher quality have reduced market and credit risks and thus tend to fluctuate less in value over time than instruments with longer remaining maturities or of lesser quality.

[8] The applications for exemptive relief have routinely set forth the specific types and quality of instruments in which the money market funds could invest. The instruments consisted exclusively of debt obligations, including such instruments as treasury bills and notes and other government issued or guaranteed debt securities, certificates of deposit and time deposits from domestic banks and thrift institutions and from foreign banks, bankers' acceptances of domestic and foreign banks, commercial paper, corporate bonds and notes and repurchase agreements on other debt obligations. While the rule does not set out the various types of debt instruments in which a money market fund relying on the rule may invest, the proposed rule does require that all portfolio instruments mature in one year or less and be of high quality.

[9] *See, e.g.*, Investment Company Act Release No. 11867, July 21, 1981.

[10] The date of purchase is regarded as the date on which the fund's interest in the instrument is subject to market action. Thus, for securities purchased under normal settlement procedures, the length of maturity would be calculated starting on the trade date. For instruments such as "when issued" securities (securities purchased for delivery beyond the normal settlement date), if the commitment to purchase the instrument includes either a set price or yield, then the maturity will be calculated based upon the commitment date.

owed or the instrument was to be paid in not more than 375 days;[11] (ii) where the instrument has a variable rate of interest [12] and is issued or guaranteed by the United States government or any agency thereof, it is no more than 365 days remaining until the next readjustment or renegotiation of the interest rate to be paid regardless of the stated maturity of the instrument and the board of directors has determined that when the rate will be readjusted it will cause the instrument to have a current market value which approximates its par value; [13] (iii) the instrument (a) has a demand feature which allows the fund unconditionally to obtain the amount due from the issuer upon notice of seven days or less,[14] (b) has either a floating rate of interest [15] or a variable rate of interest that is readjusted to no less frequently than once per year,[16] where, in the case of a variable rate instrument, the board of directors has determined that whenever a new rate will be established it will cause the instrument to have a current market value which approximates its par value and in the case of a floating rate instrument the board has determined that such floating rate feature will ensure that the market value of such instrument will always approximate its par value, and (c) will be reevaluated by the board at least quarterly to ensure that the instrument of high quality; [17] or (iv) where the instrument is a repurchase agreement or an agreement upon which portfolio instruments are lent ("portfolio instrument lending agreement") [18] regardless of the maturity of the security serving as collateral for the agreement, the agreement is to be effected within 365 days or less.[19]

Maturity of the Portfolio

In addition to requirements regarding the maturity of individual portfolio investments, the rule would impose restrictions on the dollar-weighted average maturity of the entire portfolio. Paragraphs (a)(2)(iii) and (a)(3)(ii) of the proposed rule provide that the money market fund must maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share. This provision imposes an obligation on the directors of the fund, as a part of their fiduciary duties, to ascertain that the fund is maintaining an average portfolio maturity that, given the then current market conditions, will permit it to maintain a stable price per share. During periods of greater volatility in the market, the board of directors should be aware of the greater difficulty in maintaining a stable price per share and should take steps to ensure that they are providing adequate oversight to the money market fund. In addition, the rule provides that in no event shall the fund maintain a dollar-weighted average portfolio maturity that exceeds 120 days. Should the disposition of a portfolio instrument or some market action cause the dollar-weighted average portfolio maturity to exceed 120 days, the board of directors is obligated to cause the fund to invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

For purposes of computing the average portfolio maturity, instruments generally will be deemed to have a maturity equal to the period remaining until the date of maturity of the instrument noted on the face of the instrument. Certain variable or floating interest rate instruments, which are deemed to have a remaining maturity of one year or less for purposes of the rule,[20] may be treated as having a maturity other than that noted on the face of the instrument. Any such variable rate instruments that have demand features may be deemed to have a maturity equal to the longer of the period remaining until the next rate readjustment or the period remaining until the principal amount can be recovered.[21] Any such variable rate instruments that do not have a demand feature may be treated as having a maturity equal to the period remaining until the next calculation of the interest rate rather than the period remaining until the principal amount is due. Any such floating interest rate instruments

[11] This part of the definition has been extended beyond the usual definition of one year (365 days) to encompass securities, particularly government securities such as project notes, which are denominated as and intended to be "one year" notes but which occasionally are issued with maturities slightly longer than 365 days. (*See* Investment Company Act Release No. 11679, March 11, 1981.) This part of the definition is not meant to encompass securities which were originally issued and intended to be longer than "one year" instruments. Those instruments could be purchased by a money market fund relying on this rule only after they have 365 or fewer days remaining until maturity.

[12] Variable rate instruments are those instruments whose terms provide for automatic establishment of a new interest rate on set dates.

[13] *See* Investment Company Act Release No. 11679 (March 11, 1981) and application of Government Investors Trust (File No. 812-4859) filed April 9, 1981. This definition, which goes beyond a codification of orders issued, was expanded based upon the Commission's understanding that the volatility of such instruments would not be greater than the volatility of fixed interest rate instruments having a maturity equal to the readjustment period of the U.S. government guaranteed variable rate notes. However, the Commission's position is based entirely upon experience with Small Business Administration guaranteed debentures ("SBA notes") which are the only instruments currently falling within this category so far as the Commission is aware. Accordingly, the board of directors of a money market fund considering investment in any such instrument other than a SBA note should, as a part of their overall duty to supervise the operations of the fund to ensure stability, determine that it can expect the volatility of such notes not to differ materially from the volatility of fixed rate notes of the same quality. Moreover, the Commission will consider amendment of this or any other provision of the rule if market experience indicates that it is inappropriate to the rule's overall purposes.

[14] In theory, the existence of a demand feature alone should be sufficient to enable a fund to maintain a stable net asset value per share because the holder could receive the principal amount of the instrument in a short period of time regardless of market and creditworthiness changes. However, the Commission has insufficient evidence that (1) funds will exercise such a demand feature whenever interest rates increase or the creditworthiness of the issuer is reduced and (2) there is a market for such instruments and even if there is, whether it always evaluates the instrument at a price approximating its par value.

[15] Floating rate instruments are those instruments whose terms provide for automatic adjustments of their interest rates whenever some set interest rate changes.

[16] *See* application of Municipal Fund for Temporary Investment, (File No. 812-4970) filed September 15, 1981; and letter from Gerald Osheroff, Associate Director, Division of Investment Management to Joel T. Matcovsky, Merrill Lynch Asset Management, Inc., dated December 10, 1981.

[17] If the instrument were ever deemed to be of less than high quality, the fund either would have to sell the instrument or exercise the demand feature, whichever is more beneficial to the fund.

[18] Repurchase agreements may be regarded as securities issued by the entity promising to repurchase the underlying security at a later date. (*See* Securities Act Release No. 6351 (September 25, 1981), 46 FR 48637 (October 2, 1981) and Investment Company Act Release No. 10666 (April 18, 1979), 44 FR 25128 (April 27, 1979).) Therefore, a money market fund is generally prohibited by the provisions of section 12(d)(3) of the Act (15 U.S.C. 80a-12(d)(3)) from acquiring a repurchase agreement issued by a broker or dealer unless it structures the repurchase arrangement in accordance with the manner described in the Investment Company Act release, which is designed to ensure that the investment company's investment, including accrued interest earned, is fully collateralized. The same analysis may apply to portfolio instrument lending agreements.

[19] Money market funds investing in, or seeking to invest in, an instrument with a maturity not falling within one of the above-described categories would not be able to rely upon the rule, as proposed, to permit the use of either penny-rounding or the amortized cost valuation method. Individual applications for exemptive relief to permit investment in other types of instruments may of course be filed.

[20] *See* the discussion on Maturity of Portfolio Instruments, which sets forth the conditions that must be fulfilled in order for the maturity to be deemed a period other than until the maturity date noted on the face of the instrument.

[21] Because certain of such variable rate demand instruments may not be readily marketable, the demand notice period may be the shortest period during which the holder may practically expect to bear the market risk associated with the instrument.

with a demand feature that meet the conditions enumerated in the prior section of this release may be treated as having a maturity equal to the period remaining until the principal amount due on the instrument can be recovered through demand.[22] Repurchase agreements and portfolio instrument lending agreements shall be treated as having a maturity equal to the period remaining until the agreement is due to be executed.[23] Finally, although variable rate instruments with neither a U.S. government guarantee nor a demand feature may be purchased only if the period until the maturity date set on the face of the instrument is one year or less, the rule will permit, for purposes of determining the dollar-weighted average maturity of the entire portfolio under the rule, such instruments to be treated as having a maturity equal to the period remaining until the next readjustment of the interest rate, provided that the board determines that the new rate will cause the instrument to have a current market rate which approximates its par value.[24]

Quality of Portfolio Instruments

In addition to the above limitations on the maturity of the portfolio of a money market fund seeking to rely on the proposed rule, paragraphs (a)(2)(iv) and (a)(3)(iii) of the proposed rule contain conditions relating to the quality of portfolio instruments. The rule provides that each portfolio instrument must be denominated in United States dollars and must also be an instrument which: (1) The board has determined presents minimal credit risks to the fund; and (2) is rated "high quality" by a major rating service or, if the security is unrated, is determined by the board to be of comparable quality.

The board of directors may fulfill its obligation to determine that the fund purchase only portfolio instruments which present minimal credit risks in a number of ways. For example, the board could set forth a list of "approved instruments" in which the fund could invest, such list including only those instruments which the board had evaluated and determined presented minimal credit risks.[25] The board could also approve guidelines for the investment adviser regarding what factors would be necessary in order to deem a particular instrument as presenting minimal risks. The investment adviser would then evaluate the particular instruments proposed for investment and make only conforming investments. In either case, on a periodic basis the board should secure from the investment adviser and review both a listing of all instruments acquired and a representation that the fund had invested in only those approved instruments. The board, of course, could revise the list of approved instruments or the investment factors to be used by the investment adviser.

In order to fulfill the rule's requirement that the instruments be rated "high quality," the instruments, if rated, must have been given a rating by a major financing rating service such as Standard & Poor's Corporation, Moody's Investors Services or Fitch Investors Service that falls within the rating service's definition of "high quality."[26] Even if the board of directors believes that the rating service incorrectly rated the instrument or that because of changed circumstances the instrument is now of higher quality, this provision of the rule precludes a money market fund which is relying on the rule from investing in any rated instrument which does not have a "high quality" rating.[27]

If an instrument has received no rating from a major rating service, then, assuming that the board has found that it presents minimal credit risks to the fund, it would be a permissible investment under the rule, provided that the board also finds that the instrument is of "comparable quality" to that of instruments that are rated "high quality."[28] In making this finding the board of directors may establish guidelines for determining high quality and delegate to the investment adviser the responsibility of investigating the creditworthiness of the issuer and presenting its findings to the board for its approval.[29]

Liquidity of the Portfolio

While the proposed rule does not limit a money market fund's portfolio investments solely to negotiable and marketable instruments, money market funds, like all open-end management investment companies, are subject to limitations on restricted or illiquid securities. In Investment Company Act Release No. 5847 (October 21, 1969) ("Release 5847") the Commission set forth its view that, because an open-end company has an obligation to value its portfolio correctly and to satisfy all redemption requests within the statutorily prescribed period, it must limit its acquisition of restricted securities and other securities not having readily available market quotations to the extent necessary to ensure that it can fulfill its obligations. In addition, the Commission took the

[22] If the board determined that a demand instrument, either floating or variable rate, were no longer of high quality, the fund could not base its maturity on the period remaining until recalculation of the interest rate or on the demand period, but, as noted at footnote 17, *supra*, would have to exercise the demand feature or sell the instrument, whichever is more beneficial to the fund.

[23] Although repurchase agreements ("repos") will be treated as having a maturity based upon the length of the agreement and not the maturity of the instruments which serve as collateral, the board of directors should be aware of the risks involved with the purchase of repos that are collateralized by securities with remaining maturities of greater than one year. If the issuer of the repo should default, the security serving as collateral would become a part of the money market fund's portfolio. Securities with longer maturities generally have greater volatility and thus would expose the fund to a greater risk of an unstable price per share. Moreover, the security would not satisfy the provisions defining permissible portfolio instruments. Therefore, the Commission would take the position that such a security should be disposed of as soon as possible. The same analysis would apply to transactions where the money market fund loans portfolio securities and securities having maturities of greater than one year are received as collateral for the loan. If the borrower defaults, the fund would be left with securities which would not meet the provisions of the rule.

[24] This provision reflects a slight expansion of the relief given through exemptive orders, which required periods of renegotiation to be 30 days or less and the remaining maturity of the instrument to be 180 days or less. (Investment Company Act Release No. 11679, March 11, 1981.)

[25] The Commission envisions that the investment adviser would provide the board with the data to evaluate the instruments and make its assessment.

[26] Using bonds as an example, Standard & Poor's, Fitch and Moody's define "high quality" for bonds to be those instruments which receive an AAA or AA (Aaa or Aa) rating. Therefore, a money market fund seeking to rely on this rule could invest only in bonds which were rated AA (Aa) or better.

[27] However, a rated instrument that is subject to some external agreement (such as a letter of credit from a bank), where such external agreement was not considered when the instrument was given its rating, for purposes of this rule, will be considered an unrated security. The Commission believes that agreements such as letters of credit can significantly affect the credit risk associated with an instrument. Therefore, since the security may have significant aspects which are not included in the rating, it is appropriate to consider a security subject to an external agreement, as an unrated security, and thus permit the board to determine whether the instrument, taking into account the external agreements, is of comparable quality. If the board were to consider an external agreement as a basis for judging the quality of an underlying security, that external agreement would have to be unconditional and have terms coextensive with those of the underlying security. Moreover, the instrument could not be judged to be of better quality than that of comparable debt securities of the issuer of the external agreement. It should be noted, however, that if the rating service included the external agreement in its calculation of the rating, the instrument will be regarded as a rated instrument, regardless of the board's concurrence with the rating.

[28] As noted above, provided that certain conditions are met, third party agreements may be analyzed in evaluating whether an instrument is of sufficient quality.

[29] Like the procedures discussed above regarding the board's fulfilling its obligation to determine that the fund purchase only portfolio instruments which present minimal credit risks, the rule would permit the board to approve the purchase before it is made or, if appropriate guidelines are set, after the purchase is made.

position that, in light of those obligations, in no event should the percentage of such securities exceed ten percent of the company's net assets. Therefore, money market funds relying on the rule, like any other open-end management companies, must limit their portfolio investments in illiquid instruments [30] to not more than ten percent of their net assets.[31] However, because of the nature of money market funds, the difficulties that could arise in conjunction with the purchase of illiquid instruments by such funds might be even greater than for other types of open-end management investment companies. Therefore, the board of directors of a money market fund relying on the rule may have a fidicuiary obligation to limit further the acquisition of illiquid portfolio investments.

While the Act requires only that an investment company make payment of the proceeds of redemption within seven days,[32] most money market funds promise investors that they will receive proceeds much sooner, often on the same day that the request for redemption is received by the fund. In addition, most money market funds, because they are primarily vehicles for short-term investments, experience a greater and perhaps less predictable volume of redemption transactions than other investment companies. Thus, a money market fund must have sufficient liquidity to meet redemption requests on a more immediate basis. By purchasing or otherwise acquiring illiquid instruments, a money market fund exposes itself to a risk that it will be unable to satisfy redemption requests promptly.

In addition, as set forth in Release 5847, the management of the investment company's portfolio could also be affected by the purchase of illiquid instruments. If the investment company found that it would have to sell portfolio instruments in order to satisfy redemptions, it might sell marketable securities which it would otherwise wish to retain in order to avoid selling non-negotiable instruments or other illiquid instruments through some alternative means, since the sale of such non-negotiable or illiquid securities would necessitate the money market fund's accepting a reduced price. The judgment as to which securities would be retained would no longer be based upon comparative investment merit. Therefore, the board of directors has a particular responsibility to ensure that when a money market fund purchases or acquires illiquid instruments, such instruments will not impair the proper management of the fund.

Finally, the purchase of illiquid instruments can complicate the valuation of a money market fund's shares and can result in the dilution of shareholders' interests. If illiquid instruments which were valued at amortized cost were disposed of at a reduced price, then, in retrospect, the net asset value of the money market fund would have been overstated. Similarly, if illiquid instruments were valued at a discounted value (to compensate for the possibility that they may have to be disposed of prior to maturity), but were held to maturity and thus yielded their full value, the net asset value of the money market fund would have been understated. Regardless of the types of instruments purchased, the board of directors of a money market fund is under the same obligation to ensure that the price per share correctly reflects the current net asset value per share of the fund. Therefore, when a fund purchases illiquid instruments, the board of directors has a fiduciary duty to see that the fund is operated in such a manner that the purchase of such instruments does not materially affect the valuation of the fund's shares.

Obligation of the Board to Maintain Stable Price

A money market fund that describes itself in its prospectus as having or seeking to maintain a stable price per share through portfolio management and use of a special pricing or asset valuation method has an obligation to the shareholders to continue the chosen method so long as it is consistent with the provisions of the Act, until shareholders are notified of a change in policy. The Commission believes that where a money market fund adopts either the valuation or pricing method under the proposed rule to enhance its ability to maintain a stable price it has a heightened responsibility to shareholders to maintain that stable price. Accordingly, under paragraphs (a)(2)(i) and (a)(3)(i) of the proposed rule, the board of directors of a money market fund wishing to use either penny-rounding or the amortized cost valuation method has a particular obligation to assure that the fund is managed in such a way that a stable price will be maintained.

For a fund seeking to use the amortized cost valuation method, the board of directors has a responsibility to establish procedures reasonably designed to stabilize the fund's price per share. For a fund seeking to use the penny-rounding method, the board of directors has a responsibility, through its supervision of the fund's operations and delegation of special responsibilities to the investment adviser, to assure, to the extent reasonable practicable, that the money market fund's price per share remains stabilized at one dollar.[33]

Testimony by witnesses from the investment company industry presented at the hearings on the original applications for amortized cost valuation alleged that with the limitations on quality and length of maturity provided, short of extraordinarily adverse conditions in the market, a money market fund that is properly managed should be able to maintain a stable price per share.[34] The orders granting exemptive relief and this rule, which codifies those orders, are premised on that representation. Therefore, there is a strong presumption that if a money market fund relying on this rule is unable to maintain a stable net asset value per share, and this is not due to highly unusual conditions affecting the money markets in general, the board of directors has not fulfilled its obligation to ensure that the fund is properly managed.

Monitoring the Fairness of the Valuation or Pricing Method

In addition to the restrictions on the types of portfolio investments that may be made, the provisions of the proposed rule impose obligations on the board of directors to assess the fairness of the valuation or pricing method and take

[30] Illiquid instruments, in this context, would encompass any instrument which cannot be disposed of promptly and in the usual course of business without taking a reduced price. This would include repurchase agreements for greater than seven days, non-negotiable instruments, and instruments for which no market exists.

[31] In the event that changes in the portfolio or other events cause the investments in illiquid instruments to exceed ten percent of the fund's net assets, the fund must take steps to bring the aggregate amount of illiquid instruments back within the prescribed limitations as soon as reasonably practicable. However, this requirement generally would not force the fund to liquidate any portfolio instrument where the fund would suffer a loss on the sale of that instrument.

[32] Section 22(e) of the Act (15 U.S.C. 80a-22(e)).

[33] The proposed rule mandates that the board act in some specific ways to fulfill its responsibility to ensure a stable price: having the fund maintain an appropriate dollar-weighted average maturity and permitting the fund to invest only in instruments which present a minimal credit risk and are of high quality. Thus, for example, it appears that the board of directors should, absent extenuating circumstances, cause the money market fund to dispose of any security as soon as practicable, should the quality of that instrument fall below "high quality." *See also* footnote 17, *supra*.

[34] Proceedings before the Securities and Exchange Commission in the Matter of InterCapital Liquid Asset Fund, Inc., *et al.*, 3-5431, December 20, 1978 at 1414.

appropriate steps to ensure that shareholders always receive their true proportionate interest in the money market fund. Paragraph (a)(1) of the proposed rule provides that the board of directors of each money market fund relying on the rule must determine that, absent unusual circumstances, the valuation or pricing method selected will fairly reflect the value of each shareholder's interest in the fund. That finding must be made prior to the implementation of the selected method, and the board must continue thereafter to believe that the method is fair.[35] Moreover, the minutes should reflect the findings and include the factors that were considered by the board and the board's analysis of those factors in reaching its conclusion. There would be an obligation on the board to discontinue the use of the selected valuation or pricing method if it ceased to reflect fairly each shareholder's interest. In such case, the fund's current price and net asset value per share would ordinarily have to be determined in conformance with the provisions of section 2(a)(41) of the Act and rules 2a–4 and 22c–1 thereunder.

In addition to the general obligation to assess the fairness of the valuation or pricing system, paragraph (a)(2)(ii) of the proposed rule requires the board of a money market fund relying on this rule and using the amortized cost method of valuation to adopt procedures to monitor the deviation between the per share net asset value based on the market value of the portfolio ("market-base value") and the price per share computed from a net asset value per share calculated using the amortized cost valuation of the portfolio and to maintain a record of such review. The rule does not prescribe specific intervals for such monitoring; however, the board must select intervals that are reasonable in light of current market conditions. During periods of high market volatility, this requirement may necessitate that the deviation between such market-based value and price be monitored on a daily basis. During periods of lower volatility, it may be reasonable to monitor such deviation less frequently. The reviews should be frequent enough so that the board may become aware of changes in the market-based per share net asset value before they become material. In determining the market-based value of the portfolio for purposes of computing the amount of deviation, all portfolio instruments, regardless of their length of maturity, should be valued based upon market factors and not their amortized cost value.[36]

In the fund's determination of the market-based value of each instrument, the Commission will not object if the fund, with the approval of its board, uses actual quotations or estimates of market value reflecting current market conditions chosen by the board in the exercise of its discretion to be appropriate indicators of value, or if the fund uses values obtained from yield data relating to classes of money market instruments by reputable sources, provided that certain minimum conditions are met. Any pricing system based on yield data for selected instruments used by a fund must be based upon market quotations for sufficient numbers and types of instruments to be a representative sample of each class of instrument held in the portfolio, both in terms of the types of instruments as well as the differing quality of the instruments. Moreover, the fund must periodically check the accuracy of the system. If the fund uses an outside service to provide this type of pricing for its portfolio instruments, it may not delegate to the provider of the service the ultimate responsibility to check the accuracy of the system.

The rule does not include a specific requirement that a money market fund using the penny-rounding method monitor the market-based value of its shares because such market-based valuation generally is itself the basis for the calcualtion of the per share net asset value upon which the price per share is computed. However, where a penny-rounding money market fund uses the amortized cost method to value portfolio instruments with remaining maturities of 60 days or less,[37] monitoring the deviation between the net asset value per share calculated using the market based value of all its portfolio instruments and its price per share may be necessary in order for the board to fulfill its responsibility to oversee the use of the penny-rounding method. If the price per share obtained through penny-rounding does not fairly represent each shareholder's interest in the fund, the board is obligated to use another pricing system which does fairly reflect each shareholder's interest. Particularly in a volatile market if a penny-rounding fund were to use amortized cost valuation for a material portion of its portfolio, monitoring of actual market values would be necessary in order for the board to make a determination regarding the current fairness of prices obtained under the penny-rounding method. Moreover, the board's obligation to assure that the money market fund is maintaining an appropriate dollar-weighted average maturity to ensure stability may require that the per share net asset value based upon the market value of all the fund's portfolio instruments be monitored in order for the board to make a reasonable determination whether the maturity must be changed to ensure stability. The money market fund should retain a written record of any monitoring and the frequency of such monitoring should be appropriate in light of current market conditions.

Obligation of the Board to Take Action to Stabilize Net Asset Value Per Share

Pursuant to paragraph (a)(2)(i) of the proposed rule, the board of directors of a money market fund using the amortized cost method must establish procedures reasonably designed, taking into account current market conditions and the fund's investment objectives, to stabilize the fund's per share net asset value at one dollar. While the proposed rule does not mandate the specific content of the procedures other than as set forth in paragraph (a)(2)(ii), described below, the procedures must be in writing (paragraph (a)(2)(v)) and should provide for action on the part of the investment adviser or the board of directors to ensure that the per share net asset value remains stable. Examples of types of procedures that boards may wish to consider adopting are: (1) "Early warning systems" whereby the board establishes a procedure requiring the investment adviser to inform the board, and the board to meet and consider what action is appropriate to take, whenever the per share net asset value of the fund, based upon market based valuations, falls below or rises above some predesignated level; and (2) procedures which require the investment adviser to modify its portfolio purchases in specified ways as market conditions change. Although the rule gives the board of directors some

[35] This requirement was not explicitly listed as a condition of the prior exemptive orders; however, the obligation existed as a result of: (1) The general obligation of a board to value portfolio instruments at fair value, which would cause the net asset value per share to fairly reflect each shareholder's interest, and (2) the specific condition of the orders that required the board to take action to eliminate any potential for dilution or unfair results by taking corrective actions, which might include ceasing to use the amortized cost valuation method.

[36] Release 9786 set forth the Commission's position that it would not object to a board of directors determining, in good faith, that it was appropriate for a money market fund to value securities with less than 60 days remaining until maturity at amortized cost, unless the particular circumstances dictate otherwise. The impact of that release was to obviate the necessity of exemptive relief for such valuation; that release, however, does not affect the monitoring procedures under this proposed rule.

[37] *See* footnote 36, *supra*.

discretion regarding what types of procedures they wish to establish to ensure stability, the procedures adopted must satisfy the board's responsibilities undertaken in connection with selecting the valuation method.

Paragraph (a)(2)(ii) of the proposed rule prescribes the minimum procedures that the board must adopt. These procedures include an obligation that, in the event that the deviation between market-based net asset value per share and amortized cost price exceeds 1/2 of 1 percent, the board of directors will promptly consider what action, if any, should be initiated by the board.[38] In fulfillment of that obligation, the Commission takes the position that it is inappropriate, and will not satisfy the condition, for the board of directors to determine that it need not take any action to stabilize the per share net asset value on the basis that the amount of deviation will be reduced over time by anticipated changes in the market or by the maturing of portfolio instruments. The Commission bases its position on the fact that the board has, by undertaking to establish procedures to stabilize the net asset value per share, obligated itself to take affirmative action to ensure stability. Because no one can know, with assurance, what will happen in the market in the future, or at what point the fund might experience a large increase in redemptions, the Commission believes that a decision not to take any action to reduce the deviation, based upon a believe that market action or maturation of portfolio instruments will reduce the deviation, is not an action reasonably designed to ensure stability.

The board is required additionally to take such action as it deems appropriate whenever it believes that the amount of deviation may result in material dilution or other unfair results to investors or existing shareholders.[39] The rule neither specifies what actions the board must take, or lists, as orders of exemption have, possible courses of action. However, there are a variety of methods to reduce the deviation, including: adjusting dividends; selling portfolio instruments prior to maturity to realize capital gains or losses or to shorten the average portfolio maturity of the money market fund; or redeeming shares in kind.[40]

In any event, as provided in paragraph (a)(1) of the proposed rule, if the board were ever to determine that the deviation was such that it could no longer conclude that the amortized cost price fairly reflected the value of each shareholder's interest in the fund, because of the possibility of dilution or other unfair results, it would have to discontinue use of the amortized cost method of valuation and calculate its price per share in accordance with the provisions of the Act and rules thereunder.[41] It should be noted, however, that the board of directors must undertake, as a fiduciary duty, the responsibility of establishing procedures designed to preclude the necessity for such a switch in valuation methods.

Although the proposed rule does not prescribe the specific actions that the board of directors of a fund using the penny-rounding method must take at a given time to assure that the price per share does not fluctuate, the rule explicitly imposes an obligation on the board to operate the fund in such a manner and, therefore, take action, to preclude a change in the price per share. As the net asset value per share begins to move away from one dollar, the board should consider, among other things, altering the average portfolio maturity or the quality of instruments purchased to stablize the current price per share at one dollar.

With the penny-rounding method, if the net asset value[42] ever fell below .9950 or rose above 1.0050, the fund would have to change its price per share to .99 or 1.01, respectively, or would have to cease to use the penny-rounding method and calculate its price to at least a tenth of a cent. However, under the conditions of the proposed rule, a fund may have to so adjust its price under another circumstance. As noted in Release 9786, a fund using penny-rounding may, if the board deems it appropriate, value portfolio securities with less than 60 days until maturity at amortized cost. If the deviation between the amortized cost value of those securities and their current market value were such that the per share net asset value of all the fund's portfolio, rounded to the nearest cent, did not fairly reflect each shareholder's interest in the fund, then pursuant to paragraph (a)(1) of the rule the fund would have to cease to price its shares at one dollar.

Record of Actions Taken to Stabilize Price

Under paragraph (a)(2)(v) of the proposed rule a money market fund using the amortized cost method must maintain a written record that documents the board's compliance with its obligation to consider and take action where mandated. The rule provides that the documentation, which should include a discussion of all instances where the board considered whether action should be taken and what actions were initiated, must be included in the minutes of the board of directors' meetings and must be preserved for six years. Such documentation must also be made available for inspection by the staff of the Commission. In addition, pursuant to paragraph (a)(2)(vi), if any action is taken pursuant to paragraph (a)(2)(ii)(B) of the rule the board of directors shall cause the fund to file quarterly, as an attachment to Form N–1Q, a statement describing with specificity the circumstances surrounding the action and the nature of action taken. This provision of the proposed rule is a slight departure from the existing orders in that it requires funds to make a filling only if some action was taken.[43] The Commission believes that the modified filing requirement, in conjunction with the board's monitoring, will provide adequate controls over the use of the amortized cost valuation method and is in accord with the purposes of new

[38] In determining whether the deviation exceeds 1/2 of 1 percent, the market-based per share net asset value must be calculated to the nearest one-hundredth of a cent on a share value of one dollar with no rounding. Therefore, where a fund has an amortized cost price of $1.00, a market-based net asset value per share of .99500 would not be considered as exceeding the 1/2 of 1 percent mark but a value of .99499 could not be rounded up and thus the deviation would be considered to exceed this benchmark.

[39] It should be noted that this requirement of the rule does not depend upon a determination that the deviation *will* result in material dilution, only that it *may*. Because the Commission deems a deviation of 1/2 of 1 percent to be a material amount, under all but highly unusual circumstances, the Commission would find that a deviation exceeding 1/2 of 1 percent *may* result in material dilution or other unfair results to shareholders. Thus, it is unlikely that a board of directors could, in conformance with the provisions of the rule, make a finding that no action was necessary when the deviation reached that level. Moreover a board may find that the possibility of material dilution exists when the deviation is less than 1/2 of 1 percent. In such an event, the board would also be obligated to take corrective action.

[40] The Commission is not proposing to codify such examples in order to avoid any implication that other actions would be inappropriate.

[41] Even without this provision of the rule, the board of directors has an obligation to discontinue a pricing method that does not fairly reflect the value of the fund's securities. As set forth in Release 9786, section 2(a)(41) requires the board of directors to value the fund's assets at fair value as determined in good faith.

[42] The net asset value must be calculated using market-based values for all instruments other than those with less than 60 days until maturity, which generally may be valued at amortized cost, unless particular circumstances dictate otherwise. *See* footnote 36, *supra*.

[43] The existing orders require a quarterly filing stating whether or not any action was taken. In order to eliminate differential treatment, the Division will not recommend that the Commission take any action against a fund if it continued to rely on its individual exemptive order but followed the N–1Q reporting requirement contained in the rule.

provisions regarding the filing of N–1Q's and the reduced paperwork burdens thereof.[44]

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the rule proposed herein will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to the release.

Text of Proposed Rule

It is proposed that Part 270 of Chapter II of Title 17 of the Code of Federal Regulations be amended by adding new § 270.2a–7, as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

§ 270.2a–7 Use of the amortized cost valuation and penny-rounding methods by certain money market funds.

(a) The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by a registered investment company (hereinafter referred to as a money market fund), notwithstanding the requirements of section 2(a)(41) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(41)) and of rule 2a–4 (17 CFR 270.2a–4) and rule 22c–1 (17 CFR 270.22c–1) thereunder, may be computed either by use of the amortized cost method of valuation or by use of the penny-rounding method of pricing; *Provided,* That:

(1) The board of directors of the money market fund (trustees in the case of a trust) determines, in good faith based upon a full consideration of all material factors, that, absent unusual circumstances, the valuation or pricing method selected will fairly reflect the value of each shareholder's interest in the money market fund and that the money market fund will continue to use such method only so long as the board of directors believes that it fairly reflects the value of each shareholder's interest; and either

(2) In the case of a money market fund using the amortized cost method of valuation:

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors (trustees) undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to stabilize the money market fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase at one dollar;

(ii) Included within the procedures to be adopted by the board of directors (trustees) shall be the following:

(A) Review by the board of directors (trustees), as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the current net asset value per share as determined by using available market quotations from the money market fund's amortized cost price per share, and maintenance of records of such review.

(B) In the event such deviation from the money market fund's amortized cost price per share exceeds ½ of 1 percent, a requirement that the board of directors (trustees) will promptly consider what action, if any, should be initiated by the board of directors (trustees), and

(C) Where the board of directors (trustees) believes the extent of any deviation from the money market fund's amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or reduce to the extent reasonably practicable such dilution or unfair results;

(iii) The money market fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; *Provided, however,* That the money market fund will not (A) purchase any instrument with a remaining maturity of greater than one year, or (B) maintain a dollar-weighted average portfolio maturity which exceeds 120 days;

(iv) The money market fund will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the board of directors (trustees) determines present minimal credit risks and which are of "high quality" as determined by any major rating service, or in the case of any instrument that is not rated, of comparable quality as determined by the board of directors (trustees);

(v) The money market fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph (a)(2)(i) above and the money market fund will record, maintain, and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the board of directors' (trustees') considerations and actions taken in connection with the discharge of its responsibilities, as set forth above, to be included in the minutes of the board of directors' (trustees') meetings. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)); and

(vi) If any action was taken pursuant to paragraph (a)(2)(ii)(C) above, the money market fund will file a statement describing with specificity the nature and circumstances of such action within 30 days after the close of each calendar quarter during which such action was taken; or

(3) In the case of a money market fund using the penny-rounding method of pricing:

(i) In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors (trustees) undertakes—as a particular responsibility within the overall duty of care owed to its shareholders—to assure to the extent reasonably practicable, taking into account current market conditions affecting the money market fund's investment objectives, that the money market fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one cent, will not deviate from one dollar;

(ii) The money market fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share; *Provided, however,* That the money market fund will not (A) purchase any instrument with a remaining maturity of more than one year, or (B) maintain a dollar-weighted

[44] *See* Securities Act Release No. 6366 (December 16, 1981), 46 FR 62246 (December 23, 1981).

average portfolio maturity which exceeds 120 days; and

(iii) The money market fund will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the board of directors (trustees) determines present minimal credit risks, and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the board of directors (trustees).

(b) *Definitions.* (1) The "amortized cost method of valuation" is the method of calculating an investment company's current net asset value whereby portfolio securities are valued by reference to the fund's acquisition cost as adjusted for amortization of premium or accumulation of discount rather than by reference to their value based on current market factors.

(2) The "penny-rounding method of pricing" is the method of computing an investment company's price per share for purposes of distributing, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one cent based on a share value of one dollar.

(3) The maturity of an instrument shall be deemed to be the period remaining until the date noted on the face of the instrument as the date on which the principal amount owed must be paid, except that:

(i) If the board of directors (trustees) has determined that whenever a new interest rate on a variable or floating rate instrument is established it will then cause the instrument to have a current market value which approximates its par value, (A) an instrument that is issued or guaranteed by the United States government or any agency thereof which has a variable rate of interest readjusted no less frequently than annually may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate; (B) an instrument which has a demand feature that entitles the holder to receive the principal amount of such instrument upon no more than seven days' notice and which has a variable rate of interest may be deemed to have a maturity equal to the longer of the period remaining until the interest rate will be readjusted or the period remaining until the principal amount owed can be recoverd through demand, *Provided* That the board of directors (trustees) determines no less frequently than quarterly that the instrument is of high quality; (C) an instrument which has a variable rate of interest may be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate, *Provided* That the period remaining until the date noted on the face of the instrument as the date on which the principal amount owed must be paid is one year or less; (D) and instrument which has a demand feature that entitles the holder to receive the principal amount of such instrument upon no more than seven days' notice and which has a floating rate of interest may be deemed to have a maturity equal to the period of time remaining until the principal amount owed can be recovered through demand, *Provided* That the floating interest rate is adjusted concurrently with any change in an identified market interest rate to which it is pegged and the board of directors (trustees) determines (*1*) that such floating rate feature will ensure that the market value of such instrument will always approximate its par value, and (*2*) no less frequently than quarterly that the instrument is of high quality; and

(ii) A repurchase agreement of portfolio instrument lending agreement may be treated as having a maturity equal to the period remaining until the agreement is to be executed.

(4) "One year" shall mean 365 days except in the case of an instrument that was originally issued as a one year instrument but had up to 375 days until maturity one year shall mean 375 days.

(Sec. 6(c) (15 U.S.C. 80a–6(c)), 22(c) (15 U.S.C. 80a–22(c) and 38(a) (15 U.S.C. 80a–37(a)) of the Act)

By the Commission.

George A. Fitzsimmons,

Secretary.

February 1, 1982.

Regulatory Flexibility Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that proposed rule 2a–7 under the Investment Company Act of 1940 [15 U.S.C. 80a–1 et seq.], set forth in Investment Company Act Release No. IC–12206, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the proposed rule provides an exemption from certain of the Investment Company Act's provisions for certain investment companies and therefore will reduce or have no effect on the costs involved in preparing and filing documents with the Commission.

Dated: January 29, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82–3150 Filed 2–4–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 290

[Docket No. RM82–13]

Collection of Cost of Service Information

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission requests comment on the use of the data filed by electric utilities under section 133 of the Public Utility Regulatory Policies Act of 1978 and whether the data reported is duplicative of other Federal and state reports. Interested parties are also invited to suggest alternatives to, or revisions of, the regulations which would carry out the purpose of section 133 in a less burdensome manner.

DATE: Comments must be filed by not later than March 31, 1982.

ADDRESS: An original and fourteen copies of all comments to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. (Reference Docket No. RM82–13.)

FOR FURTHER INFORMATION CONTACT:

Daniel G. Lewis, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 376–9227

Michael R. Postar, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8033

SUPPLEMENTARY INFORMATION:

Issued: January 29, 1982.

In the matter of collection of cost of service information Under section 133 of the Public Utility Regulatory Policies Act of 1978 (Docket No. RM82–13), notice of inquiry.

By this Notice, the Federal Energy Regulatory Commission (Commission) is soliciting information relating to its regulations (18 CFR Part 290) that implement section 133 of the Public Utility Regulatory Policies Act of 1978 (PURPA)[1]. Comments are requested on: (1) The use of the data collected and reported under those regulations; (2) whether those regulations duplicate other Federal and state reporting requirements; and (3) suggested alternatives to, or revisions of, the regulations which would carry out the

[1] 16 U.S.C. 2601–2645 (1978).

purpose of section 133 in a less burdensome manner.

I. Background

Section 133 of PURPA requires electric utilities to file cost and load data with the Commission and the states. Congress directed the commission to prescribe the methods, procedures, and format to be used by electric utilities in gathering the information described in this section. Congress intended by this section "* * * that good information with regard to costs of providing service must be readily available on a timely basis to everyone."[2]

On June 5, 1979, the Commission issued a final rule implementing section 133 of PURPA.[3] Approximately 260 electric utilities are presently required to file cost and load data under the regulations. Electric utilities with annual retail sales in excess of 1 billion kilowatt-hours, constituting nearly two-thirds of the affected electric utilities, were required to make an initial filing of the data by November, 1980, and biennially thereafter. Electric utilities with smaller annual retail sales were permitted to make their initial filing not later than June 30, 1982, coincident with the second report of the larger utilities.[4]

The cost to utilities of complying with the regulations under section 133 has been a continuing concern of the Commission and the Congress. In addition, on September 14, 1981, the GAO issued a report[5] recommending that the Commission—

> Review and, as appropriate, revise its regulations for implementing section 133 in order to reduce the cost and burden on utilities. In doing so, FERC should, before the next filings are due,
>
> —Review the extent to which data collected under section 133 duplicates other data submitted to the Federal Government,
>
> —Assess whether the number of utilities required to comply with section 133 should be reduced in terms of size, number of utilities reporting per state, etc., and
>
> —Determine whether the data is actually being used by the parties for which it was intended and whether the benefits received from use of the data outweigh the costs.

The purpose of this Notice of Inquiry is to obtain information to aid the Commission in its reexamination of the costs and benefits of its regulations under section 133.

II. Subjects of Inquiry

This Notice of Inquiry is designed to ascertain whether the information contained in the section 133 reports have been employed to further the purposes of PURPA and or have otherwise been used in the regulation of electric utilities. The Commission also seeks comment on whether Part 290 of the Commission's regulations requires utilities to file duplicative information and suggested alternatives to, or revisions of, Part 290 which would carry out the statutory purpose in a less burdensome way. Comment should address the financial impact of the reporting requirements under Part 290. Comments on the following subjects is specifically requested.

A. Use of Reported Information

1. The Commission solicits information on how the information contained in the following sections of the Commission's contained in the following sections of the commission's regulations has been employed in regulatory proceedings: (a) Accounting costs, §§ 290.201–205, (b) marginal costs, §§ 290.301–308, (c) load data, §§ 290.401–406; (d) calculated costs, §§ 290.501–502.

2. Specifically, how useful has this data been in the implementation of PURPA sections 111 and 210 or other sections of PURPA, in retail or wholesale rate cases, and in "Need for Power" proceedings, *i.e.*, applications for new generation facilities?

3. Are marginal costs or load data necessary to assess the cost-effectiveness of investment and pricing actions designed to affect future load characteristics?

4. Should the Commission independently ascertain the accuracy of information submitted under Part 290 of the Commission rules, or should states verify the data at the time the data is used?

5. Are there data requirements under Part 290 which have no practical applications to particular utilities because of special operating or geographic environments?

6. What criteria should the Commission employ in determining whether specific reporting requirements of Part 290 are inappropriate for a particular utility, class of utilities or utilities within a particular state or region?

B. Cost of Compliance

Utilities are requested to describe the costs of collecting, processing and analyzing the load data, as follows: initial investment in hardware (*e.g.*, purchase and installation of metering equipment or computers which are used mainly for section 133 compliance work), and variable costs of continued compliance (on a calendar year basis, if possible).

C. Duplicative Reporting Requirements

The Commission solicits information on three aspects of information collected under section 133:

1. To what extent is the section 133 information duplicative of other Federal or state reporting requirements?

2. What are the added costs of providing the information in section 133 which duplicates information elsewhere available, excluding the cost of photocopying? [6]

3. How might state authorities or interested parties benefit from requiring a utility to collect data which might be duplicative?

D. Alternatives to the Existing Requirements

The Commission also seeks information on practical alternatives to existing regulations.

What provisions of Part 290, including the threshold for applicability of the reporting requirements or the frequency of scheduled filings, are not likely to carry out the purpose of section 133? What revisions to these provisions would be appropriate in light of the statutory purpose of section 133?

III. Comment Procedure

The Commission invites all interested persons to submit comments, views and analyses on the questions presented in this Notice, including the practical effect that alternatives to the current requirements might have on both the interests of the commenter and on the implementation of PURPA.

An original and fourteen copies of all comments must be submitted not later than March 31, 1982. Comments must be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should indicate the name, title, mailing address and telephone number of the commenter. All

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[2] Joint Explanatory Statement of the Committee of Conference, House Conference Report No. 95–1750, 95th Cong. 2d Sess. 86 (1978).

[3] Final Regulations, "Collection of Cost of Service Information Under Section 133 of the Public Utility Regulatory Policies Act of 1978 "(Docket No. RM79–6), issued June 5, 1979, 44 FR 33847 (June 13, 1979), *codified at* 18 CFR Part 290. The rules were revised: Order No. 48, (Docket No. RM79–6), issued September 28, 1979, 44 FR 58687 (October 11, 1979). Order No. 48A, (Docket No. RM79–6), issued January 4, 1980, 45 FR 2023 (January 10, 1980); Order No. 48–B, (Docket No. RM79–6), issued August 7, 1980, 45 FR 54033 (August 14, 1980).

[4] 18 CFR 290.102(d), 44 FR 58687, October 11, 1979.

[5] "Burdensome and Unnecessary Reporting Requirements of the Public Utility Regulatory Policies Act Need to be Changed" at 20, September 14, 1981, EMD–81–105.

[6] The Commission currently helps avert such costs by accepting copies of portions of Form No. 1, in lieu of the section 133 requirements, for the same or similar data.

documents submitted must reference Docket No. RM82–13.

All comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, address above, during regular business hours.

(Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 142; and the Public Utility Regulatory Policies Act of 1978, 16 U.S.C 2601–2645 (1978))

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–3013 Filed 2–4–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 369, 370, 371, 372, 373, 374, 375, 378, and 379

Vocational Rehabilitation Service Projects

AGENCY: Department of Education.

ACTION: Notice of availability of draft notice of proposed rulemaking.

SUMMARY: Notice is given that a draft of the proposed regulations governing the Vocational Rehabilitation Service Projects under the Rehabilitation Act of 1973, is now available to the public. The regulations were published as final regulations with invitation to comment in the **Federal Register** on January 19, 1981 (46 FR 5416–5435) and became effective on March 30, 1981.

ADDRESS: Copies of this draft Notice of Proposed Rulemaking may be obtained by writing to: Mr. Charles Smolkin, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW, Room 3618, Switzer Office Building, Washington, D.C. 20202–2305.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Smolkin, Telephone: (202) 472–3796.

SUPPLEMENTARY INFORMATION: On March 27, 1981 (46 FR 19000–19002), the Secretary published a notice of his intent to review these final regulations for regulatory burden reduction and opportunities for deregulation.

On October 15, 1981 (46 FR 50809–50810), the Secretary published a notice stating that the regulations for the Vocational Rehabilitation Service Projects would be amended.

A draft Notice of Proposed Rulemaking is now available. The draft notice has not been officially adopted by the Department of Education and has no legal effect. The purpose of this announcement is to provide notice of the availability of the draft Notice of Proposed Rulemaking to all interested parties. It is not to solicit additional public comment on the regulations.

(Catalog of Federal Domestic Assistance No. 84.129, Vocational Rehabilitation Service Projects)

Dated: February 1, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82–3132 Filed 2–4–82; 8:45 am]

BILLING CODE 4000–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–9–FRL–2033–3]

Approval and Promulgation of Implementation Plans; State of Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: On October 30, 1980 the State of Arizona submitted a request to extend the carbon monoxide (CO) attainment date for the Maricopa County Urban Plannng Area. EPA is proposing to approve this revision to the Arizona State Implementation Plan (SIP).

DATE: Comments must be received by April 6, 1982.

ADDRESSES: Written comments should be addressed to the EPA Region 9 Air Programs Branch (address below). Copies of the revision are available for public inspection during normal business hours at the EPA Region 9 office and the following locations:

Public Information Reference Unit, Environmental Protection Agency, Library, 401 "M" Street, S.W., Room 2404, Washington, D.C. 20460.

Arizona Department of Health Services, 1740 West Adams Street, Phoenix, AZ 85007

Maricopa Association of Governments, 1820 West Washington Street, Phoenix, AZ 85007

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, State Implementation Plan Section, Air Programs Branch, Air & Hazardous Materials Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974–8222

SUPPLEMENTARY INFORMATION: On October 30, 1980 the Governor's designee for the State of Arizona submitted a request to extend the CO attainment date for the Maricopa County Planning Area.

On September 14, 1981 EPA announced the availability of this revision and took final action to approve it. In that notice EPA advised the public that it was deferring the effective date of its approval for 60 days (until November 13, 1981). EPA announced that, if, within 30 days of the publication of the approval notice, EPA received notice that someone wished to submit adverse or critical comments, EPA would withdraw the approval and propose the action.

In the same **Federal Register** notice, EPA also approved a request to extend the CO attainment date for the Truckee Meadows Nonattainment Area as a revision to the Nevada SIP.

EPA also published a general notice announcing this special procedure on September 4, 1981 (46 FR 44476).

EPA has received notice that someone wishes to submit an adverse or critical comment on the Arizona SIP revision. Therefore, in accordance with the procedure described above, EPA is today proposing to approve the CO extension request submitted by the State of Arizona. A detailed description of the revision and EPA's rationale for approval are found at 46 FR 45605 (September 14, 1981). Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within sixty days of the publication of this notice.

EPA did not receive notice from the public regarding the request to submit an adverse or critical comment on the approval of the revision to the Nevada SIP. Therefore, approval of the Nevada CO extension is effective on November 13, 1981.

Elsewhere in today's **Federal Register**, EPA is taking final action to withdraw its September 14, 1981 approval of the revision to the Arizona SIP for CO.

Pursuant to the provisions of 5 U.S.C. 605(b) the Administrator has certified that SIP approvals under sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709, January 27, 1981). This action, if approved, will constitute a SIP approval within the meaning of the January 27 certification. It imposes no new regulatory requirements.

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

(Secs. 10, 129, 172, and 301(a), Clean Air Act as amended (42 U.S.C. 7410, 7429, 7502, and 7601(a)))

Dated: December 21, 1981.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 82-3043 Filed 2-4-82; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 81

[A-5-FRL 2012-7]

Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations: Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking changes the air quality attainment designation relative to the ozone National Ambient Air Quality Standard (NAAQS) for the Ft. Wayne Metropolitan Area, which includes Allen County in Indiana.

On October 5, 1978 (43 FR 45993), EPA designated Allen County nonattainment for the primary National Ambient Air Quality Standards (NAAQS) for ozone. EPA is proposing to designate Allen County attainment/unclassifiable for ozone. The purpose of this notice is to discuss EPA's review of the available monitoring data, to propose to change the attainment status of the above mentioned county, and EPA is today inviting public comments on this action.

DATES: Comments must be received on or before March 8, 1982.

ADDRESSES: Copies of the supporting air quality data are available at the following addresses:

Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Air Pollution Control Division, Indiana Board of Health, 1330 West Michigan Street, Indianapolis, Indiana 46206.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Anne Ernstein, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION: On October 5, 1978, pursuant to section 107 of the Clean Air Act (Act), EPA designated the following area Allen County, Indiana as nonattainment for the ozone National Ambient Air Quality Standards (NAAQS).

EPA's present policy on redesignation for ozone requires that three years of data when available be considered for each monitoring site. If less than three years of data are available, however, such data can be considered for purposes of redesignation. At least one full year of data, however, is necessary to accurately classify an area.

The "Guideline for the Interpretation of the Ozone Air Quality Standards" (EPA 450/4-79-003) and the December 7, 1979, Richard G. Rhoads memorandum to the Directors of the Air and Hazardous Materials Division, Regions I-X entitled "Criteria of Ozone Redesignations Under Section 107" further elaborate and clarify data requirements when designating an area for the ozone NAAQS and are available for inspection at the EPA offices previously mentioned.

Based on recent monitoring data, EPA today is proposing to redesignate Allen County, Indiana from nonattainment to attainment/unclassifiable for ozone.

To support this redesignation, on October 17, 1980, the State of Indiana submitted all available ozone ambient monitoring data for Allen County collected between 1978 and 1980. There are a total of four monitors in the area. The Fort Wayne Police Station's monitor was operated for the period from 1978 thru 1979. The maximum hourly ozone concentration observed at this site was 0.120 ppm. The second monitor, located at 2022 North Beacon, was operated at this site for a partial year during 1979. The highest observed ozone concentration was 0.113 ppm.

The third monitoring site, Woodland High School, had a single observed exceedance during 1980. The maximum hourly ozone concentration at this site was 0.130 ppm.

The fourth monitoring site, Fort Wayne Children's Home, had 2 observed exceedances of the ozone standard during its single year of operation in 1980. The maximum hourly ozone concentration was 0.131 ppm and the second highest concentration was 0.126 ppm. Thus the Fort Wayne Children's Home is the critial monitor, since it is the only monitor recording more than one concentration above the standard.

EPA is today proposing to redesignate Allen County as attainment/unclassifiable for ozone. EPA bases its proposed redesignations on two factors. First, although the data at the critical monitor show exceedances above the ozone standard, the exceedance is extremely marginal. As discussed in detail in the technical support document for this revision, the critical exceedance is only 0.002 ppm over the excursion cut-off level.

Second, section 107(d)(1)(B) authorizes EPA to base designations on projected air quality. (PPG Industries, Inc. v Costle, 630 F2d 462, 1980). EPA believes that the requirements of the Federal Motor Vehicle Control Program alone will be adequate to achieve attainment in Allen County.

For the above reasons, the EPA is redesignating Allen County attainment/unclassifiable. We will continue to review monitoring data submitted for this area and if a trend toward greater exceedances is observed, EPA will propose to redesignate the area as nonattainment.

Pursuant to the provisions of 5 U.S.C. Section 605(b) the Administrator has certified on January 27, 1981 (46 FR 8709) that the attached rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This action imposes no regulatory requirements but only changes area air quality designations. Any regulatory requirements which may become necessary as a result of this action will be dealt with in a separate action.

These regulations were exempted from review by the Office of Management and Budget (OMB) under section 3 of Executive Order 12291. Any regulatory requirement which may occur as a result of this action will be dealt with in a separate notice.

This Notice of Proposed Rulemaking is issued under the authority of Section 107 of the Clean Air Act, as amended.

Dated: December 14, 1981.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 82-3003 Filed 2-4-82; 8:45 am]

BILLING CODE 6560-38-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1321

Grants for State and Community Programs on Aging; Deletion of Program Development and Coordination Activities as Allowable Social Services Costs

AGENCY: Office of Human Development Services (OHDS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The regulations implementing the Older Americans Act provide that the cost of program development and coordination activities are allowable social service costs. The proposed rule would change this provision so that the cost of program development and coordination activities would only be allowable as costs of area agency administration. This action is necessitated by reductions in funding resulting from projected budget decreases, as well as the effects of inflation. It is intended to ensure that this reduction is absorbed through a reduction of administrative costs rather than a reduction in the funding of direct social services to the elderly.

DATE: Comments must be received on or before March 8, 1982.

ADDRESSES: Address comments in writing to Commissioner on Aging, Administration on Aging, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201. Agencies and organizations are requested to submit comments in duplicate. Beginning two weeks from today, the public may review the comments submitted in response to this notice in Room 4639, HHS North Building, 330 Independence Avenue, SW., Washington, D.C. 20201, between the hours of 9 a.m. and 4 p.m. Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Anita Shalit, (202) 472–3057.

SUPPLEMENTARY INFORMATION: The Older Americans Act (42 U.S.C. 3001 et seq.) was enacted in 1965. It has been amended nine times. The most recent amendments were enacted on December 29, 1981. New regulations, as needed, will be developed to implement this new legislation. The new amendments do not have an impact on the program revisions addressed in this Notice of Proposed Rulemaking. This proposed regulation is being isssued now in response to reductions in the budget for FY 1982.

Title III of the Older Americans Act provides formula grants to States for the purpose of providing social and nutrition services to the elderly. Emphasis is given to those elderly persons with greatest social or economic need. Under the Title III program, Part B concerns provision of social services to the elderly and Part C addresses nutrition services.

It is anticipated that the FY 1982 budget for Part B social services will be approximately $10,604,000 less than in FY 1981. In planning for this budget reduction, the Administration on Aging attempted to identify a strategy which would have the least harmful effect on direct services to the elderly. Available data indicate that in FY 1981 States expended approximately $49 million for program development and coordination activities as social services costs. These activities involve staff functions such as liaison with other agencies and organizations concerning needs of the elderly or services development. The Administration on Aging continues to view these functions as important activities in behalf of the elderly. However, by proposing the elimination of program development and coordination activities as allowable costs of social services, the Administration on Aging intends to assure that the budget reductions are absorbed in area agency administration rather than direct social services to the elderly.

The Older Americans Act (42 U.S.C. 3024(d)(1)(A)) and the Title III regulations at § 1321.199(b) permit States to use up to 8.5 percent of the combined Part B social services allotment and the Part C nutrition services allotment for paying the costs of administering area plans. The remainder is used for providing direct social and nutrition services for the elderly. Currently, States have the option of funding program development and coordination activities as social services costs at a Federal/State matching rate of 85/15, and as costs of administering area plans at a Federal/State matching rate of 75/25. (The Title III regulations have not provided for funding program development and coordination as allowable nutrition services costs.) Since program development and coordination continue to be vital functions of an area agency, this proposed regulation would allow the continued funding of program development and coordination, but only as a cost of administering area plans, and no longer as social services costs.

States currently expend approximately 6 percent, rather than 8.5 percent, of their social and nutrition services allotment for administering area plans. States now spending less than the maximum allowed for adminstering area plans may choose to increase these expenditures to the 8.5 percent level. We anticipate that this will help to offset some of the decreased funding of administrative activities that may result from the elimination of program development and coordination as allowable social services costs.

The proposed effective date of this regulation is April 1, 1982. This time frame provides for a 30 day public comment period. We also believe that an effective date of April 1, 1982 will facilitate achievement of the required budget savings for FY 1982 since States spend the bulk of their funds in the last half of the fiscal year.

Changes in the Regulations

(1) 45 CFR 1321.75 requires that each area plan provide for development of a comprehensive and coordinated service delivery system for social and nutrition services needed by elderly persons in the planning and service area. Section 1321.75(b) lists the service components of a comprehensive and coordinated service delivery system including (a) access services, (b) community services, (c) in home services, and (d) services to residents of care providing facilities. We propose to delete program development and coordination as an element of community services in § 1321.75(b)(2).

(2) 45 CFR 1321.103 prohibits State and area agencies on aging from directly providing services to elderly persons except where necessary to assure an adequate supply of the services. Section 1321.103(c)(2) enumerates the advocacy and service delivery activities which area agencies may directly provide as social services. We propose to delete program development and coordination from among this list of activities.

Impact Analysis

Executive Order 12291

E.O. 12291 requires that a regulatory impact analysis be prepared for major rules—defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. The Department concludes that these proposed regulations are not major rules within the meaning of the Executive Order because they do not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980.

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal Government to anticipate and reduce the impact of rules and paperwork requirements on small businessess. For each proposed rule with a "significant economic impact on a substantial number of small entities" an initial analysis must be prepared describing the proposed rule's impact on small entities. Consistent with the provisions of the Regulatory Flexibility Act, I hereby certify that this proposed rule will not have significant economic impact on a substantial number of small entities.

Recordkeeping and Reporting Requirements

Recordkeeping and reporting requirements will not increase as a result of the proposed regulation. These requirements may be decreased somewhat since State and area agencies on aging will account for program development and coordination only as area agency administrative costs.

(Title III, Older Americans Act (42 U.S.C. 3021 through 3030g). (Catalog of Federal Domestic Assistance Program Numbers: 13.633 Special Programs for Aging, Title III Parts A and B—Grants on Aging; 13.635 Special Programs for Aging, Title III Part C—Nutrition Services))

Dated: December 4, 1981.

Lennie-Marie P. Tolliver,

Commissioner on Aging.

Approved: December 4, 1981.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

Approved: January 20, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

Accordingly, it is proposed to amend 45 CFR Chapter XIII, Subchapter C as follows:

PART 1321—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

1. 45 CFR 1321.75(b)(2) is revised as follows:

§ 1321.75 Comprehensive and coordinated service delivery system.

* * * * *

(b) Service components of a comprehensive and coordinated service delivery system that may be funded under this part are—

* * * * *

(2) Services provided in the community, such as congregate meals, continuing education, health and health screening, legal services, advocacy, information and referral, individual needs assessment and service management, casework counseling and assistance (concerning taxes, financial problems, welfare, the use of facilities and services, preretirement or second career), day care, protective services, health screening, services designed for the unique needs of the disabled, emergency services, including disaster relief services, residential repair and renovation, physical fitness, and recreation services, services in helping to obtain adequate housing. Alteration, renovation, acquisition and, where permitted according to the provisions of § 1321.131, construction of facilities to be used as multipurpose senior centers, are community services for purposes of this part;

* * * * *

2. 45 CFR 1321.103(c)(2) is revised to read as follows:

§ 1321.103 Direct provision of services by State and area agencies.

* * * * *

(c) *Test for adequate supply for services related to area agency statutory functions.*

* * * * *

(2) Services directly related to the statutory advocacy and service delivery functions of the area agency are those which must be performed in a consistent manner throughout the agency's jurisdiction. These services are: information and referral, outreach, advocacy, individual needs assessment and case management.

* * * * *

[FR Doc. 82-3041 Filed 2-4-82; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Docket No. 81-786; RM-3126; RM-3832]

Auditory Training Devices; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: The filing dates for comments and reply comments regarding the Notice of Proposed Rulemaking in General Docket 81-786, released December 14, 1981, concerning the use of auditory training devices are extended. Since notice of the proposed rules did not appear in the **Federal Register** until January 5, 1982 (47 FR 216) the original date of January 15, 1982 for filing comments was found not adequate to allow for meaningful comments.

DATES: The comment and reply comment dates have been extended to February 26, 1982 and March 20, 1982, respectively.

ADDRESS: Federal Communications Commission, Washington, D.C.20554.

FOR FURTHER INFORMATION CONTACT: Ronald Netro, (202) 653-8100, Office of Science & Technology 2025 M Street NW, Room 7002, Washington, D.C.20554.

SUPPLEMENTARY INFORMATION:

Adopted: January 20, 1982.

Released: January 21, 1982.

By delegated authority § 0.241(d).

1. On November 12, 1981, the Commission adopted a notice of proposed rulemaking regarding the above-captioned matter. Filing dates for comments and reply comments were specified as January 15, 1982 and February 1, 1982, respectively. Two requests for extension of these filing dates have been received.[1]

2. Although the Notice was released by the Commission on December 14, 1981, we note that notice of the proposed rules was not published in the **Federal Register** until January 5, 1982. In view of this delay and our desire to give adequate time for filing comments in this proceeding we find that sufficient cause exists to extend the filing dates.

3. Accordingly, it is ordered, pursuant to § 0.241(d) of the Commission's rules and regulations, that the dates for filing comments and reply comments in the subject proceeding are February 26, 1982 and March 20, 1982, respectively.

Robert S. Powers,

Deputy Chief Scientist.

[FR Doc. 82-3044 Filed 2-4-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

South Atlantic Fishery Management Council; Public Hearing

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

ACTION: Notice of public hearing.

SUMMARY: The South Atlantic Fishery Management Council will hold a public hearing to allow for public input on a portion of the Draft Environmental Impact Statement/Fishery Management Plan for Coral and Coral Reefs.

DATES: Written comments on the full coral and coral reefs plan including this portion will be accepted until March 1, 1982. Individuals or organizations wishing to comment may do so at a public hearing to be held on February 25, 1982.

ADDRESSES: Send comments to: Chairman, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407; or Chairman Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West

[1] Terrad Enterprises, Inc. and the American Speech-Language-Hearing Association.

Kennedy Boulevard, Tampa, Florida 33609.

Hearing location: The hearing will be held at the Holiday Inn Surfside, 2700 N. Atlantic Avenue, Daytona Beach, Florida. The hearing will start at 7:30 p.m. and adjourn at 10:00 p.m. The hearing will be tape recorded and the tapes will be filed as an official transcript of the proceedings. A written summary of the hearing will be prepared.

FOR FURTHER INFORMATION CONTACT: David H. G. Gould, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407 (803) 571–4366.

SUPPLEMENTARY INFORMATION: The hearing will deal with a proposal to include coral reefs composed of *Oculina sp.* located at the edge of the Continental Shelf off central eastern Florida as a Habitat Area of Concern (HAPC) in the Fishery Management Plan for Coral and Coral Reefs (FMP). The geographic area of this proposal is 27°30′N to 28°35′N and 76°56′W to 80°02′W; an area 65 x 6n mi. or 390 mi ^{2}. In addition, the prohibition of the use of bottom trawls, fish traps, pots, and bottom longlines in this HAPC is under consideration.

Only this portion of the FMP is under consideration at this particular hearing. hearings on this particular FMP which did not include this proposal were held during January 1982.

Dated: February 1, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-3079 Filed 2-4-82; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 47, No. 25
Friday, February 5, 1982

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

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

1981-Crop Upland Cotton: Determinations Regarding the Proclamation of the National Program Acreage (NPA) and Allocation Factor

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of Determination of National Program Acreage and Program Allocation Factor for 1981 Crop of Upland Cotton.

SUMMARY: The purpose of this notice is to revise the national program acreage and determine the allocation factor for the 1981 crop of upland cotton. The national program acreage was originally announced as 14,021,538 acres on December 15, 1980 (45 FR 83643). The revised national program acreage is 12,837,577 acres. Based on the revised national program acreage, the allocation factor is 93 percent. These actions are taken in accordance with Sections 103(f)(7) and 103(f)(8) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: January 29, 1982.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Acting Deputy Director, Analysis Division, USDA-ASCS, P.O. Box 2415, Washington D.C. 20013, (202) 447-7954. This Notice of Determination serves as the impact statement.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as "designated nonmajor." It has been determined that these provisions will not result in: (1) Major increases in costs or prices for consumers, individual industries, Federal, State, or local Government agencies or geographic regions; or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based industries to compete with foreign-based enterprises in domestic or foreign markets. In addition, it has been detemined that while the provisions of this notice will not have an annual impact on the economy of $100 million or more, they could affect budget outlays substantially.

The title and number of the federal assistance program that this notice applies to are: Title—Cotton Production Stabilization, number—10.052, as found in the Catalog of Federal Domestic Assistance.

This action will not have a significant impact specifically on area and community development. Therefore, review as established under OMB Circular A-95 was not used to assure that units of local government are informed of this action.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that a notice of proposed rulemaking be published with respect to the subject matter of these determinations in accordance with 5 U.S.C. 553 or any other provision of law.

Section 103(f)(7) of the Agricultural Act of 1949, as amended, requires that the Secretary of Agriculture establish a national program acreage for the 1978 through 1981 crops of upland cotton. The national program acreage is the number of harvested acres the Secretary determine will be needed to product the quantity (less imports) that the Secretary estimates will be utilized domestically and for export during the marketing year for such crop. The nations program acreage is based on the estimated weighted national average of farm payment yields and may be adjusted as the Secretary determines necessary to provide for an adequate but not excessive total supply of upland cotton for the marketing year for the crop for which such national program acreage is established. Section 103(f)(7) further provides that the Secretary may revise the national program acreage for the purpose of determining the allocation factor if he determines it necessary based on the latest available information. If the national program acreage is revised, the Secretry shall announce the revised national program acreage as soon as the revision has been made.

Section 103(f)(8) of the Agricultural Act of 1949, as amended, requires that the Secretary determine a program allocation factor for each crop of upland cotton. The allocation factor (not to exceed 100 percent) is determined by dividing the national program acreage by the number of acres which the Secretary estimates will be harvested for such crop.

A national program acreage of 14,021,538 acres was announced for the 1981 crop of upland cotton on December 15, 1980 (45 FR 83643). It is necessary to revise the national program acreage for the purpose of determining the allocation factor because estimates of domestic use, exports, carryover stocks, and the weighted national average of farm payment yields have changed since that time. Because the determinations of the national program acreage and allocation factor impact upon the calculations of deficiency payments for the 1981 crop of upland cotton, it is essential that this notice be made effective as soon as possible. Therefore, it is hereby determined that compliance with any further rulemaking requirements of 5 U.S.C. 553 is impracticable and contrary to the public interest. Thus, this notice of determination shall become effective on January 29, 1981.

Accordingly, the revised national program acreage and the allocation factor for the 1981 crop of upland cotton are determined to be the following:

Determinations

1. *Revised national program acreage for the 1981 crop of upland cotton.* The national program acreage for the 1981 crop of upland cotton is hereby determined to be 12,878,391 acres. This determination is based on the following data:

(a) Estimated domestic use, 1981-82 (bales)	5,700,000
(b) Estimated exports, 1981-82 (bales)	7,000,000
(c) Minus estimated imports, 1981-82 (bales)	10,000
(d) Plus adjustment to increase carryover stocks (bales) [1]	1,886,000
(e) Subtotal (bales)	14,576,000
(f) Times pounds per bale	480
(g) Equals total pounds	6,996,480,000
(h) Divided by weighted national average of farm program yield (pounds per acre)	545
(i) Equals national program acreage	12,837,577

[1] The desirable level of ending stocks is 4,500,000 bales. Beginning stocks were 2,614,000 bales. Thus, the stock adjustment is 1,886,000 bales.

2. *Program allocation factor for the 1981 crop of upland cotton.* The program allocation factor for the 1981 crop of upland cotton is hereby determined to be 93 percent. This determination is based on the following data:

(a) National program acreage	12,837,577
(b) Divided by the estimated harvested acreage	13,761,800
(c) Equals program allocation factor (percent)	93

(Secs. 103 (f) (7) and (8), 91 Stat. 030 (7 U.S.C. 1444))

Signed at Washington, D.C., on January 28, 1982.

John R. Block,

Secretary.

[FR Doc. 82-2805 Filed 1-29-82; 4:19 pm]

BILLING CODE 3410-05-M

Forest Service

Adam's Rib Recreation Area; White River National Forest, Eagle County, Colorado; Revision of Notice of Intent To Prepare Environmental Impact Statement

A Draft Environmental Impact Statement (DEIS) for the proposed Adam's Rib Recreation Area was distributed to the public and filed with the Environmental Protection Agency on August 5, 1981.

The Notice of Intent published in the **Federal Register** in November 1980 gave the schedule for publication of the Final Environmental Impact Statement as October 1981. The revised schedule for publication of the Final Environmental Impact statement is May 1982.

Questions about the Environmental Impact Statement should be directed to Richard E. Woodrow, Forest Supervisor, White River National Forest, telephone, 303-945-2521.

Richard E. Woodrow,

Forest Supervisor.

January 26, 1982.

[FR Doc. 82-2999 filed 2-4-82; 8:45 am]

BILLING CODE 3410-11-M

Wayne National Forest Land and Resource Management Plan; State of Ohio; Intent To Prepare Environmental Impact Statement

Pursuant to the National Environmental Policy Act of 1969 the Forest Service, Department of Agriculture will prepare an Environmental Impact Statement on the proposed Land and Resource Management Plan for the Wayne National Forest in Ohio.

The plan is being prepared in accordance with requirements of the Secretary of Agriculture's regulations developed pursuant to the National Forest Management Act of 1976. It will propose management direction for the natural and human resources within the proclamation boundaries of the Wayne National Forest.

The planning process will begin with the identification of public issues, management concerns, resource use, and development opportunities. Public participation has been an integral part of the planning process. Response forms, meetings, and other public involvement tools were used to identify and verify issues early in the planning process. Major new issues will be considered as they are identified during the planning process.

Planning criteria will be developed and data will be collected and analyzed to determine how the identified issues and concerns can best be resolved. An assessment of the capability of the land resource outputs and the determination of the public's future demands for these outputs will be made. Methods for resolving the identified public issues will be developed from this information and will be used to formulate alternatives.

Alternatives will display a range of resource outputs at several expenditure levels. Each alternative will represent a cost-effective combination of management practices which can best meet the objectives of the alternative. In addition, each identified major public issue will be addressed; each alternative will specify methods to maintain or enhance renewable resources; and a no-change alternative will be included.

A preferred alternative will be selected by ranking the alternatives according to their physical, biological, social, and economic effects. It will include the best combination of resource uses on the Forest and will also provide for a continuous monitoring and evaluation process.

A Draft Environmental Impact Statement (DEIS) and Draft Plan will be released around March of 1983. The Final Environmental Impact Statement (FEIS) and Land and Resource Management Plan will be released approximately seven months later.

Steve Yurich, Regional Forester, Eastern Region, is responsible for approval of the Forest plan. Harold Godlevski, Forest Supervisor of the Wayne National Forest, is the responsible official in charge of preparation and implementation of the plan. Further information about the planning process can be obtained by calling Robert K. Ballantyne, Forest Planner on the Wayne National Forest, at 812 275-5987. Written comments on this Notice of Intent should be directed to: Forest Supervisor, Wayne-Hoosier National Forests, 1615 J Street, Bedford, Indiana 47421.

Dated: January 27, 1982.

Jack L. Craven,

Acting Director of Planning, Programming and Budgeting.

[FR DOc. 82-3014 Filed 2-4-82; 8:45 am]

BILLING CODE 3410-11-M

Fremont National Forest Grazing Advisory Board; Meeting

The Fremont National Forest Grazing Advisory Board will meet at 10:00 A.M. On Friday, March 5, 1982 at the Forest Supervisor's Office, 34 North D Street, Lakeview, Oregon 97630. The purpose of this meeting is:

1. Discuss use of range betterment funds.

2. Review range allotment management planning.

The meeting will be opened to the public. Persons who wish to attend should notify Ralph B. Roberts, 34 North D Street, Lakeview, Oregon 97630, phone 947-2151. Written statements may be filed with the Board before or after the meeting.

The committee has established the following rules for public participation:

1. Must have pre-notice and placed on agenda.

2. Time limit will be announced at meeting.

3. May be oral or written.

4. General Public.

a. Open input on agenda items permitted.

b. May present topics or concerns if prearranged.

Dated: January 20, 1982.

John W. Chambers,

Forest Supervisor.

[FR Doc. 82-3000 Filed 2-4-82; 8:45 am]

BILLING CODE 3410-11-M

Rural Electrification Administration

Dairyland Power Cooperative; Environmental Impact Statement; Finding of No Significant Impact

Notice is hereby given that the Rural Electrification Administration (REA) has made a Finding of No Significant Impact (FONSI) in connection with proposed financing assistance by REA to Dairyland Power Cooperative (Dairyland) of La Crosse, Wisconsin. Consequently, no Environmental Impact Statement will be prepared.

Dairyland proposed to convert approximately 47.6 km (29.5 mi) of 34.5 kilovolt (kV) transmission line to 69 kV

and rebuild the existing Canton and Spring Grove 34.5 kV substations to 69 kV operation on different sites. The entire project will be located in Houston and Fillmore Counties, Minnesota, extending between Caledonia and Harmony. REA has reviewed a Borrower's Environmental Report (BER) prepared by Dairyland and determined that it represents an accurate assessment of the environmental impacts of the proposed project. Based upon the BER and information from other sources, REA prepared an Environmental Assessment (EA) concerning the proposed project and has concluded that the project will not represent a major Federal action significantly affecting the quality of the human environment.

REA has determined that the proposed project will have no effect on wetlands, threatened and endangered species, or known historical and archaeological sites, will have no adverse effect on floodplains and will have a negligible effect on important farmlands.

REA has determined that transmission structures will be located within the 100-year floodplain of five creeks or streams. However, there are no practicable alternatives to siting structures within these floodplains. More detailed information concerning the effects of the proposed project on floodplains and other environmental parameters can be found in REA's FONSI and EA, and Dairyland's BER.

The alternatives evaluated by REA included no action, construction of a new transmission line that would follow a route separate from the existing 34.5 kV transmission line, and converting the Canton and Spring Grove Substations at the existing locations. After evaluating these alternatives, REA has determined that construction of the project, as proposed, represents an acceptable alternative when environmental, economic and technical factors are balanced.

Copies of the FONSI, EA and BER may be reviewed at REA in the office of the Director, Power Supply Division, Room 0230, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 382–1400 or FTS 382–1400, and at the office of Dairyland Power Cooperative, P.O. Box 855, La Crosse, Wisconsin 54601, telephone: (608) 788–4000. A limited number of copies of these documents are available upon request and can be obtained from REA, office of the Director, Power Supply Division at the address given above.

This Program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 27th day of January 1982.

Harold V. Hunter,

Administrator.

[FR Doc. 82–2829 Filed 2–4–82; 8:45 am]

BILLING CODE 3410–15–M

Soyland Power Cooperative, Inc.; Draft Environmental Impact Statement

The Rural Electrification Administration (REA) has prepared a Draft Environmental Impact Statement (DEIS) in connection with potential financing assistance to Soyland Power Cooperative, Inc., (Soyland) P.O. Box A1606, Decatur, Illinois 62525, for construction of a 450 MW coal-fired generating facility, 138 kV and 345 kV transmission lines and related facilities.

The alternatives considered in the DEIS are no action, purchasing additional power from existing sources, alternative energy sources, energy conservation and load management, alternative transmission line corridors, and alternative construction methods.

The preferred alternative is the construction of a coal-fired generating facility to be located on the west bluffs of the Illinois River in Pike County, south of Florence, Illinois. The project consists of a 450 MW (net) coal-fired generating unit scheduled for operation in summer of 1987 and ancillary facilities. The proposed electric transmission associated with this proposed plant involves two 345 kV lines and one 138 kV line. One of the 345 kV lines and the 138 kV line would be constructed on a double circuit tower line 16.1 km (10 mi) east from the Pike County Site to an existing substation in the vicinity of Winchester, Illinois, where the 138 kV line will terminate. The 345 kV line will continue east for another 72.4 km (45 mi) and terminate at an existing substation at Pawnee, Illinois. The second 345 kV line will be constructed 25.7 km (16 mi) north from the Pike County Plant to a proposed substation in the vicinity of Chambersburg, then west for 61.1 km (38 mi) to a proposed substation in the area southeast of Quincy, Illinois, and then 17.7 km (11 mi) southwest to terminate at an existing substation at Palmyra, Missouri.

Transmission line structures may be constructed in the floodplains of the Mississippi and Illinois Rivers. REA has tentatively concluded that there is no practicable alternative to crossing the floodplain. Further information concerning this matter can be found in the DEIS.

Copies of the DEIS have been sent to various Federal, State and local agencies as outlined in the Council on Environmental Quality regulations. Limited supplies of the DEIS are available upon request to: Mr. Frank W. Bennett, Director, Power Supply Division, Rural Electrification Administration, 14th St., and Independence Ave., S.W., Washington, D.C. 20250.

The DEIS may also be examined during regular business hours at the following locations and at local libraries in the project area.

Rural Electrification Administration, USDA, 14th St. and Independence Ave., S.W. Room 0230, Washington, D.C.

Soyland Power Cooperative, 675 Imboden Drive, Decatur, Illinois

Persons, organizations, and agencies wishing to comment on the environmental aspects of the proposed project should do so in writing within the 45-day period indicated and address their comments to Mr. Bennett of REA at the address given above. All comments received within the 45–day period will be considered in the formulation of final determinations regarding the Final Environmental Impact Statement (FEIS). Response to all substantive comments will be published in the FEIS.

Any financing assistance which may be made pursuant to Soyland's application will be subject to REA's reaching satisfactory conclusions with respect to the project's environmental effects and after procedural requirements set forth in NEPA and other environmentally related statutes, regulations and executive orders have been met.

This Federal assistance program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees.

Dated at Washington, D.C., this 12th day of January 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82–2980 Filed 2–4–82; 8:45 am]

BILLING CODE 3410–15–M

Science and Education

National Agriculture Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub.

L. 92–463, 86 Stat. 770–776) Science and Education announces the following meetings.

Name: Committee meeting of the National Agricultural Research and Extension Users Advisory Board.

Date: February 15, 1982

Time: 2:00 p.m.–6:00 p.m.

Place: Capitol Holiday Inn, 550 C Street, SW., Washington, D.C. 20024

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will be reviewing and discussing agricultural research and extension program budgets.

Contact Person for Agenda and More Information: Barbara L. Fontana, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 351–A, Administration Building, U.S. Department of Agriculture; Washington, D.C. 20250; telephone 202–447–3684.

Done at Washington, D.C., this 28th day of January 1982.

John G. Stovall,

Executive Director, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 82–3021 Filed 2–4–82; 8:45 am]

BILLING CODE 3410–03–M

Soil Conservation Service

Southeast Texas R.C. & D. Area; Pocinto Critical Area Treatment Measure, Texas

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: George C. Marks, State Conservationist, Soil Conservation Service, 101 South Main, Temple, Texas 76501, telephone 817–774–1214.

NOTICE: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Pocinto Critical Area Treatment R.C. & D. Measure, Polk and San Jacinto Counties, Texas.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, George C. Marks, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for treatment of critical erosion at 31 identified sites and includes 205 acres of shaping, 322 acres of vegetation, 13 grade stabilization structures, 4,600 feet of diversion terraces, and fencing as needed.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. Basic data developed during the environmental assessment are on file and may be reviewed by contacting George C. Marks. The FONSI has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken on or before March 8, 1982.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: January 28, 1982.

George C. Marks,

State Conservationist.

[FR Doc. 82–3012 Filed 2–4–82; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Order 82–2–2]

Application of Alaska Airlines for Certificate Amendment Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of order to show cause (Order 82–2–2).

SUMMARY: The Board is proposing to renew the authority of Alaska Airlines to provide mail-only service over segment 2 of its Route 324 on a permanent basis.

DATES: Objections: All interested persons having objections to the Board issuing the proposed certificate amendment shall file, and serve upon all persons listed below no later than March 2, 1982, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the objections.

ADDRESSES: Objections to the issuance of a final order should be filed in Docket 40315, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Alaska Airlines; the mayor and airport manager of each city to which the pleading refers; and the Alaska Transportation Commission.

FOR FURTHER INFORMATION CONTACT: Anne W. Stockvis, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5335.

SUPPLEMENTARY INFORMATION: The complete text of Order 82–2–2 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 82–2–2 to that address.

By the Bureau of Domestic Aviation, February 2, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82–3153 Filed 2–4–82; 8:45 am]

BILLING CODE 6320–01–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of the Board's Procedural Regulations; Week Ended January 29, 1982

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a Show-Cause order, a tentative order, or in appropriate cases a final order without further proceedings

Date filed	Docket No.	Description
Jan. 26, 1982	40424	Yukon Air Service, Inc. d/b/a Air North And Nenana Air Service, c/o Michael J. Roberts, Verner, Liipfert, Bernhard and McPherson, Suite 1100, 1660 L Street, N.W., Washington, D.C. 20036. Application of Yukon Air Service, Inc. d/b/a Air North And Nenana Air Service, pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests that it be issued a certificate of public convenience and necessity which authorizes the following transportation of persons, property and mail: Between the terminal point Juneau, Alaska, and the terminal point Whitehorse, Yukon Territory, Canada. Conforming Applications, motions to modify scope, and Answers may be filed by February 23, 1982.
Jan. 27, 1981	40427	Air Express International Airlines, Inc. Et Al., c/o Robert Reed Gray, Hale Russell & Gray, Suite 400, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036. Application of Air Express International Airlines, Inc. Et Al. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations requests authority to perform the following foreign charter air transportation of property and mail: Between any point or points in any state of the United States, or in any territory or possession of the United States, and any point or points in— (a) Canada; (b) Mexico; (c) Jamaica, The Bahamas, Bermuda, Haiti, The Dominican Republic, Trinidad, Tobago, Aruba, The Leeward and Windward Islands, the Canary Islands, The British Virgin Islands, all of the Netherland Antilles, and any other foreign place located in the Gulf of Mexico or the Caribbean Sea; (d) Central America; (e) Colombia, Venezuela, Guyana, Surinam and French Guiana; and (f) Europe. Conforming Applications, motions to modify scope, and Answers may be filed by February 24, 1982.

Phyllis T. Kaylor,

Secretary.

[FR. Doc. 82-3155 Filed 2-4-82; 8:45 am]

BILLING CODE 6320-01-M

[Orders 82-1-134—82-1-136]

Commuter Fitness Determination; Northern Airlines, Inc., et al.

The Board is proposing to find the following carriers fit willing and able to provide commuter air carrier service under Section 419 (c)(2) of the Federal Aviation Act, as amended, and that aircraft used in this service conform to applicable safety standards.

Order	Applicant	Response date
82-1-134	Northern Airlines, Inc	Feb. 19, 1982.
82-1-135	SFO Helicopter Airlines, Inc	Feb. 19, 1982.
82-1-136	Simmons L.J. Enterprises, Inc. d.b.a. Simmons Airlines.	Feb. 19, 1982.

All interested persons wishing to respond to the Board's tentative fitness determination shall serve their responses on all persons listed in Attachment A of the respective orders and file response or additional data for Orders 82-1-134 and -135 with the Special Authorities Division, Room 915, and for Order 82-1-136 with the Essential Air Services Division, Room 921, 1825 Connecticut Avenue, N.W. Washington, D.C. 20428.

The complete text of the orders is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request to the above address.

FOR FURTHER INFORMATION CONTACT: Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428 for Order 82-1-134: Ms. Joyce Snovitch, (202) 673-5074, for Order 82-1-135: Ms. Patti Szrom, (202) 673-5088; and for Order 82-1-136: Ms. Susan H. Fishbein, (202) 673-5348.

By the Civil Aeronautics Board: January 29, 1982.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 82-3152 Filed 2-4-82; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 40395; Order 82-1-145]

Non-Affinity Group Fares From Denmark, Norway and Sweden to Florida proposed by Scandinavian Airlines System; Order of Suspension and Investigation

Adopted by the Civil Aeronautics Board at its Office in Washington, D.C., on the 18th day of January 1982.

By Order 81-12-128, December 11, 1981, the Board suspended a tariff filing of Scandinavian Airlines System (SAS) proposing reductions of 8-21 percent in non-affinity group fares from various Scandianavian points to Miami, Ft. Lauderdale, Orlando and Tampa. We suspended the fares because recent actions of the Scandinavian governments denying fare filings of U.S. carriers have severely hampered their ability to compete in the Scandinavian market, and require us to scrutinize SAS fare proposals more closely than we would otherwise prefer.

SAS has now refiled most of its suspended Scandinavia-Florida group fares, at somewhat higher levels. But the carrier's governments have not fully satisfied the concerns which led us to suspend the previous filing, and we have no choice but to suspend SAS' latest filing as well.

Accordingly, pursuant to sections 102, 204(a), 403, 801 and 1002(j) of the Federal Aviation Act of 1958, as amended:

1. We shall institute an investigation to determine whether the fares and provisions set forth in the Appendix below, and rules and regulations or practices affecting such fares and provisions, are or will be unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful or contrary to the public interest; and if we find them to be unlawful or contrary to the public interest, to act appropriately to prevent the use of such fares, provisions or rules, regulations or practices;

2. Pending hearing and decision by the Board, we suspend and defer the use of the fares named in the Appendix from January 30, 1982, to and including January 29, 1983, unless other wise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President[1] and unless disapproved by the President it shall become effective on January 30, 1982; and

4. We shall file copies of this order in the aforesaid tariff and serve them on Scandinavian Airlines System and the Ambassadors of Denmark, Norway and Sweden in Washington, D.C.

We shall publish this order in the **Federal Register.**

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[2]

Secretary.

Appendix

International Passenger Rules Tariff No. IPR-2, C.A.B. No. 376, Issued by Airline Tariff Publishing Company, Agent

On 11th and 12th Revised Pages 493, the exception to Paragraph (I) (1) in Rule 4230.

[1] We submitted this order to the President on January 19, 1982.

[2] All Members concurred.

Transatlantic Passenger Fares Tariff No. TAF-1, C.A.B. NO. 377, Issued by Airline Tariff Publishing Company, Agent

All YFLA1 fares:

From	To	On
Copenhagen	Ft. Lauderdale	23rd, 24th Revised Pages 269
Copenhagen	Miami	23rd, 24th Revised Pages 270
Oslo	Ft. Lauderdale	20th, 21st Revised Pages 276
Oslo	Miami	21st, 22nd Revised Pages 277
Stockholm	Ft. Lauderdale	21st Revised Page 280
Stockholm	Miami	23rd, 24th Revised Pages 281

[FR Doc. 82-3154 Filed 2-4-82; 8:45 am]

BILLING CODE 6320-01

DEPARTMENT OF COMMERCE

International Trade Administration Telecommunications Equipment Technical Advisory Committee; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Telecommunications Equipment Technical Advisory Committee was initially established on October 23, 1973, and rechartered on September 18, 1981, in accordance with the Export Administration Act of 1979 and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical specifications and policy issues relating to those specifications which are of concern to the Department, (B) worldwide availability of products and systems, including quantity and quality, and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to telecommunications equipment or technology, and (D) exports of the aforementioned commodities subject to unilateral and multilateral controls which the United States establishes or in which it participates including proposed revisions of any such controls.

TIME AND PLACE: March 2, 1982, at 10:00 a.m. The meeting will take place at the Main Commerce Building, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. The committee will meet only in executive session to discuss matters properly classified under Executive Order 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 29, 1981, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12065.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, U.S. Department of Commerce, telephone: 202-377-4217.

FOR FURTHER INFORMATION CONTACT: Mrs. Margaret Cornejo, Committee Control Officer, Office of Export Administration, Room 1609 U.S. Department of Commerce, Washington, D.C. 20230, Telephone: 202-377-2583.

Dated: January 29, 1982.

Vincent F. DeCain,

Acting Director, Office of Export Administration.

[FR Doc. 82-2986 Filed 2-4-82; 8:45 am]

BILLING CODE 3510-25-M

President's Export Council; Change in Subcommittee Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that the business meeting of the Export Promotion Subcommittee of the President's Export Council scheduled to be held on Thursday, February 11, in room 4830 at the U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., from 1:30-4:00 p.m., has been changed to Monday, February 22, from 2:00-5:00 p.m., to be held at the same location. The meeting notice was published in the Federal Register on January 25. (47 FR 3399-3400).

Dated: February 1, 1982.

Donald V. Earnshaw,

Deputy Assistant Secretary for Export Development.

[FR Doc. 82-3069 Filed 2-4-82; 8:45 am]

BILLING CODE 3510-25-M

Steel Units for Electrical Transmission Towers From Italy; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by the Government of Italy, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on steel units for electrical transmission towers from Italy would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise made on or after April 3, 1980, shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: February 5, 1982.

FOR FURTHER INFORMATION CONTACT: Paul J. McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1167).

SUPPLEMENTARY INFORMATION: On April 21, 1967, a final countervailing duty determination on steel units for electrical transmission towers from Italy, T.D. 67-102, was published in the Federal Register (32 FR 6274).

On April 3, 1980, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that an injury determination for this order had been requested under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). Therefore, following the requirements of that section, liquidation was suspended on April 3, 1980 on all shipments of steel units for electrical transmission towers from Italy entered, or withdrawn from warehouse, for consumption on or after that date.

On August 11, 1981, the Department published the final results of its administrative review of this order as required by section 751 of the Tariff Act of 1930 (46 FR 40719). The Department determined that a net subsidy on steel units for electrical transmission towers from Italy of 18 lire per kilogram of this merchandise was being conferred during the period of review and reported that rate to the ITC.

On December 29, 1981, the ITC published its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports from Italy of steel units for electrical transmission towers covered by the

countervailing duty order if the order were revoked (46 FR 62966). As a result, the Department is revoking the countervailing duty order concerning steel units for electrical transmission towers from Italy (T.D. 67–102) with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after April 3, 1980, the date the Department received notification of the request for an injury determination.

The Department will instruct Customs officers to proceed with liquidation of all unliquidated entries of this merchandise made on or after April 3, 1980 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries. Entries, or withdrawals from warehouse, for consumption made prior to April 3, 1980, are subject to countervailing duties as set forth in the final results of the administrative review.

This revocation is in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

February 1, 1982.

[FR Doc. 82-3068 Filed 2-4-82; 8:45 am]

BILLING CODE 3510-25-M

National Bureau of Standards

Amendment and Anticipated Revision to Federal Information Processing Standard 86; Additional Controls for Use With ASCII

On January 29, 1981, a notice was published in the **Federal Register** (46 FR 9687–9688), announcing the approval of Federal Information Processing Standards Publication (FIPS PUB) 86, Additional Controls for Use with ASCII. Section 11 on Implementation Schedule includes the statement "This standard becomes effective one year after the publication date of this announcement of its approval by the Secretary of Commerce in the **Federal Register**." Therefore, the effective date was projected to be January 29, 1982.

As a result of substantive comments concerning this standard which were received after its adoption, a revision of the applicability section is being considered. In order to provide ample time for all interested parties to comment on the proposed revision to the applicability section, the Secretary of Commerce, on January 28, 1982, approved an amendment to FIPS PUB 86 so that the first sentence of Section 11 now reads: "The provisions of this standard are effective September 30, 1982."

It is anticipated that the proposed revision to the applicability section of FIPS PUB 86 will be published in the **Federal Register** within the next few months, so that all interested parties will have ample time to submit written comments, in order that a revised version of FIPS PUB 86 may be approved by the Secretary of Commerce prior to September 30, 1982.

Persons desiring further information about this proposed revision to FIPS PUB 86 may contact Mr. John L. Little, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, telephone: 301/921–3723.

Dated: February 2, 1982.

Ernest Ambler,

Director.

[FR Doc. 82-3070 Filed 2-4-82; 8:45 am]

BILLING CODE 3510-CN-M

DEPARTMENT OF EDUCATION

Community Education Advisory Council, Meeting

AGENCY: Community Education Advisory Council, ED.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for the forthcoming meeting of the Community Education Advisory Council. It also describes the functions of the Council. Notice of these meetings is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: Meeting: February 25 and February 26, 1982.

ADDRESS: Department of Education, Federal Office Building No. 6, Room 6004, 400 Maryland Avenue, SW, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Ron Castaldi, Department of Education, Community Education Program, 7th And D Streets, SW., Regional Office Building No. 3, Room 5622, Washington, D.C. 20202. Telephone: (202) 245–0691.

SUPPLEMENTARY INFORMATION: The Community Education Advisory Council is authorized under Public Law 95–561. The Council is established to advise on policy matters relating to the interest of community schools.

All sessions of this meeting are open to the public. The meeting will begin at 9:00 a.m. on Thursday, February 25 and end at 4:30 p.m. On Friday, February 26, the meeting will begin at 9:00 a.m. and end at 3:00 p.m.

At the last meeting held in Washington, D.C. on April 30, and May 1, 1981 the Council reviewed and discussed assessment process; examined future roles, functions, and projects; and considered tasks relative to the intergency and state advisory council initiatives and the national evaluation.

Proposed agenda items for this meeting include:

(1) Report on the national evaluation;

(2) Discussion of Council mission, role, priorities, and strategies;

(3) Review of Council's Annual Report to Congress; and

(4) Consideration of other administrative matters and related business.

Records shall be kept of all Council proceedings and shall be available for public inspection in Regional Office Building No. 3, Room 5622, 7th and D Streets, SW., Washington, D.C. 20202.

Signed at Washington, D.C., on February 1, 1982.

John Wu,

Executive Assistant to the Secretary of Vocational and Adult Education.

[FR Doc. 82-3162 Filed 2-4-82; 8:45 am]

BILLING CODE 4000-01-M

Special Services for Disadvantaged Students Program; Application Notice for Noncompeting Continuation Awards for Fiscal Year 1982

Applications are invited for noncompeting continuation awards under the Special Services for Disadvantaged Students Program.

Authority for this program is contained in sections 417A and 417D of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1b)

The Secretary awards grants under this program to institutions of higher education only. Under the new law, combinations of institutions or agencies are no longer eligible applicants. Therefore, applicants currently funded as part of a combination of institutions or as an agency must restructure their project in such a way that they can apply separately for an award as an individual institution.

The purpose of the awards is to allow applicants to carry out projects designed to provide supportive services to disadvantaged students who are

pursuing programs of postsecondary education.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by March 8, 1982.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting continuation applications and may decline to accept it.

Applications Delivered by Mail

An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.042 (Special Servics for Disadvantaged Students), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information

Successful applicants for noncompeting continuation grants under the Special Services for Disadvantaged Students Program must administer their projects in accordance with the changes made in this program by the Education Amendments of 1980 when they begin operating with Fiscal Year 1982 (Program Year 1982–83) funds. That means that for the Special Services Program at least two-thirds (⅔) of the participants must be either physically handicapped, or low-income individlals who are also first-generation college students. The remaining participants must qualify as low-income individuals, first-generation college students, or physically handicapped persons.

A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project.

A "first-generation college student" means a person neither of whose parents received a bachelor's degree.

Available Funds

The Third Continuing Resolution, which expires on March 31, 1982, authorizes $61,344,000 to be made available for noncompeting continuation awards in Fiscal Year 1982. Although processing of the 613 eligible applications will proceed on the basis of this authorization, it should be noted that the level of funding is an estimate which does not bind the Department of Education. Subsequent Congressional actions on spending limits for Fiscal Year 1982 may result in a further reduction of available funds.

Application Forms

Application forms for noncompeting continuation awards are expected to be ready for mailing no later than February 5, 1982. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by February 12, 1982, the grantee should telephone the Information Systems and Program Support Branch of the Division of Student Services at (202) 245–7070.

Applications must be prepared and submitted in accordance with instructions and forms included in the program information package. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR) §§ 75.118(b), (1), (2), (3), and (c); 75.109(a) and 75.125(a); and

(b) Regulations for the Special Services for Disadvantaged Students Program as proposed in 34 CFR Part 646. (Applications are being accepted based on the notice of proposed rulemaking for the Special Services Program which was published in the Federal Register on December 31, 1980 (45 FR 86900–86905). If any substantive changes are made in the proposed regulations for this program, applicants will be given an opportunity to revise their applications.)

Further Information

For further information contact the Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514), Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2511.

(20 U.S.C. 1070d, 1070d–1b)

(Catalog of Federal Domestic Assistance Number: 84.042—Special Services for Disadvantaged Students Program)

Dated: February 1, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-3130 Filed 2-4-82; 8:45 am]

BILLING CODE 4000-01-M

Upward Bound Program; Application Notice for Noncompeting Continuation Awards for Fiscal Year 1982

Applications are invited for noncompeting continuation awards under the Upward Bound Program.

Authority for this program is contained in sections 417A and 417C of the Higher Education Act of 1965, as amended.

(20 U.S.C. 1070d, 1070d–1a)

The Secretary awards grants under the Upward Bound Program to institutions of higher education, public and private agencies and organizations, and in exceptional cases to secondary schools.

The purpose of the awards is to allow applicants to carry out projects designed to identify low-income and potential first-generation college students and to generate in them the skills and motivation necessary for their success in education beyond high school.

Closing Date for Transmittal of Applications

To be assured of consideration for funding, an application for a noncompeting continuation award should be mailed or hand delivered by March 8, 1982.

If an application for a noncompeting continuation award is late, the Department may lack sufficient time to review it with other noncompeting

continuation applications and may decline to accept it.

Applications Delivered by Mail

An application sent by mail should be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.047 (Upward Bound), Washington, D.C. 20202.

An applicant should show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a private mail receipt as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept a hand-delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Program Information

Successful applicants for noncompeting continuation grants under the Upward Bound Program must administer their projects in accordance with the changes made in this program by the Education Amendments of 1980 when they begin operating with Fiscal Year 1982 (Program Year 1982–83) funds. That means that for the Upward Bound Program at least two-thirds (2/3) of the participants must be low-income individuals who are also potential first-generation college students. The remaining participants must qualify as either low-income individuals or first-generation college students.

A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level in the calendar year preceding the year in which the individual participates in the project.

A "potential first-generation college student" means a person neither of whose parents received a bachelor's degree.

Available Funds

The Third Continuing Resolution, which expires on March 31, 1982, authorizes $63,840,000 to be made available for noncompeting continuation awards in Fiscal Year 1982. Although processing of the 446 eligible applications will proceed on the basis of this authorization, it should be noted that the level of funding is an estimate which does not bind the Department of Education. Subsequent Congressional actions on spending limits for Fiscal Year 1982 may result in a further reduction of available funds.

Application Forms

Application forms for noncompeting continuation awards are expected to be ready for mailing no later than February 5, 1982. They are mailed routinely to currently funded projects. If a grantee does not receive the forms by February 12, 1982, the grantee should telephone the Information Systems and Program Support Branch of the Division of Student Services at (202) 245–7070.

Applications must be prepared and submitted in accordance with instructions and forms included in the program information package. The Secretary strongly urges that applicants not submit information that is not requested.

Applicable Regulations

Regulations applicable to noncompeting continuation awards are:

(a) Education Department General Administrative Regulations (EDGAR) §§ 75.118(b), (1), (2), (3), and (c); 75.109(a) and 75.125(a); and

(b) Regulations governing the Upward Bound Program as proposed in 34 CFR Part 645. (Applications are being accepted based on the notice of proposed rulemaking for the Upward Bound Program, which was published in the **Federal Register** on December 31, 1980 (45 FR 86914–86920). If any substantive changes are made in the proposed regulations for this program, applicants will be given an opportunity to revise their applications.)

Further Information

For further information contact the Program Development Branch, Division of Student Services, U.S. Department of Education (Room 3514, Regional Office Building 3), 400 Maryland Avenue, SW., Washington, D.C. 20202. Telephone: (202) 245–2511.

(20 U.S.C. 1070d, 1070d–1a)

(Catalog of Federal Domestic Assistance Number: 84.047—Upward Bound Program)

Dated: February 1, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-3129 Filed 2-4-82; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Civil Uses; Proposed Subsequent Arrangement Between U.S. and European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Switzerland Concerning Civil Uses of Atomic Energy, as amended.

This subsequent arrangement would give approval, which must be obtained under the above mentioned agreements, for the following transfer of special nuclear materials of United States origin, or of special nuclear materials produced through the use of materials of United States origin, as follows: from Switzerland to the United Kingdom (the Thorp facility) for the purpose of reprocessing, 49 irradiated fuel assemblies, containing 15,285 kilograms of uranium, enriched to 0.98% in U-235, and 139 kilograms of plutonium from the Beznau Power Plants No. I and No. II, owned by the Nordostschweizerische Kraftwerk AG. This subsequent arrangement is designated as RTD/EU(SD)–37.

The Department of Energy has received letters of assurance from the Government of Switzerland that the recovered uranium and plutonium will be stored within the United Kingdom and will not be transferred from the United Kingdom, nor put to any use, without the prior consent of the United States Government.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended,

it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no soomer than fifteen days after the date of publication of this notice and after fifteen days of continuous session of the Congress, beginning the day after the date on which the reports required by Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) are submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate. The two time periods referred to above shall run concurrently.

Dated: February 2, 1982.

Harold D. Bengelsdorf,

Director for Nuclear Affairs, International Nuclear and Technical Programs.

[FR Doc. 82-2998 Filed 2-4-82; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Docket No. ERA-FC-82-001] (OFC Case No. 51518-0672-21-22A)

Acceptance of Petition for Exemption and Availability of Certification; Kissimmee Municipal Electric System

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification.

SUMMARY: On January 5, 1982, the City of Kissimmee Municipal Electric System (Kissimmee) filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting one new proposed powerplant from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which prohibits the use of petroleum and natural gas as a primary energy source in new electric powerplants. Kissimmee requested a permanent exmption due to inability to obtain adequate capital. The Final Rule contaning the criteria and procudures for petitioning for exemptions from the prohibitions of FUA is published in the Federal Register at 46 FR 59872 (December 7, 1981).

The proposed electric powerplant for which the petition is filed is a combined cycle unit (Unit #21) having a primary energy source of natural gas (70%) and No. 2 fuel oil (30%) to be installed at the Roy Hansel Generating Plant in Kissimmee, Florida.

ERA has determined that the petition and certification for the requested exemption is complete in accordance with the Final Rules.

ERA retains the right to request additional relevant information for Kissimmee at any time during the pendency of these proceedings where circumstances or procedural requirements may so require. A review of the petition is provided in the SUPPLEMENTARY INFORMATION section below.

As provided for in section 701(c) and (d) of FUA §§ 501.31 and 501.33 of the final rule, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearings.

The public file containing a copy of this Notice of Acceptance and Availabilty of Certification and other documents and supporting materials on this proceeding are available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, D.C. 20585, Monday through Friday, 8:00 a.m.-4:00 p.m.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the public comment period provided for in this notice, unless ERA extends such period. Notice of any extension, together with a statement of reasons for such extension, will be published in the Federal Register.

DATES: Written comments are due on or before March 22, 1982. A request for public hearing must also be made within the same 45 day public comment period.

ADDRESS: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room 6114, 2000 M Street, NW, Washington, D.C. 20461.

Docket No. ERA-FC-82-001 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

William H. Freeman, Case Manager, Office of Fuels Programs, Economic Regulatory Administration, 2000 M Street, NW, Room 6114J, Washington, D.C. 20461, Telephone (202) 653-3379.

Marya Rowan, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6G-087, 1000 Independence Avenue, SW, Washington, D.C. 20585, Telephone (202) 252-2967.

SUPPLEMENTARY INFORMATION: The Powerplant and Industrial Fuel Use Act of 1978 (the "Act") prohibits the use of natural gas and petroleum as a primary energy source in a new electric powerplants unless an exemption from the prohibitions has been granted by ERA. Kissimmee proposes to construct an electric powerplant at its Roy Hansel Generating Plant in Kissimmee, Florida. Unit #21 will consist of a combustion turbine, a heat recovery boiler, cooling tower and two steam turbines. The proposed unit will have a designed heat input rate of 9,010 Btu per KWH (full load heat rate). The combustion turbine will have a rating of 34.5 MW, and the two steam turbines will have a rating of 10.6 MW each at 80 degrees F ambient. This yields a total capactiy of 55.7 MW. The combustion turbine exhaust will be ducted through an exhaust-heat-recovery system steam generator, which will provide steam to power the two steam turbines. The combined cycle facility will be used to provide baseload power. The combustion turbine is scheduled for operation at the end of the second quarter of 1982. The two 10.6 MW steam turbines and the heat recovery steam generator are scheduled to be completed by January 1983.

Section 212(a)(1)(D) of the Act provides for the issuance of a permanent exemption permitting a new unit to use petroleum or natural gas as its primary energy source if the petitioner demonstrates that the required use of coal or another alternate fuel would not allow it to obtain adequate capital for the financing of such a powerplant. In accordance with § 503.35(a) of the final rule, Kissimmee has certified that:

(1) Despite good faith efforts, it will be unable to comply with the applicable prohibitions imposed by the Act because additional capital required for an alternate fuel-capable unit beyond that required for the proposed unit cannot be raised;

(2) The additional capital cannot be raised due to specific restrictions in existing bonds which constrain the system's ability to raise debt.

(3) No alternate power supply exists;

(4) Use of mixtures is not feasible; and

(5) A permanent exemption due to inability to obtain adequate capital would be available at any reasonable alternate site(s) for the facility.

ERA hereby accepts the filing of the petition for the permanent exemption as adequate for filing. ERA retains the right to request additional relevant information from Kissimmee at any time during the pendency of these proceedings where circumstances of procedural requirements may so require. As provided in § 501.3(b)(4) of the final rule, the acceptance of the petition by ERA does not constitute a determination

that Kissimmee is entitled to the exemption requested.

NEPA Compliance

In processing this exemption, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's implementing regulations 40 CFR Part 1500 *et seq.*, and the DOE guidelines implementing those regulations (45 FR 20694, March 28, 1980). NEPA compliance may involve the preparation of (1) an environmental impact statement (EIS); (2) an environmental assessment (EA); or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major federal action significantly affecting the quality of the human environment. If an EIS is determined to be required, ERA will publish a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until NEPA compliance has been completed.

Issued in Washington, D.C. on January 29, 1982.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 82-3159 Filed 2-4-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-81-003; OFC Case No. 51209-1393-27-21]

Gulf States Utilities Co.; Withdrawal of Exemption Request Pursuant to the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Gulf States Utilities Company; notice of withdrawal of exemption request pursuant to the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: On July 11, 1980, Gulf States Utilities Company (GSU) petitioned the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for a temporary exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 et seq. (FUA or the Act) for the future use of synthetic fuels. GSU requested the exemption for a proposed new generation unit, Roy S. Nelson Unit No. 7 (Nelson 7), at its generating plant in Westlake, Louisiana. FUA prohibits the use of petroleum and natural gas as a primary energy source in new powerplants unless an exemption for such use has been granted by DOE.

The petition was accepted for filing on April 7, 1981, on the condition that GSU would submit all evidence required to obtain the requested exemption on or before October 1, 1981. ERA published notice of its conditional acceptance, together with a statement of the reasons set forth in the petition for requesting the exemption, in the **Federal Register** on April 14, 1981 (46 FR 21801). Publication of the notice commenced a 45-day public comment period pursuant to section 701 of FUA which expired May 29, 1981. The notice further stated that an additional public comment period might be provided upon receipt of the evidentiary material furnished ERA by GSU.

At the request of GSU, ERA extended the period during which it would accept the required evidentiary material to December 31, 1981. Notice of that extension was published in the **Federal Register** on November 30, 1981 (46 FR 58145).

By letter dated December 18, 1981, GSU withdrew its request for a temporary exemption for the future use of synthetic fuels in the proposed Nelson 7 Unit. GSU stated that its withdrawal of the exemption petition was predicated on changes in the company's future plans for generation and fuel.

Accordingly, notice is hereby given that the proceeding on this petition is terminated and through this action ERA is not required to issue an order granting or denying petitioner's requested exemption pursuant to 10 CFR 501.68.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Office of Fuels Programs, Economic Regulatory Administration, 2000 M Street, N.W., Room 6114-G, Washington, D.C. 20461, Phone (202) 653-3379

Christina Simmons, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B-178, Washington, D.C. 20585, Phone (202) 252-2967

Issued in Washington, D.C., on January 29, 1982.

James W. Workman,

Director, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 82-3158 Filed 2-4-82; 8:45 am]

BILLING CODE 6450-01-M

[Docket PP 77]

New England Electric Transmission Corp.; Application for Presidential Permit

AGENCY: Economic Regulatory Administration, Office of Emergency Operations, DOE.

ACTION: Notice of Application by New England Electric Transmission Company (NEET) for a Presidential Permit to Construct, Connect, Operate, and Maintain an International Electrical Transmission Line.

SUMMARY: On December 11, 1981, NEET filed application for a Presidential Permit (Docket PP 77) with the Department of Energy (DOE) to construct, connect, operate, and maintain an international electrical transmission line across the U.S.-Canadian border. Specifically, this application proposes the construction of a direct current (dc) transmission line with a design voltage of ±450 line kilovolts (kV) between Sherbrooke, Quebec and New England Power Company's Comerford generating station located in Monroe, New Hampshire. The proposed transmission line would enter the United States in Coos County, New Hampshire at approximately the town of Pittsburg. The primary purpose of the proposed interconnection is to obtain access to Canadian hydroelectric energy. The transmission line ultimately will be capable of transferring up to 2000 MW.

Another application was received on the same date (December 11, 1981) from the Vermont Electric Power Company (VELCO) and docketed as Presidential Permit Application PP 76. It proposes the construction of a dc transmission line from Sherbrooke, Quebec to the Comerford Station, Monroe, New Hampshire via a border crossing at Norton, Vermont.

Only one of these two proposed transmission lines eventually will be constructed, i.e., either the line proposed under PP 76 or the line proposed under PP 77. However, that decision will be made by the New England Power Pool (NEPOOL), not the Department of Energy.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Office of Emergency Operations, EP-422, U.S. Department of Energy, Room GH-034-G, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 653-3889

Lise Courtney Howe, Office of General Counsel, GC-11, U.S. Department of Energy, Room 6A-141, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2900

SUPPLEMENTARY INFORMATION: On December 11, 1981, NEET filed with DOE an application for a Presidential Permit (Docket PP 77) to construct, connect, operate, and maintain an international electrical transmission line across the U.S.-Canadian border. NEET is a New Hampshire public utility corporation and is part of the New

England Electric holding company system. NEET has been formed to own, operate, construct, and lease power lines to transmit electricity within and without New Hampshire.

According to NEET's December 11 application, the purpose of the proposed interconnection is to permit the utilities in New England, operating through NEPOOL, to obtain access to the benefits of Canadian hydroelectric energy. The interconnection would connect the facilities of NEPOOL with those of the Hydro-Quebec system and thereby provide access to Hydro-Quebec's hydroelectric energy located in the Province of Quebec. The interconnection not only will improve reliability on both systems by permitting emergency transfers and by providing mutual backup, but also will permit the New England utilities to reduce their dependence on oil and thereby to achieve significant costs savings for their customers.

The agreements between NEPOOL and Hydro-Quebec have not yet been finalized. However, contract negotiations are currently under way, and it is expected that contracts will be executed in the near future.

The applicant proposes to construct an international interconnection at the U.S.-Canadian border in Coos County, New Hampshire, near the town of Pittsburg. The international transmission line will interconnect a new terminal to be located in the vicinity of Sherbrooke, Quebec, and a terminal to be located at the Comerford Station in Monroe, New Hampshire, and constructed by NEET. The Canadian portion of the facilities will be built by Hydro-Quebec. Each of the terminals will, among other things, convert the power being transmitted from alternating current (ac) to direct current (dc), and imported power from dc to ac.

NEET considered several alternative corridors before choosing the preferred route which runs from the border crossing at the Town of Pittsburg, Coos County to the Comerford Station. According to the applicant, "selection of the preferred route was based on an assessment of engineering, economic, and environmental considerations of the several possible routes. The route selected will minimize potential adverse environmental impacts and is sound from engineering and economic perspectives. The preferred route will not unduly interfere with the orderly development of the region nor will it have an unreasonable adverse effect on aesthetics, historic sites, air and water quality, the natural environment, or the public health and safety."

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Office of Emergency Operations, Department of Energy, Room GH-034-G, Forrestal Building, Washington, D.C. 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed on or before March 22, 1982. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the DOE Docket Room, Room 1E-190, Forrestal Building, Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, D.C. on January 29, 1982.

Bethel Larey,[1]

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 82-3156 Filed 2-4-82; 8:45 am]
BILLING CODE 6450-01-M

[Docket PP 76]

Vermont Electric Power Co.; Applicantion for Presidential Permit

AGENCY: Economic Regulatory Administration, Office of Emergency Operations, DOE.

ACTION: Notice of Application by Vermont Electric Power Company (VELCO) for a Presidential Permit to Construct, Connect, Operate, and Maintain an International Electric Transmission Line.

SUMMARY: On December 11, 1981, VELCO filed an application for a Presidential Permit (Docket PP 76) with the Department of Energy (DOE) to construct, connect, operate, and maintain an international electric transmission line across the U.S.-Canadian border. Specifically, this application proposes the construction of a direct current (dc) transmission line with a design voltage of ±450 kilovolts (kV) between Sherbrooke, Quebec and New England Power Company's Comerford generating station located in Monroe, New Hampshire via a border crossing at Norton, Vermont. the primary purpose of the proposed interconnection is to obtain access to Canadian hydroelectric energy. The transmission line ultimately will be capable of transferring up to 2000 MW.

A second application was received on the same date (December 11, 1981) from the New England Electric Transmission Corporation (NEET) and docketed as Presidential Permit Application PP 77. It proposes the construction of a dc transmission line from Sherbrooke, Quebec to the New England Power Company Comerford generating station located in Monroe, New Hampshire via a border crossing in Coos County, New Hampshire.

Only one of these two proposed transmission lines eventually will be constructed, i.e., either the line proposed under PP 76 or the line proposed under PP 76. However, that decision will be made by the New England Power Pool (NEPOOL), not the Department of Energy.

FOR FURTHER INFORMATION CONTACT:

Garet Bornstein, Office of Emergency Operations, EP-422, U.S. Department of Energy, Room GH-034-G, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 653-3889

Lise Courtney Howe, Office of General Counsel, GC-11, U.S. Department of Energy, Room 6A-141, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2900

SUPPLEMENTARY INFORMATION: On December 11, 1981, VELCO filed with DOE an application for a Presidential Permit (Docket PP 76) to construct, connect, operate, and maintain an international electrical transmission line across the U.S.-Canadian border. VELCO is a public utility corporation organized in 1956, according to the laws of the State of Vermont, to design and maintain a State-wide transmission system for the delivery of power from the Power Authority of the State of New York to various Vermont utilities.

According to VELCO's December 11, application, the purpose of the proposed interconnection is to permit the utilities in New England, operating through NEPOOL, to obtain access to the benefits of Canadian hydroelectric energy. The interconnection would connect the facilities of NEPOOL with those of Hydro-Quebec system and thereby provide access to Hydro-Quebec's hydrolectric energy located in the Province of Quebec. The interconnection not only will improve reliability on both systems by permitting emergency transfers and by providing

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[1] In the recent reorganization of DOE, responsibility for Presidential Permits was transferred from ERA to the Office of Environmental Protection, Safety, and Emergency Preparedness. DOE is in the process of redelegating authority.

mutual backup, but also will permit New England utilities to reduce their dependence on oil and thereby to achieve significant cost savings for their customers.

The agreements between NEPOOL and Hydro-Quebec have not yet been finalized. However, contract negotiations are currently under way, and it is expected that contracts will be executed in the near future.

The applicant proposes to construct an international interconnection at the U.S.-Canadian border near Norton, Vermont. The international transmission line will interconnect a new terminal to be located in the vicinity of Sherbrooke, Quebec, and a terminal to be located at the Comerford Station in Monroe, New Hampshire, and constructed by NEET. The Canadian portion of the facilities will be built by Hydro-Quebec. Each of the terminals will, among other things, convert the power being transmitted from alternating current (ac) to direct current (dc), and imported power from dc to ac.

VELCO considered several alternative corridors before choosing the preferred route which runs from the border crossing at Norton, Vermont to Monroe, New Hampshire. According to the applicant, "the preferred corridor has been found superior to the alternatives because it avoids major settlement areas and all major environmentally sensitive areas, and minimizes the disruption to the aesthetic integrity of the northeast region of Vermont."

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Office of Emergency Operations, Department of Energy, Room GH-034-G, Forrestal Building, Washington, D.C. 20585, in accordance with §§ 1.8 or 1.10 of the Rules of Practice and Procedure (18 CFR 1.8, 1.10).

Any such petitions and protests should be filed on or before March 22, 1982. Protests will be considered by DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with DOE and will, upon request, be made available for public inspection and copying at the DOE Docket Room, Room 1E-190, Forrestal Building, Washington, D.C., from 8 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, D.C. on January 29, 1982.

Bethel Larey,[1]

Acting Administrator, Economic Regulatory Administration.

[FR Doc. 82-3157 Filed 2-4-82; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-2044-1]

Availability of Environmental Impact Statements Filed

Responsible Agency: Office of Federal Activities, EPA.

Information Contact: Ms. Kathi Wilson (202) 245-3006.

EIS's Filed: January 25-29, 1982.

Comment Due Dates: Drafts—March 22, 1982; Finals—March 8, 1982.

Corps of Engineers (COE): Draft—Bogue Inlet Navigation Improvements, Onslow and Carteret Counties, North Carolina. (EPA EIS #820038)

COE: Final—Crown Bay/Charlotte Amalie Port Facility, Permit, St. Thomas, Virgin Islands. (EPA EIS #820045)

DOI: Office of Surface Mining: Final—Antelope Mining and Reclamation Plan, Approval, Converse County, Wyoming. (EPA EIS #820037)

DOT: Federal Highway Administration (FHWA): Draft—FH-61 Reconstruction, MT-40 to Rt. 8, Flathead National Forest, Flathead County, Montana; Extended Review 3-31-82. (EPA EIS #820035)

DOT: FHWA: Final—A-C Couplet, A Street South from Sixth, Anchorage, Alaska. (EPA EIS #820043)

EPA: Region 4: Final—South Fort Meade Phosphate Mine, NPDES Permit, Polk County, Florida. (EPA EIS #820044)

Department of Housing and Urban Development (HUD): Draft—Desert Falls Country Club, Mortgage Insurance, Riverside County, California. (EPA EIS #820042)

HUD: Final—Crestview Estates Development, Mortgage Insurance, Campbell County, Wyoming. (EPA EIS #820036)

USDA: Rural Electrification Administration: Final—Antelope Valley to Charlie Creek Transmission Line, Billings, Dunn, McKenzie and Mercer Counties, North Dakota. (EPA EIS #820039)

USDA: Soil Conservation Service: Draft—Diamond Creek Watershed Flood Protection Plan, Chase and Morris Counties, Kansas. (EPA EIS #820041)

Interstate Commerce Commission: Final Supplement—Somerset Railroad Construction and Operation, Niagara County, New York. (EPA EIS #820040)

Waiver: DOC: National Oceanic and Atmospheric Administration (NOAA): Final Supplement—Mid-Atlantic Surf Clam and Ocean Quahog, FMP—published FR 1-15-82; this EIS has been granted a reduction of the review period which terminated on 1-26-82. (EPA EIS #820009)

Correction: COE: Draft Supplement—I-70 Construction in Glenwood Canyon, Garfield County, Colorado—correction appearing in FR 1-8-82 should not have been published—refer to original publication in FR 12-31-81. (EPA EIS #811032)

Extended Reviews: DOC: NOAA: Draft—Coral and Coral Reefs FMP, Gulf of Mexico and South Atlantic—published FR 12-18-82; Due 3-1-82. (EPA EIS #810996)

COE: Draft—Wynoochee Hydropower/Fish Hatchery Development, Grays Harbor County, Washington—published FR 12-11-81; Due 2-28-82. (EPA EIS #810983)

DOT: Bureau of Reclamation: Draft—Chikaskia Water Supply Project, Kansas and Oklahoma—published FR 10-9-81 Due 3-1-82. (EPA EIS #810817)

Dated: February 2, 1982.

Paul C. Cahill,

Director, Office of Federal Activities.

[FR Doc. 82-3148 Filed 2-4-82; 8:45 am]

BILLING CODE 6560-37-M

[OPTS 41008; TSH-FRL-2043-3]

Ninth Report of the Interagency Testing Committee to the Administrator; Receipt of Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA), transmitted its Ninth Report to the Administrator of EPA on October 30, 1981. This report, which revises and updates the Committee's priority list of chemicals, adds three chemicals to the list for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act. It also noted the removal of four entries from the list. The three new chemicals are chlorendic acid, 4-chlorobenzotrifluoride, and tris(2-chloroethyl) phosphite. The deletions from the list are dichloromethane, nitrobenzene, 1,1,1-trichloroethane and the category alkyltin compounds. The Ninth Report is included in this notice. The Agency invites interested persons to submit written comments on the Report and to indicate if an informal meeting would be useful in focusing and narrowing the issues raised by the ITC recommendations.

DATE: Written comments should be submitted by March 8, 1982.

[1] In the recent reorganization of DOE, responsibility for Presidential Permits was transferred from ERA to the Office of Environmental Protection, Safety, and Emergency Preparedness. DOE is in the process of redelegating authority.

ADDRESSES: Send written submissions to: Document Control Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–401, 401 M St., Washington, D.C. 20460.

Submissions should bear the Document Control Number OPTS–41008. The public record supporting this action, including comments, is available for public inspection in Rm. E–107 at the address noted above from 8:00 a.m. to 4:00 p.m. Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Douglas G. Bannerman, Acting Director, Industry Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Toll Free: 800–424–9065, In Washington, D.C.: 554–1404, Outside the USA: (Operator—202–554–1404).

SUPPLEMENTARY INFORMATION:

I. Background

Sec. 4(a) of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances in order to develop data relevant to determining the risks that such chemical substances may present to health and the environment.

Sec. 4(e) of TSCA established an Interagency Testing Committee to make recommendations to the Administrator of EPA of chemical substances to be given priority consideration in proposing test rules under Sec. 4(a). Sec. 4(e) directs the Committee to revise its list of recommendations at least every six months as it determines to be necessary. The ITC also may designate chemicals for priority consideration by EPA within 12 months of the date of designation. The total number of designated chemicals on the list may not exceed 50 at any one time. For each designated chemical EPA must, within 12 months, either initiate rulemaking or publish in the **Federal Register** its reasons for not so doing.

II. Status of the List

The ITC's Ninth Report, which was received by the Administrator on October 30, 1981, follows this Notice. In it, the ITC has added three chemicals to the list, designating each for EPA action within 12 months. The chemicals added are chlorendic acid (CAS No. 115–28–6), 4-chlorobenzotrifluoride (CAS No. 98–56–6) and tris (2-chloroethyl) phosphite (CAS No. 140–08–9). The Report also noted the deletion from the list of four previous entries. Dichloromethane, nitrobenzene, and 1,1,1-trichloroethane were removed from the list because EPA proposed test rules for these substances on June 5, 1981 (45 FR 30300). The Committee also has removed the category "Alkytin Compounds" from the list and will reconsider the need for futher testing of such compounds and their appropriate categorization.

Readers of the ITC Ninth Report also should note that EPA recently has taken action on the following eleven chemicals and categories designated by the ITC, fulfilling the Agency's obligation under TSCA section 4(e) with respect to those designations: Alkyl phthalates and benzyl butyl phthalate (46 FR 53775), butyl glycolyl butyl phthalate (46 FR 54487), chlorinated naphthalenes (46 FR 54451), fluoroalkenes (46 FR 53704), polychlorinated terphenyls (46 FR 54482), benzidine-based dyes, o-dianisidine-based dyes, and o-tolidine-based dyes (46 FR 55004), chlorinated paraffins (47 FR 1017) and phenylenediamines (47 FR 973).

III. Public Comments

EPA invites interested persons to submit written comments on the ITC's new recommendations. The Agency is especially interested in receiving information concerning any additional or ongoing health and safety testing of the newly designated chemicals that may respond to the concerns expressed by the ITC. The Agency requests that submissions be received no later than March 8, 1982. All submissions received by that date will be considered by the Agency in determining whether to propose test rules in response to the Committee's new recommendations. Submissions should bear the identifying Docket No. OPTS–41008.

EPA is experimenting with its approach to focusing issues and encouraging public involvement in responding to the ITC recommendations and has decided to hold public meetings to obtain oral comment on the ITC's Ninth Report only: (a) If requested to by interested parties, and (b) if EPA concludes that public discussion will be useful in focusing and narrowing the issues the Agency must address in responding to the ITC's recommendations. Therefore, persons who believe that an informal meeting with EPA technical staff would be useful in achieving such focusing should call the Industry Assistance Office before the close of the written comment period. Any such meetings, if held, will be open to the public; however, active participation will be limited to those persons who requested the opportunity for informal discussions. Persons wishing to attend any such meetings should notify the Industry Assistance Office who will inform them of all such meetings that are scheduled.

Dated: January 28, 1982.

John A. Todhunter,

Assistant Administrator for Pesticides and Toxic Substances.

Ninth Report of the TSCA Interagency Testing Committee to The Administrator, Environmental Protection Agency

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469) provides for the testing of chemicals in commerce that may present an unreasonable risk of injury to health or the environment. It also provides for the establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances or mixtures to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules. The Committee makes such revisions in the List (the section 4(e) Priority List) as it determines to be necessary and transmits them to the EPA Administrator at least every six months.

As a result of its deliberations, the Committee is revising the TSCA section 4(e) Priority List by the addition of three entries and the removal of four. The chemicals being added to the list are presented alphabetically, together with the types of testing recommended, as follows:

Chemical	Recommended studies
Chlorendic acid	Environmental effects: Chemical fate; acute chronic toxicity to fish and aquatic invertebrates; toxicity to aquatic macrophytes and algae.
4-Chlorobenzotrifluoride	Health effects: Chronic effects.
	Environmental effects: Chemical fate; bioconcentration.
Tris (2-chloroethyl)phosphite	Health effects: Pharmacokinetic and metabolic studies; subchronic effects; reproductive effects.
	Environmental effects: Chemical fate; acute toxicity to fish, aquatic invertebrates, and algae.

As stipulated by section 4(e)(1)(B) of TSCA, each of the new recommendations is being designated by the Committee for action by the EPA within 12 months of the date of this report.

Dichloromethane, nitrobenzene, 1,1,1-trichloroethane, and the alkyltin

compounds are being removed from the list.

TSCA Interagency Testing Committee

Statutory Member Agencies and Their Representatives

Council on Environmental Quality, Gordon F. Snow, Member [1]
Department of Commerce, Orville E. Paynter, Member, Bernard Greifer, Alternate
Environmental Protection Agency, Joseph Seifter, Member, Carl R. Morris, Alternate
National Cancer Institute, Elizabeth K. Weisburger, Member, [2] Richard Adamson, Alternate, Jerrold Ward, Alternate
National Institute of Environmental Health Sciences, Dorothy Canter, Member [3]
National Institute for Occupational Safety and Health, Vera W. Hudson, Member and Chairperson, Hebert E. Christensen, Alternate
National Science Foudnation, Winston C. Nottingham, Member
Occupational Safety and Health Administration, Patricia Marlow, Member and Vice Chairperson, Lucille Adamson, Alternate [4]

Liaison Agencies and Their Representatives

Consumer Product Safety Commission, Arthur Gregory and Lakshmi Mishra
Department of Agriculture, Homer E. Fairchild and Fred W. Clayton
Department of Defense, Arthur H. McCreesh
Department of the Interior, Charles R. Walker
Food and Drug Administration, Allen H. Heim and Winston deMonsabert
National Toxicology Program, Dorothy Canter

Committee Staff

Martin Greif, Executive Secretary
Vacant, Administrative Technician

Support Staff

Gary W. Dickson [5]—Office of Toxic Substances, EPA
Ellen Siegler—Office of the General Counsel, EPA
Edward Zillioux [6]—Office of Toxic Substances, EPA

References

(1) Dr. Snow was appointed on August 28, 1982.

(2) Dr. Weisburger has previously served as an Alternate member and was appointed to full-member status on September 23, 1981.

(3) Dr. Canter had previously served as an Alternate member and was appointed to full-member status on July 8, 1981.

(4) Dr. L. Adamson terminated her association with the Committee on July 17, 1981.

(5) Dr. Dickson has assisted the Committee since April 1981 and was appointed formally to replace Dr. Zillioux on September 17, 1981.

(6) Dr. Zillioux terminated his association with the Committee on June 25, 1981.

The Committee acknowledges and is grateful for the assistance and support given to it by the staff of Enviro Control, Inc. (technical support contractor) and numerous personnel of the Office of Toxic Substances, EPA, especially the Industry Assistance Office, the Assessment Division, the Management Support Division and the Health and Environmental Review Division. Special cognizance is given to Fumihiko Hayashi, Richard Tucker, and Larry Turner of the Health and Environmental Review Division for their timely review of the environmental effects of chemicals studied by the Committee.

Chapter 1—Introduction

1.1 *Background.* The TSCA Interagency Testing Committee (Committee) was established under section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94-469). The specific mandate of the Committee is to identify and recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances or mixtures in commerce that should be tested to determine their potential hazard to human health and/or the environment. TSCA specifies that the Committee's recommendations shall be in the form of a Priority List, which is to be published in the **Federal Register.** The Committee is directed to make revisions to the Priority List, as it determines to be necessary, and to transmit such revisions to the EPA Administrator at least every 6 months after submission of the Initial List.

The Committee is comprised of representatives from eight statutory member agencies, five liaison agencies, and one national program. The specific representatives and their affiliations are named in the front of this report. The Committee's chemical review procedures and prior recommendations are described in previous reports (Refs. *1* through *9*).

1.2 *Committee's previous reports.* Eight previous reports to the EPA Administrator have been issued by the Committee and published in the **Federal Register** (Refs. *2* through *9*). Forty-six entries (chemical substances and categories of chemicals) have been designated by the Committee for priority consideration by the EPA Administrator. One entry, chloromethane, was removed (Ref. *8*) after EPA responded to the Committee's recommendation for testing.

1.3 *Committee's activities during this reporting period.* The Committee has continued to review chemicals from its second and third rounds of scoring (see Ref. *2* for methodology). During this reporting period the Committee has evaluated 62 chemicals for priority consideration. Three were designated for inclusion in the section 4(e) Priority List, 34 were deferred from further consideration at this time, and 25 are still under review.

As reported in the Eighth ITC Report (Ref. *9*), the Committee initiated, in the latter part of 1980, a systematic procedure for obtaining from the chemical industry exposure and effects data. The Committee listed in the **Federal Register** (Ref. *11*) the 107 chemicals selected in its 1980 scoring exercise for detailed review. The Committee requested comments on these chemicals to be presented either at a public meeting held November 6, 1980, or subsequently to be submitted in writing.

To further encourage submission of relevant information on the chemicals being studied, letters were written to manufacturers of the chemicals on the 1980 list, inviting submission of data and information on exposure to and effects of the chemicals. Response to the Committee's requests from both the public and private sectors has been excellent. Information received from chemical companies, trade associations and governmental agencies has increased the information base relied upon by the Committee in its review of chemicals.

To date the Committee and its technical support contractor have contacted 72 chemical manufacturers by letter and telephone, requesting information on 97 chemicals. Eighty-two separate written responses were received from 47 chemical companies and trade associations, providing information on 90 chemicals. The information is being used by the Committee in its deliberations, together with that obtained from other sources.

The Committee is continuing the practice of providing EPA with copies of all available data and information relevant to designated chemicals.

During this period the Committee completed the development and implementation of a computerized tracking system for chemicals it has considered since its inception. The tracking system will be kept current as additional chemicals are scored and considered by the Committee.

1.4 *The TSCA section 4(e) Priority List.* Section 4(e)(1)(B) of TSCA authorizes the Committee to: "* * * make sure revisions in the priority list as it determines to be necessary and * * * transmit them to the Administrator together with the Committee's reasons for the revisions." Under this authority, the Committee is revising the Priority List as follows:

Three chemicals, chlorendic acid, 4-chlorobenzotrifluoride, and tris(2-

chloroethyl)phosphite are added. The testing recommended for these chemicals and the rationales for the recommendations are presented in Chapter 2 of this report.

Four entries are removed from the Priority List. Three chemicals (dichloromethane, nitrobenzene, and 1,1,1-trichloroethane) are removed because the EPA Administrator has responded (Ref. *10*) to the Committee's recommendations in accordance with TSCA section 4(e) requirements. In addition, the Committee is withdrawing from the Priority List the alkyltin compounds entry designated to the EPA Administrator in the Committee's Seventh Report (Ref. *8*). Information on alkyltins has recently become available in the medical literature, through EPA's Scoping Workshop (March 12, 1981), and through followup information-gathering activities by EPA with the cooperation of industry, other governmental agencies, and EPA contractors. In view of this information, the Committee concludes that the alkyltin compounds category is too broad to be considered as a single category from the standpoint of chemistry, exposure or effects. Although the Committee is removing the alkyltins category from the Priority List, it continues to be concerned about the potential adverse effects of some members of this category. Consequently, the Committee will reconsider its alkyltin recommendation and submit a revised recommendation within the next twelve months. The Committee welcomes additional information from the public to aid in its deliberations.

With the three designations and four removals in this report, 44 entries now appear on the Priority List (Table 1).

The cumulative list of entries removed by the Committee from the Priority List is presented in Table 2.

TABLE 1—TSCA SECTION 4(e) PRIORITY LIST

Entry	Date of designation
1. Acetonitrile	April 1979.
2. Acrylamide	April 1978 (b) (d).
3. Alkyl epoxides	October 1977(a).
4. Alkyl phthalates	October 1977(a).
5. Aniline and bromo, chloro and/or nitroanilines.	April 1979.
6. Antimony (metal)	April 1979.
7. Antimony sulfide	April 1979.
8. Antimony trioxide	April 1979.
9. Aryl phosphates	April 1978(b).
10. Benzidine-based dyes	November 1979.
11. Benzyl butyl phthalate	October 1980.
12. Butyl glycolyl butal phthalate	October 1980.
13. Chlorendic acid	October 1981.
14. Chlorinated benzenes, mono and di.	October 1977 (a) (c).
15. Chlorinated benzenes, tri-, tetra-, and penta-.	October 1978(c).
16. Chlorinated naphthalenes	April 1978(b).
17. Chlorinated paraffins	October 1977(a).
18. 4-Chlorobenzotrifluoride	October 1981.
19. 2-Chlorotoluene	April 1981.
20. Cresols	October 1977(a).
21. Cyclohexanone	April 1979.
22. o-Dianisidine-based dyes	November 1979.
23. 1,2-Dichloropropane	October 1978.
24. Diethylenetriamine	April 1981.
25. Fluoroalkenes	October 1980.
26. Glycidol and its derivatives	October 1978.
27. Halogenated alkyl epoxides	April 1978(b).
28. Hexachloro-1,3-butadiene	October 1977(a).
29. Hexachlorocyclopentadiene	April 1979.
30. Hexachloroethane	April 1981.
31. Hydroquinone	November 1979
32. Isophorone	April 1979.
33. Mesityl oxide	April 1979.
34. 4,4'-Methylenedianiline	April 1979.
35. Methyl ethyl ketone	April 1979.
36. Methyl isobutyl ketone	April 1979.
37. Phenylenediamines	April 1980.
38. Polychlorinated terphenyls	April 1978(b).
39. Pyridine	April 1978(b).
40. Quinone	November 1979.
41. o-Tolidine-based dyes	November 1979.
42. Toluene	October 1977(a).
43. Tris(2-chlorethyl)phosphite	October 1981.
44. Xylenes	October 1977(a).

(a) EPA Administrator replied in 43 FR 50134–50138.
(b) EPA Administrator replied in 44 FR 28095–28097.
(c) EPA Administrator replied in 45 FR 48524–48564.
(d) EPA Administrator replied in 45 FR 48510–48512.

TABLE 2—REMOVALS FROM THE TSCA SECTION 4(e) PRIORITY LIST

Removal	Date of removal
1. Alkyltin compounds	October 1981(a).
2. Chloromethane	October 1981(b).
3. Dichloromethane	October 1981(c).
4. Nitrobenzene	October 1981(c).
5. 1,1,1-Trichloroethane	October 1981(c).

(a) Removed by the Committee for reconsideration (This Report).
(b) Responded to by the EPA Administrator in 45 FR 48524–48564.
(c) Responded to by the EPA Administrator in 46 FR 30300–30320.

References

(*1*) Preliminary List of Chemical Substances for Further Evaluation. Toxic Substances Control Act Interagency Testing Committee, July 1977.

(*2*) Initial Report to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1, 1977. Published in the **Federal Register** of Wednesday, October 12, 1977, 42 FR 55026–55080. Corrections published in the **Federal Register** of November 11, 1977, 42 FR 58777–58778. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560–10–78/001, January 1978.

(*3*) Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1978. Published in the **Federal Register** of Wednesday, April 19, 1978, 43 FR 16684–16688. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560–10–78/002, July 1978.

(*4*) Third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1978. Published in the **Federal Register** of Monday, October 10, 1978, 43 FR 50630–50635. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560–10–79/001, January 1979.

(*5*) Fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1979. Published in the **Federal Register** of Friday, June 1, 1979, 44 FR 31866–31889.

(*6*) Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, November 1979. Published in the **Federal Register** of Friday, December 7, 1979, 44 FR 70664–70674.

(*7*) Sixth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1980. Published in the **Federal Register** of Wednesday, May 28, 1980, 45 FR 35897–35910.

(*8*) Seventh Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, October 1980. Published in the **Federal Register** of Tuesday, November 25, 1980, 45 FR 78432–78446.

(*9*) Eighth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency. TSCA Interagency Testing Committee, April 1981. Published in the **Federal Register** of Friday, May 22, 1981, 46 FR 28138–28144.

(*10*) Dichloromethane, Nitrobenzene and 1,1,1-Trichloroethane; Proposed Test Rule. Published in the **Federal Register** of Friday, June 5, 1981, 46 FR 30300–30320.

(*11*) Chemicals to be Reviewed by the TSCA Interagency Testing Committee; Notice of Public Meeting. Published in the **Federal Register** of Tuesday, October 7, 1980, 45 FR 66056–66513.

Chapter 2—Recommendations of the Committee

2.1 *Chemical substances designated for action by the EPA Administrator.* As provided by section 4(e)(1)(B) of TSCA, the Committee is adding the following three chemical substances to the section 4(e) Priority list: Chlorendic acid, 4-chlorobenzotrifluoride, and tris(2-chloroethyl)phosphite. The designation of these entries was determined after considering the factors identified in section 4(e)(1)(A) and other available relevant information, as well as the professional judgment of Committee members.

The studies recommended for these entries and the rationales to support the recommendations are given in section 2.2 of this report. In accordance with section 4(e) of TSCA, the Committee designates these entries for action by the EPA within 12 months of the date of issuance of this Ninth Committee Report.

2.2 *Recommendations and rationales.*

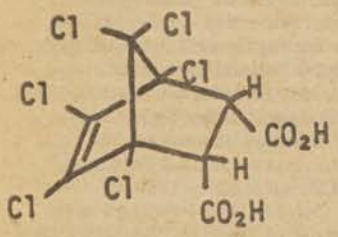
2.2.a. *Chlorendic Acid.*

Summary of recommended studies. It is recommended that chlorendic acid be tested for the following:

A. *Environmental Effects:*
Chemical fate.
Actue and chronic toxicity to fish and aquatic invertebrates.
Toxicity to aquatic macrophytes and algae.

Physical and Chemical Information

CAS Number: 115–28–6.
Structural Formula:



Empirical formula: $C_9H_4Cl_6O_4$.
Molecular Weight: 388.87.
Melting Point: 208–210° C (in sealed tube).

Solubility in Water: 0.35g/100 g at 22.8° C.

Log Octanol/Water Partition Coefficient: No information found.
Description of Chemical: Chlorendic acid is a nearly odorless white solid.

Rationale for Recommendations

I. *Exposure information—A. Production/use/disposal information.* Industrial use of chlorendic acid and the corresponding anhydride (supplied from both U.S. production and importation) is presently estimated to be approximately 7 million pounds a year (EPA, 1981; Asland, 1981). Chlorendic acid and its corresponding anhydride are considered to be two of the most reactive (as contracted with additive) flame retardants in use (Kirk-Othmer, 1980). Chlorendic acid is used to import flame resistance to polyesters, coatings, epoxy resins, and polyurethan (Kirk-Othmer, 1971). Release to the environment may occur during preparation of flame retardant polymers, polyesters and pesticides, and from the hydrolysis of chlorendic anhydride.

B. *Chemical fate information.* Chlorendic acid is a hexachlorobornene compound. Although no information has been found on the photolysis of chlorendic acid, studies on numerous hexachlorobornene compounds have shown that these compounds undergo cleavage of the C–Cl bond at the vinyl carbon with replacement of chlorine by hydrogen (Parlor and Korte, 1979). Chlorendic acid is not expected to present an atmospheric problem because of its low volatility. Additionally, reactions with hydroxyl radicals and ozone, as well as direct photolysis, should rapidly destroy any chlorendic acid directly exposed to air (Parlar and Korte, 1977; Parlar and Korte, 1979; and Shuphan et al., 1972).

Chlorendic acid may enter the environment in wastewater from flameprooofing processes in the textile industry (Friedman et al., 1974) and is expected to favor the aqueous compartment because of its solubility in water. It is likely that chlorendic acid will be formed as a degradation product in soil containing polymers and pesticides having the hexachlorobornene moity (Martens, 1972; menzie, 1978). Chlorendic acid will form also through hydrolysis of chlorendic anhydride. Due to the insolubility of the anhydride at environmental temperatures. This process will be slow (Velsicol, 1968).

With respect to biodegradation, chlorendic acid would be expected to behave like other highly chlorinated norbornene compounds, which exhibit considerable resistance to degradation. Chlorendic acid forms complexes with iron and may sorb to iron oxide colloids in sediments and soil (Berger and McKay, 1975).

II. *Environmental considerations*—A. *Short-term (acute) effects.* No studies on the short-term effects of chlorendic acid have been found for either aquatic animals or plants.

B. *Long-term (subchronic/chronic) effects.* No studies on the long-term effects of chlorendic acid have been found for either aquatic animals or plants.

C. *Other effects (phsiological/behavioral/ecosystem processes).* No studies on physiological, behavioral, or ecosystem effects of chlorendic acid have been found.

D. *Bioconcentration and food/chain transport.* Because of the polar nature of chlorendic acid, it is not expected to bioconcentrate in fatty tissues of organisms. The estimated bioconcentration factor (BCF) in fatty tissues of fish is 1 (Veith, 1981). Chlorendic acid may bind with protein groups (Friedman et al, 1974) thereby increasing the potential for food/chain transport. No data were found on this concern.

E. *Reasons for specific environmental effects recommendations.* Because of the use/disposal patterns and water solubility of chlorendic acid, this compound is expected to accumulate in the aquatic environment. Chemical and biological degradation of chlorendic acid is estimated to be sufficiently slow to persist in the environment. Chemical fate testing is recommended to permit an understanding of movement and compartmentalization of chlornedic acid in the aquatic environment. These tests can provide data on the potential exposure of aquatic organisms to chlorendic acid, as well as an estimate of food-chain transport.

No data were found on the toxicity of chlorendic acid to aquatic organisms. There is concern with this compound because it is structurally similar to other highly chlorinated norbornene compounds, such as the pesticides chlordane, heptachlor, endosulfan, isodrin, dieldrin, and endrin. Therefore, it is recommended that chlorendic acid be tested for acute and chronic toxicity to aquatic animals and plants.

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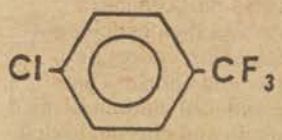
2.2.b *4-Chlorobenzotrifluoride.*

Summary of recommended studies. It is recommended that 4-chlorobenzotrifluoride be tested for the following:

A. *Health Effects:*
Chronic effects
B. *Environmental Effects:*
Chemical Fate
Bioconcentration

Physical and Chemical Information

CAS Number: 98–56–6.
Structural Formula:



Empirical Formula: $C_7H_4ClF_3$.
Molecular Weight: 181.
Melting Point: −36° C.
Vapor Pressure: 8 mm Hg at 25° C (estimated).
Log Octanol/Water Partition Coefficient: 3.72 (estimated).

Description of Chemical: 4-Chlorobenzotrifluoride is a colorless liquid at room temperature (22° C). It has a low solubility in water and is soluble in most organic solvents.

Rationale for Recommendations

I. *Exposure information*—A. *Production/use/disposal information.* Between 10 million and 50 million pounds of 4-chlorobenzotrifluoride were produced in 1977 (EPA, 1980). The chemical is used primarily as an intermediate. It has been considered for use as a solvent and as a dielectric fluid (Hooker, 1981a). 4-Chlorobenzotrifluoride appears to be released to the environment at production and use sites through wastewaters (Pellizari et al, 1979; Hites, 1980; Yurawecz, 1979) and through drainage from waste disposal areas. The detection of 4-chlorobenzotrifluoride at concentrations of 0.17–2.0 ppm in edible portions of three species of freshwater fish (Yurawecz, 1979) provides further evidence that there is environmental exposure to this chemical.

B. *Chemical fate information.* No test data on the environmental transport or persistence of 4-chlorobenzotrifluoride have been identified. The chemical is sufficiently volatile to enter the atmosphere. Based on its chemical structure, it is expected to resist degradation, persist in the environment, and bioconcentrate (see section III0.

II. *Biological effects of concern to human health*—A. *Short-term (acute) effects.* The acute toxicity of 4-chlorobenzotrifluoride has been well characterized in rodents (Hooker, 1981a). Oral LD_{50} values have been estimated to be greater than 6.8 g/kg in male and female Sprague-Dawley rats. A 4-hour acute inhalation study utilizing male and female Sprague-Dawley rats yielded an estimated LC_{50} value of 33.0 mg/L.

B. *Short-term tests.* Several short-term in vitro tests have been performed on 4-chlorobenzotrifluoride and the following results have been reported (Hooker, 1981a):

Test	Test results
(1) *Salmonella typhimurium* (TA–1535; TA–1537; TA–1538; TA–98; TA–100).	Negative.
(2) *Escherichia coli* (W3110/*pol* A⁺; P 3478/*pol* A⁻).	Negative.
(3) *Saccharomyces cerevisiae* (D_4)	Negative.
(4) Mouse lymphoma forward mutation assay (TK locus in L5178Y cells).	Negative.
(5) Unscheduled DNA synthesis (EUE cells)	Positive.
(6) In vitro transformation (BALB/3T3 cells)	Negative.
(7) Sister chromatid exchange (L5178Y mouse lymphoma cells).	Positive.

Details of the study designs and evaluation criteria were not available to the Committee for review.

C. *Long-term (subchronic/chronic) effects.* No data are currently available to assess the long-term effects of 4-chlorobenzotrifluoride. A 90-day subchronic and reproductive study, by gavage in rats, has been proposed by a sponsor (Hooker, 1981b). The Committee has received no information concerning the status of the study.

D. *Health effects recommendations.* Based on the data provided by industry (Hooker, 1981a) no further acute toxicity testing is recommended. Since two of the seven short-term in vitro tests were positive, there are concerns about its potential for chronic effects.

The potential for 4-chlorobenzotrifluoride to bioconcentrate is of concern because humans may be chronically exposed to this chemical through its manufacture, use, and disposal. Since humans may be exposed through the food chain, as suggested in the following section on Environmental Considerations, there is concern for chronic human health effects. Based on these considerations, 4-chlorobenzotrifluoride is recommended for chronic toxicity testing. The Committee believes, however, that prior to conducting long-term chronic testing, there should be a clarification and subsequent review of the protocols and criteria used for the short-term tests summarized above.

III. *Environmental considerations*—A. *Short-term (acute) effects.* Acute toxicity tests have been conducted under static conditions in fish and daphnids (Hooker, 1981a). LC_{50} values were reported for bluegill sunfish (12.0 mg/L; 96 hr), rainbow trout (13.5 mg/L; 96 hr), and *Daphnia magna* (12.4 mg/L; 48 hr).

B. *Long-term (subchronic/chronic) effects.* A 21-day flow-through test was conducted with *D. magna* (Hooker, 1981a). The maximum allowable toxicant concentration (MATC) was calculated to be 0.03–0.05 mg/L. Results of a 30-day embryo/larval test using fathead minnows produced an MATC of 0.54–1.40 mg/L (Hooker, 1981a).

C. *Other effects (physiological/behavioral/ecosystem processes).* Inhibition of six species of bacteria and fungi was observed at concentrations ranging from 31 to 8,000 ppm (Hooker, 1981a). This data summary also reported inhibition of green and blue-green algal species at 500 ppm.

D. *Bioconcentration and food-chain transport.* The log of the octanol/water partition coefficient, estimated by Hansch and Leo (1979), is 3.72 for 4-chlorobenzotrifluoride. By the method of Veith et al. (1980), the bioconcentration factor is calculated to be 382 for 4-chlorobenzotrifluoride.

E. *Rationale for environmental effects recommendations.* Adequate testing has been completed on the short-term (acute) and long-term (chronic) effects of 4-chlorobenzotrifluoride on aquatic organisms. The results of these tests (Hooker, 1981a) indicates that 4-chloro benzotrifluoride is moderately toxic to fish and aquatic invertebrates.

The compound may enter aquatic systems through wastewater from manufacture, solvent usage and through drainage from waste dump sites. Upon reaching the aquatic environment, 4-chlorobenzotrifluoride is expected to be persistent because of the estimated low rates of chemical and biological degradation (Adler et al, 1978). Chemical fate studies are recommended to provide information necessary to quantify the environmental transport and compartmentalization of 4-chlorobenzotrifluoride.

Because of the relatively high calculated log octanol/water partition coefficient, 4-chlorobenzotrifluoride is expected to bioconcentrate in fatty tissues of living organisms. Yurawecz (1979) detected 4-chlorobenzotrifluoride at concerntrations ranging from 0.17 to 2.0 ppm in the edible portion of three species of freshwater fish (white bass, smallmouth bass, and yellow perch) collected from Niagara River. This potential for bioconcentration increases concern for the effects of food chain transport of 4-chlorobenzotrifluoride. For these reasons and the expected

environmental entry routes, it is recommended that testing be conducted to determine the bioconcentration of 4-chlorobenzotrifluoride.

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2.2.c *Tris(2-Chloroethyl)Phosphite. Summary of recommended studies.* The Committee recommends that tris(2-chloroethyl)phosphite be tested for the following:

A. Health Effects:
- Pharmacokinetic and metabolic studies
- Subchronic effects
- Reproductive effects

B. Environmental Effects:
- Chemical fate
- Acute toxicity to fish, aquatic invertebrates, and algae

Physical and Chemical Information

CAS No.: 140–08–9.

Synonyms: 2-chloroethanol phosphite (3:1), tris(2-chloroethyl) ester of phosphorous acid.

Structural Formula: $(ClCH_2CH_2O)_3P$.

Empirical Formula: $C_6H_{12}Cl_3O_3P$.

Molecular Weight: 269.5.

Boiling Point: 112–115° C at 2.5 mm Hg; estimated vapor pressure at 25° C less than 0.01 mm Hg.

Specific Gravity: 1.34.

Solubility: Hydrolyzed in water; soluble in organic solvents, including acetone, alcohols, benzene, ether, and carbon tetrachloride

Log Octanol/Water Partition Coefficient: <2 (estimated).

Description: Colorless liquid with a characteristic odor.

Rationale for Recommendations

I. *Exposure information*—A. *Production and use information.* The public portion of the TSCA Chemical Substances Inventory discloses aggregate production by three manufacturers in 1977 of between 2.1 and 21 million pounds in the United States (EPA, 1981). Tris(2-chloroethyl) phosphite is an intermediate in the manufacture of various phosphorous-containing monomers, including latexes, forms, adhesives, and coatings (Kirk-Othmer, 1978). It is reported to be used as an extreme pressure additive in lubricants and as a plasticizer for polyvinyl chloride (Stauffer, 1981a); in these applications the compound could occur in consumer products.

No threshold limit value (TLV®) has been designated by ACGIH, although 2 ppm (10 mg/m³) with a short-term exposure limit (STEL) of 5 ppm (25 mg/m³) has been set for an analog, trimethylphosphite (ACGIH, 1981).

B. *Chemical fate information.* Tris(2-chloroethyl) Phosphite probably is hydrolyzed in aqueous environments, with estimated half-lives depending on the pH of the system (rapid at low pH; a few hours at pH 7 and above). The hydrolysis product very likely is 2-chloroethanol. (Smith, 1933; Imaev, 1961a; Imaev, 1961b).

II. *Biological effects of concern to human health*—A. *Toxicity studies.* Tris(2-chloroethyl)phosphite was reported in one study to have an acute oral LD_{50} in the rat of 0.9 ml/kg (1200 mg/kg) (Olin, 1981). Another study found an oral LD_{50} of 100 mg/kg (Mobil, 1980). A third study reported that the LD_{50} is greater than 10 mg/kg and less than 50 mg/kg in female rats. The same source reported an LD_{10} of 50 mg/kg in male rats; in both male and female rats there was 100 percent mortality at doses above 500 mg/kg (Stauffer, 1981b).

Acute dermal LD_{50} values in rabbits, reported by three chemical firms were in the range of 500 to 2000 mg/kg (Olin, 1981; Mobil, 1980; Stauffer, 1981b).

In rabbits a 4-hour skin application elicited only a mild irritant action (Stauffer, 1981b), whereas 24-hour dermal exposure to tris(2-chloroethyl)phosphite caused necrosis and fissures of the skin (Olin, 1981). Edema was noted in intact and abraded skin sites. The test material produced severe corneal, iridial, and conjunctival effects in rabbit eyes; more than 7 days was required for recovery. (Olin, 1981).

In rats, the acute inhalation LC_{50} was greated than 5.0 mg/L in both male and female rats. There was 20 percent mortality in female rats exposed at 5.0 mg/L for 4 hours, but none in males. Both sexes displayed physical signs of toxicity. (Stauffer, 1981b).

In both rats and rabbits, tris(2-chloroethyl)phosphite led to decreases in cholinesterase levels in either red blood cells or plasma. (Olin, 1981).

In view of the variance in reported acute toxicity levels, as well as the difference in response of male and female rats, subchronic studies of the toxicity of tris(2-chloroethyl)phosphite are recommended.

B. *Mutagenicity.* Tris(2-chloroethyl)phosphite was tested in *Salmonella typhimurium* strains TA 98, TA 100, TA 1535, and TA 1537, with and without activation. Two activation systems were used, namely: Aroclor 1254-induced male Sprague-Dawley rat liver S–9 and Aroclor 1254-induced male Syrian hamster liver S–9. No significant mutagenic activity was noted in TA 98, TA 100, TA 1535, or TA 1537, despite the use of doses ranging from 333 to 13,800 μg with and without activation (NTP, 1981a).

C. *Metabolism studies.* No information was found on the absorption, distribution, excretion, or metabolism of tris(2-chloroethyl)phosphite. Thus, pharmacokinetic and metabolic studies should be performed to determine what the possible products are. A long-term study on 2-chloroethanol, one possible metabolite, was initiated in January of 1981 and animal studies will end in February 1983 (NTP, 1981b). 2-Chloroethanol is eventually converted to chloroacetic acid which was not carcinogenic in two hybrid strains of mice (Innes et al., 1969) or in rats (Fuhrman et al., 1955). Depending upon the results of the studies with 2-chloroethanol, further testing requirements for tris(2-chloroethyl)phosphite should be considered.

D. *Teratogenicity and reproductive effects.* No information was available on teratogenicity or reproductive effects. In view of the possible alkylating action of tris(2-chloroethyl)phosphite, alterations in genetic material may result from exposure. Thus, studies of reproductive effects in both sexes are recommended.

III. *Environmental considerations*—A. *Short-term (acute) effects.* No studies on the short-term effects of tris(2-

chloroethyl)phosphite have been found for either aquatic animals or plants.

B. *Long-term (subchronic/chronic)effects.* No studies on the long-term effects of tris(2-chloroethyl)phosphite have been found for either aquatic animals or plants.

C. *Other effects (physiological/behavioral/ecosystem processes).* No studies on physiological, behavioral, or ecosystem effects of tris(2-chloroethyl)phosphite have been found.

D. *Bioconcentration and food-chain transport.* Because of chemical structure, there is no reliable way to estimate the log octanol/water partition coefficient (log P) for this compound. However, based upon solubility characteristics and comparisons with other data (Leo et al., 1971), tris(2-chloroethyl)phosphite is expected to have a log P of less than 2 (Veith, 1981). Because of the relatively low log P estimates and the anticipated rapid in vivo hydrolysis (Smith et al., 1933, Imaev, 1961b), tris(2-chloroethyl)phosphite is not expected to bioconcentrate significantly in fatty tissues. This compound is likely to bind to sediments and thus have the potential to be transported along the food chain. No data were found on food-chain transport.

E. *Reasons for specific environmental effects recommendations.* The reported use/disposal pattern of tris(2-chloroethyl)phosphite indicates that the primary exposure to this compound will occur in the aquatic environment. It is expected to enter the aquatic environment through manufacturers' and processors' wastewater and through degradation of polymers.

Studies of similar trialkyl phosphites (Imaev, 1961a, 1961b) indicate that tris(2-chloroethyl)phosphite will be rapidly hydrolyzed (estimated minutes to hours) in water to a potentially toxic compound, 2-chloroethanol. Sorption of tris(2-chloroethyl)phosphite to sediments may impede hydrolysis. Chemical fate testing is recommended to permit an understanding of the movement and compartmentalization of tris(2-chloroethyl)phosphite in the aquatic environment. These tests can provide data on the expected rate of hydrolysis to 2-chloroethanol. In addition, chemical fate testing will permit estimates of the sorption of tris(2-chloroethyl)phosphite to sediments and its effect on hydrolysis and potential food chain transport.

No test data were located on the toxicity of tris(2-chloroethyl)phosphite to aquatic organisms. Acute toxicity tests in fish, aquatic invertebrates, and algae are recommended because of the aquatic exposure anticipated, the apparent toxicity of a degradation product, and the paucity of toxicity test data on tris(2-chloroethyl)phosphite.

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[FR Doc. 82-3071 Filed 2-4-82; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Application for Certificate [Casualty]

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

DFDS Seaways (Bahamas) Ltd.,
DFDS Seacruises (Bahamas) Ltd.,
United Steamship Company (Bahamas) Ltd. and Scandinavian World Cruises (Bahamas) Limited
c/o Scandinavian World Cruises, 1441 Port Boulevard, Port of Miami, Miami, Florida 33132

Dated: February 2, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-3015 Filed 2-4-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Banque Nationale de Paris; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as BNP International Corp., Houston, Texas. BNP International Corp. would operate as a subsidiary of Banque Nationale de Paris, Paris, France. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than February 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3028 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bay-Hermann Bancshares, Inc.; Formation of Bank Holding Company

Bay-Hermann Bancshares, Inc., Hermann, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of

Bay-Hermann Bank, Hermann, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3029 Filed 2-4-82; 8:45]

BILLING CODE 6210-01-M

Carter Bancshares, Inc.; Formation of Bank Holding Company

Carter Bancshares, Inc., Carter, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of The First National Bank of Carter, Carter, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the applciation should submit views in writing to the Reserve Bank, to be received not later than February 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3030 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Inter First Corp.; Acquisition of Bank

Inter First Corporation, Dallas, Texas, (formerly First International Bancshares, Inc.), has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of The Peoples National Bank of Tyler, Tyler, Texas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3031 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Met-State Corp.; Proposed Acquisition of Metropolitan State Industrial Bank

Met-State Corporation, Brighton, Colorado, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Metropolitan State Industrial Bank, Commerce City, Colorado.

Applicant states that the proposed subsidiary would engage in the activities of an industrial bank, and sell insurance that is directly related to an extension of credit by a bank or is directly related to the provision of financial services by a bank. These activities would be performed from offices of Applicant's subsidiary in Commerce City, Colorado, and the geographic areas to be served are Commerce City, Colorado and the unincorporated section of Adams County, Colorado that is bounded by the South Platte River to the west; 120th Avenue to the north; the Rocky Mountain Arsenal to the east; and the Adams County Line to the south. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received no later than February 27, 1982.

Board of Governors of the Federal Reserve System, January 28, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3034 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Republic of Texas Corp.; Acquisition of Bank

Republic of Texas Corporation, Dallas, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of The Lubbock National Bank, Lubbock, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than February 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing,

identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3032 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

RLG Bancshares, N.V.; Formation of Bank Holding Company

RLG Bancshares, N.V., Houston, Texas, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares, less directors' qualifying shares, of First Western Bancshares, Inc., a bank holding company, and thereby acquire indirectly 100 percent, less directors' qualifying shares, of Western Bank, Houston, Texas. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 27, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 28, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3035 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Terre Du Lac Bancshares, Inc.; Formation of Bank Holding Company

Terre Du Lac Bancshares, Inc., Chesterfield, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Leadwood, Leadwood, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 27, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 28, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3036 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Western Holding Company of Wolf Point; Formation of Bank Holding Company

Western Holding Company of Wolf Point, Wolf Point, Montana, has applied for the Board's approval under Section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 100 percent of the voting shares of Western National Bank of Wolf Point, Wolf Point, Montana. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 28, 1982. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3033 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Govenors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 25, 1982.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Philadelphia National Corporation,* Philadelphia, Pennsylvania (mortgage lending activities; New Jersey and Pennsylvania): To engage through its subsidiary, Colonial Mortgage Service Company Associates, Inc., in the origination of FHA, VA, and conventional residential mortgage loans. These activities will be conducted from offices in Haddonfield and Newark, New Jersey, serving New Jersey and Pennsylvania.

2. *Philadelphia National Corporation,* Philadelphia, Pennsylvania (financing activities; New York, Ohio, and Pennsylvania): To engage through its subsidiary, Congress Financial Corporation, in the solicitation and making of loans secured by accounts receivable, inventory, machinery and equipment and/or other commercial finance collateral from and to businesses and corporations. These activities will be conducted from an office in Elma, New York, serving the

States of New York, Ohio, and Pennsylvania.

B. **Federal Reserve Bank of Chicago.** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

Continental Illinois Corporation, Chicago, Illinois (servicing and commercial finance activities; California): To engage, through its existing subsidiary, Continental Illinois Commercial Corporation, in the following previously approved activities: making or acquiring, for its own account or for the account of others, secured and unsecured loans and other extensions of credit (including issuing letters of credit and accepting drafts) to or for business, governmental and other customers (excluding direct consumer lending), and servicing such loans and other extensions of credit. These activities will be performed from an office to be located at 515 Flower Street, in the city of Los Angeles, California, serving the State of California.

C. **Other Federal Reserve Banks:** None.

Board of Governors of the Federal Reserve System, January 29, 1982.

Theodore E. Downing, Jr.,

Assistant Secretary of the Board.

[FR Doc. 82-3037 Filed 2-4-82; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR H-38]

Utilization and Disposal; Regional Consolidation of Real Property Disposition Programs

January 28, 1982.

To: Heads of Federal Agencies.

Subject: GSA Regional Consolidation of Real Property Disposition Programs.

1. *Purpose.* This bulletin is issued to notify agencies of the consolidation of real property disposition programs in the GSA regional offices, and to redirect agency inquiries and program documentation accordingly. The real property program provides for the utilization and disposal of excess and surplus real property and related personal property.

2. *Expiration date.* This bulletin will remain in effect until canceled.

3. *Backgound.* In order to conduct the real property disposition programs efficiently with the current and projected resources available, the Federal Property Resources Service (FPRS) is consolidating the Real Property Divisions from 10 regions into 6 regional offices.

4. *General.* On February 28, 1982, the Real Property Divisions in Regions 2, NCR, 6, and 8 will be disestablished and the real property disposition functions transferred to the consolidated Real Property Division regions listed below

Consolidated real property regions	Standard Gas regions covered
Region 1—Boston, MA	Regions 1, 2 (less Puerto Rico and Virgin Islands).
Region 4—Atlanta, GA	Regions 3, NCR, 4 (Puerto Rico and Virgin Islands).
Region 5—Chicago, IL	Region 5.
Region 7—Fort Worth, TX	Regions 6 and 7.
Region 9—San Francisco, CA.	Regions 8 and 9
Region 10—Auburn, WA	Region 10.

5. *Agency action.* Effective February 28, 1982, Standard Forms 118 (Report of Excess Real Property) and accompanying Standard Forms 118a (Buildings, Structures, Utilities, and Miscellaneous Facilities), 118b (Land), and 118c (Related Personal Property), should be submitted to the appropriate consolidated regional Real Property Division listed above. All other matters, except mortgage administration, related to the real property program should also be directed to the consolidated regional Real Property Division. Inquiries regarding property reported to a Real Property Division scheduled to be deactivated should be directed to those regional offices until they are closed out on February 28, 1982. After that date, any remaining workload will be reassigned to the consolidated regional offices listed above.

6. *GSA assistance.*

a. A satellite office with real property disposition program representatives reporting to the consolidated Real Property Division office will be maintained in Regions 2, NCR, and 8 to maintain customer liaison, and related work of a local nature.

b. Additional information needed in connection with this bulletin may be obtained by writing to the Commissioner, Federal Property Resources Service (D), General Services Administration, Washington, DC 20405, or by calling the Office of Real Property (DR), telephone (202) 535-7084.

Roy Markon,

Commissioner, Federal Property Resources Service.

[FR Doc. 82-3016 Filed 2-4-82; 8:45 am]

BILLING CODE 6820-96-M

GOLD COMMISSION

Meeting

Notice is hereby given that the Commission established pursuant to Pub. L. 96-389 to review the role of gold in the domestic and international monetary systems and report its findings and recommendations to the Congress, will meet in the Treasury Department Cash Room on Friday, February 12, 1982, beginning at 9:30 A.M. The meeting is open to the public.

Any comment or inquiry with respect to this notice can be addressed to Ralph V. Korp, Director, Office of International Monetary Affairs, U.S. Department of Treasury, Washington, D.C. 20220, (202) 566-5365.

Dated: February 1, 1982.

Ralph V. Korp,

Director, Office of International Monetary Affairs, Department of Treasury.

[FR Doc. 82-3038 Filed 2-4-82; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Salsbury Laboratories, Inc.; Polystat and Polystat-3; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) sponsored by Salsbury Laboratories, Inc., providing for use of Polystat and Polystat-3 (sulfanitran, butynorate, dinsed, and roxarsone) in manufacturing complete chicken and turkey feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: February 16, 1982.

FOR FURTHER INFORMATION CONTACT: Philip J. Frappaolo, Bureau of Veterinary Medicine (HFV-232), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4940.

SUPPLEMENTARY INFORMATION: Salsbury Laboratories, Inc., 200 Rockford Rd., Charles City, IA 50616, is the sponsor of NADA 9-638 which provides for use of the combination medicated premixes Polystat (30 percent sulfanitran, 20 percent butynorate, 20 percent dinsed, and 2.5 percent roxarsone) and Polystat-3 (30 percent sulfanitran, 20 percent butynorate, 20 percent dinsed, and 5 percent roxarsone). The premixes are used in manufacturing a complete chicken and turkey feed containing 2 pounds of premix per ton for coccidiosis, large roundworm infections, tapeworm infections, weight gain, feed efficiency, and improved pigmentation, and hexamitiasis in turkeys.

The application originally became effective on December 13, 1954. The NADA was the subject of a notice of opportunity for hearing published in the **Federal Register** of August 29, 1978 (Doc. No. 78N-0230; 43 FR 38628). The notice indicated there is a lack of substantial evidence demonstrating that the products are safe and effective when used as labled. The firm initially responded requesting a hearing. In their letter of October 27, 1981, the firm requested withdrawal of approval of the NADA and of its request for hearing.

Section 514.115(d) (21 CFR 514.115(d)) of the animal drug regulations allows for the voluntary withdrawal of an approved NADA. Section 514.115(d), however, normally does not apply if the holder of the application whose withdrawal has been requested already has been afforded an opportunity for hearing on a proposal to withdraw approval of the NADA. In this case, however, Salsbury's request is being granted because of the extended time interval which has elapsed since the notice of opportunity for hearing was published and also because the public interest will be served and Salsbury's interests will not be prejudiced by the withdrawal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10 (formerly 5.1; see 46 FR 26052; May 11, 1981)) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 9-638 and all its supplements for Polystat and Polystat-3 containing sulfanitran, butynorate, dinsed, and roxarsone is hereby withdrawn, effective February 16, 1982.

Dated: January 29, 1982.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 82-3010 Filed 2-4-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 81N-0397]

Revisions of Certain Food Chemicals Codex, 3d Edition, Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex, 3d edition, monographs and is soliciting specification information on proposed new monographs. For certain substances used as food ingredients, revised materials, consisting of new monographs, and additions, changes, and corrections in several current monographs, are being prepared by the National Academy of Sciences/National Research Council (NAS/NRC) Subcommittee on Codex Specifications. These revised materials will be published in the first supplement to the Food Chemicals Codex, 3d edition.

DATE: Comments by April 6, 1982. (The NAS/NRC Subcommittee on Codex Specifications advises that comments that are not received by this date cannot be considered for the first supplement but will be considered for later supplements.)

ADDRESS: Written comments to the NAS/NRC Subcommittee on Codex Specifications, National Academy of Sciences (JH 224), 2101 Constitution Ave., NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Robert Mathews, Food Chemicals Codex, Food and Nutrition Board, 2101 Constitution Ave., NW., Washington, DC 20418, 202-389-6537,

or

John W. Gordon, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202-426-9462.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to the NAS/NRC to support preparation of the Food Chemicals Codex, a compilation of specifications for substances used as food ingredients. In the **Federal Register** of November 2, 1979 (44 FR 63155), FDA announced that the NAS/NRC Subcommittee on Codex Specifications was reviewing the Food Chemicals Codex, 2d edition, and the three supplements issued thereto, in preparation for publication of the Food Chemicals Codex, 3d edition. The public was invited to comment and to make suggestions for consideration for inclusion in that publication. The Food Chemicals Codex, 3d edition, was published in 1981.

The agency now gives notice that the NAS/NRC Subcommittee on Codex Specifications is soliciting comments and information on proposed new monographs and proposed changes to certain current monographs. Information received in response to this notice will be used for developing these new monographs and for determining the necessity of the contemplated changes to the current monographs. These changes and new monographs will be published in the first supplement to the Food Chemicals Codex, 3d edition. Copies of the proposed changes to current monographs may be obtained from the National Academy of Sciences at the address listed above.

FDA emphasizes, however, that it will not consider adopting the first supplement to the Food Chemicals Codex, 3d edition, until the public has had ample opportunity to comment on the changes. The opportunity for public comment will be announced in a notice published in the **Federal Register**.

The NAS/NRC Subcommittee on Codex Specifications invites comments and suggestions of specifications by all interested parties on the proposed monographs and proposed revisions of current monographs.

I. Proposed new monographs:

Synthetic fatty alcohols (cetyl, decyl, hexyl, lauryl, myristyl, octyl, stearyl)
Annatto extract
Dehydrated beets
Casein
Certified food colorants
High fructose corn syrup
Gelatin
Grape skin extract
Hexane
Hydrolyzed vegetable protein
Carbon dioxide
Invert sugar
Lactose
Magnesium sulfate, monohydrate
Propellant gases
Smoke flavor
Triglycerides (refined edible lipids)
Vitamin D concentrate
Calcium sorbate

II. Current monographs in which the NAS/NRC is proposing to make changes:

Aspartame (optical rotation, test for isomeric impurities)
Butylated hydroxyanisole (BHA) (new gas chromatography assay)
Calcium chloride, anhydrous (particulate contaminants)
Calcium oxide (fluoride limit)
Carbon, activated (lead test, polynuclear aromatic hydrocarbon test)
Dimethylpolysiloxane (viscosity range)
Malic acid (fumaric and maleic acid tests)
Sodium saccharin (assay method)
Sodium bicarbonate (assay procedure)
Zinc sulfate, monohydrate (assay range)

Four copies of written comments regarding this notice are to be submitted to the National Academy of Sciences at the address listed above. The National Academy of Sciences will forward copies of each comment to the Dockets Management Branch (HFA-305), Food

and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, to be placed under Docket No. 81N–0397 for public review.

Dated: January 28, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–2861 Filed 2–4–82; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Reports on Bioassays of Selenium Sulfide and Selsun® for Possible Carcinogenicity; Availability

Three long-term animal bioassays of selenium compounds for possible carcinogenicity were conducted by the National Toxicology Program and the National Cancer Institute. Two of the bioassays were skin painting studies designed to approximate the human use of antidandruff shampoos. The bioassays of selenium sulfide were conducted in two ways: by administering it by gavage to mice and rats, and by applying it to the skin of mice. Selsun®, an antidandruff shampoo containing 2.5 percent selenium sulfide, was also tested dermally in mice.

The element selenium is a trace metal that is a dietary constituent for animals and probably for humans. In excess, it is toxic. Various selenium compounds have industrial and medical uses.

Under the conditions of the dermal bioassays, neither selenium sulfide nor Selsun® produced a carcinogenic effect in the mice.

The garage study of selenium sulfide was carcinogenic for F344 rats and female B6C3F1 mice, inducing hepatocellular carcinomas in male and female rats and female mice and alveolar/bronchiolar carcinomas and adenomas in female mice. Selenium sulfide was not carcinogenic for male mice, but they may have been able to tolerate higher doses.

Single copies of the reports, Bioassay of Selenium Sulfide (Gavage) for Possible Carcinogenicity (TR 194), Bioassay of Selsun® for Possible Carcinogenicity (TR 199), and Bioassay of Selenium Sulfide (Dermal Study) for Possible Carcinogenicity (TR 197), and additional information are available from the Office of Cancer Communications, National Cancer Institute, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: January 27, 1982.

Thomas E. Malone,

Acting Director, National Institutes of Health.

[FR Doc. 82–2861 Filed 2–4–82; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Environmental Quality

[Docket No. NI–93]

Intended Environmental Impact Statement; KaKa'aKo, Oahu, Hawaii

The Department of Housing and Urban Development gives notice that an Environmental Impact Statement (EIS) is intended to be prepared for the following project under HUD programs as described in the appendix to this Notice: KaKa'aKo, Oahu, Hawaii. This Notice is required by the Council on Environmental Quality under its rules (40 CFR Part 1500).

Interested individuals, governmental agencies, and private organizations are invited to submit information and comments concerning the project to the specific person or address indicated in the appropriate part of the appendix.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, issues and data which the EIS should consider, recommended mitigating measures and alternatives, and major issues associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interests should report their interests and indicate their readiness to aid the EIS effort as a "cooperating agency."

Each Notice shall be effective for one year. If one year after the publication of a Notice in the **Federal Register** a Draft EIS has not been filed on a project, then the Notice for that project shall be cancelled. If a Draft EIS is expected more than one year after the publication of the Notice in the **Federal Register**, then a new and updated Notice of Intent will be published.

Issued at Washington, D.C. February 1, 1982.

Francis G. Haas,

Deputy Director, Office of Environmental Quality.

Appendix

Environmental Impact Statement on the KaKa'aKo, Oahu, Hawaii, Community Development District Plan

The Department of Housing and Urban Development (HUD) Honolulu Area Office and the Hawaii Community Development Authority intend to prepare an EIS on the project described below. The Department hereby solicits comments and information for consideration in the EIS.

Description: The KaKa'aKo Community Development District Plan is a proposal to redevelop KaKa'aKo, a 450 acre area of the Honolulu urban core between the Central Business District and Waikiki. HUD may participate in the implementation of the District Plan by making available mortgage insurance, low rent housing subsidies, and other funds under the Community Development Block Grant Program.

A mixture of commercial, industrial, and residential uses are planned with new public roadways, parks, schools, housing and commercial and industrial uses proposed to be established over a period of the next 25 to 30 years. A population increase from 2,300 to 47,500 persons and a job increase from 18,600 to 69,000 jobs is anticipated.

Need: An EIS is proposed due to HUD threshold requirement in accordance with housing program environmental regulations and probable impact on: Topography, water quality, air quality, noise, vegetation, public sewers, utilities, and traffic volumes.

Alternatives: At this time, the HUD alternatives are: accept the proposed development as submitted, accept the proposed development with modifications, or reject the proposed development.

Scoping: A formal scoping meeting is not anticipated. This notice is part of a process for scoping the EIS. Responses to this notice will be used to help (1) determine significant issues, (2) identify relevant data, and (3) identify cooperating agencies. For further information, please contact Frank Johnson, Environmental Officer, Department of Housing and Urban Development, Honolulu Area Office, P.O. Box 50007, Honolulu, Hawaii 96850. His phone number is (808) 546–2198.

Comments: Comments and questions regarding this proposal should be sent to Robert K. Fukuda, Area Manager, Attention of Frank Johnson, Environmental Officer, HUD Honolulu Area Office, 300 Ala Moana Boulevard, Room 3318, Honolulu, Hawaii 96850. The Area Office phone number is (808) 546–2136.

[FR Doc. 82–3020 Filed 2–4–82; 8:45 am]

BILLING CODE 4210–01–M

Office of the Secretary

[Docket No. D–82–663]

Delegation of Authority Under Multifamily Mortgage Foreclosure Act of 1981

AGENCY: Department of Housing and Urban Development.

ACTION: Delegation of certain responsibilities under the Multifamily Mortgage Foreclosure Act to the general counsel.

SUMMARY: This notice delegates to the General Counsel the power under the Multifamily Mortgage Foreclosure Act

(the "Act") to appoint a foreclosure commissioner or commissioners, or a substitute forclosure commissioner to replace a previously designated foreclosure commissioner to fix compensation and to promulgate implementing regulations under the Act.

EFFECTIVE DATE: January 27, 1982.

FOR FURTHER INFORMATION CONTACT: John P. Kennedy, Office of General Counsel, U.S. Department of Housing and Urban Development, Room 10270, Area Code (202) 755–6999.

SUPPLEMENTARY INFORMATION: Section 365 of the Multifamily Mortgage Foreclosure Act of 1981, Pub. L. 97–35, 95 Stat. 423 (August 13, 1981) (12 U.S.C. 3704), empowers the Secretary of HUD, by executing a duly acknowledged, written designation stating the name and business or residential address, to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, to exercise a nonjudical, statutory power of sale with respect to a multifamily mortgage held by the Secretary. Such mortgage may have originated under Title II of the National Housing Act or section 312 of the Housing Act of 1964. Section 369C of the Act states that foreclosure costs incurred by the foreclosure commissioner and a commission as authorized by regulations issued by the Secretary shall be paid from the sale proceeds prior to satisfaction of other claims. Section 369I of the Act empowers the Secretary of HUD to issue such regulations as may be necessary to carry out the provisions of the Act. These responsibilities are being delegated by the Secretary to the General Counsel. Accordingly, the Secretary delegates as follows:

Under section 365 of the Act the power to appoint a foreclosure commissioner or commissioners, or a substitute foreclosure commissioner to replace a previously designated foreclosure commissioner, is hereby delegated to the General Counsel with authority to redelegate.

Under section 369C of the Act, the power to fix compensation is delegated to the General Counsel with authority to redelegate this authority. Foreclosure commissioners shall be compensated from the proceeds of sale in accordance with section 412 of the Act. Should the sale proceeds be insufficient, payment of the commission and costs may be made from the insurance fund contingently obligated when the secured indebtendness was insured on the project being foreclosed.

Under section 369I of the Act the power to promulgate such regulations as may be necessary to carry out the provisions of the Act is delegated to the General Counsel with authority to redelegate.

(Multifamily Mortgage Foreclosure Act of 1981, Pub. L. 97–35, 95 Stat. 423 (August 13, 1981); section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Issued at Washington, D.C., January 27, 1982.

Samuel R. Pierce, Jr.,

Secretary of Housing and Urban Development.

[FR Doc. 82–3019 Filed 2–4–82; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona Strip Planning and Wilderness Management Proposal

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent to Amend the Vermillion Management Framework Plan and Prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, the BLM will review public land areas suitable and non-suitable for wilderness designation. This review process will include an amendment to the existing Management Framework Plan to determine proposed recommendations and identify alternates to be utilized in the preparation of an Environmental Impact Statement. The Environmental Impact Statement will also analyze impacts on those areas recommended for wilderness in the Shivwits Management Framework Plan where planning was completed in fiscal year 1981. These areas are in Coconino and Mohave Counties, Arizona.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) requires the Secretary of the Interior to review areas of public land determined to have wilderness characteristics.

FLPMA has therefore made wilderness preservation a part of BLM's multiple-use mandate, with wilderness values recognized as a part of the spectrum of resource values and uses to be considered in the resource management planning process. To carry out the wilderness mandate of FLPMA, the Bureau of Land Management has developed a wilderness review process with three phases: inventory, study, and reporting to Congress. In the wilderness inventory, the B.L.M examined the public lands and, with extensive public participation, identified those areas that met the definition of wilderness established by Congress. These areas were identified as Wilderness Study Areas (WSAs). As a result of the wilderness inventory, 41 WSAs, comprising approximately 762,038 acres have been established (March 19, 1981) in the EIS area.

The wilderness study phase consists of the management planning process and Environmental Impact Statement (EIS) development. The EIS will analyze the Management Proposal as the Proposed Action. Other Alternatives will also be analyzed and include:

(1) Continuation of present management (No Action);

(2) Designation of all WSAs as Wilderness; and

(3) Designation of *more* total wilderness acreage than the Proposed Action.

These alternatives present a range of management for the wilderness resources from all to none. When the study has been completed, a report regarding the suitability or unsuitability of each wilderness study area for designation as wilderness will be submitted to the Secretary of the Interior. The Secretary will make recommendations to the President as provided in Section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782). Reports on wilderness study areas must reach the President no later than October 21, 1991, and reach Congress by October 21, 1993. Only Congress can designate an area as wilderness.

Public participation will include news releases, informational mailings requesting comment and participation and public hearings to receive comment on the adequacy of the EIS. Hearing dates and locations will be announced at a later date.

For information concerning the Environmental Impact Statement contact:

Dennis R. Carter, Team Leader, EIS Office, BLM, 196 East Tabernacle, P.O. Box 250, St. George, Utah 84770, Telephone: (801) 628–0426

Art Tower, Environmental Coordinator, Arizona State Office, BLM, 2400 Valley Bank Center, Phoenix, Arizona 85073, Telephone: FTS–261–4127, Commercial (602) 261–4127

Dated: January 28, 1982.

Tom Allen,

Acting State Director.

[FR Doc. 82-3076 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[Serial Number: A 17000-G]

Arizona; Classification of Public Lands for State Indemnity Selection

In **Federal Register** Document 82-1470, appearing on pages 3042 and 3043 of the issue for January 21, 1982, the following changes should be made for Application A 17000-G:

In paragraph 1, line 5, "1919" should be "1910".

T. 6 N., R. 2 E.,

Section 5 should be:

Lots 1, 2 the W¼ of Lot 3, Lot 4, S½NE¼, N½SW¼NW¼, SW¼SW¼NW¼, E½SE¼NW¼, E½NW¼SE¼NW¼, N½NE¼NE¼SW¼, SE¼NE¼NE¼, SW¼, NE ¼SE¼NE¼SW¼, S½SE¼NE¼SW¼, W½NW¼SW¼, SE¼NW¼SW¼, SW¼SW¼, E½SE¼SW¼, W½SW¼SE¼SW¼, SE¼ [2, 3, 4, 10]

Section 8 should be:

NE¼, NE¼NE¼NW¼, W½W½NE¼NW¼, E½SE¼NE¼NW¼, W½NW¼, E½NE¼SE¼NW¼, W½SE¼NW¼, W½E½SW¼, W½SW¼, SE¼ [2, 3, 4, 10]

Section 29 should be:

E½NE¼NE¼, E½W½NE¼NE½, W½NE¼NW¼NE¼, W½NW¼NE¼, SE¼NW¼NE¼, SE¼NE¼, E½SE¼NE¼, E½NW¼SE¼NE¼, W½, E½NE¼SE¼, W½W½NE¼SE¼, W½SE¼, NE¼SE¼SE¼, W½W½SE¼SE¼, W½E½SW¼SE¼SE¼, E½W½SE¼ SE¼SE¼, E½SE¼SE¼SE¼, [4, 5, 6, 9, 13, 14]

T. 7 N., R. 2 E.,

Section 29 should be:

N½,SW¼, N½NE¼SE¼, N½S½NE¼SE½, NW¼SE¼, SE¼NE¼SW¼SE¼, N½NW¼SW¼SE¼, SW¼NW¼SW¼SE¼, NW¼SW¼SW¼SE¼, SE¼SW¼SE¼, NE¼SE¼SE¼, NE¼NW¼SE¼SE¼, S½NW¼SE¼SE¼, S½SE¼SE¼ [10, 16]

Section 32 should be:

NE¼NE¼, NE¼NW¼NE¼, E½NW¼NE¼NE¼, S½NE¼NW¼, S½NW¼, W½NE¼NE¼NW¼, W½NE¼NW¼, NW¼NW¼, N½SW¼NW¼, SW¼SW¼NW¼, W½SE¼SW¼NW¼, W½NW¼SE¼NW¼, E½E½SW¼, E½W½E½SW¼, W½NE¼NW¼SW¼, W½NW¼SW¼, SE¼NW¼SW¼, SW¼SW¼, SE¼ [4, 10, 16]

Dated: January 28, 1982.

William K. Barker,

For the State Director.

[FR Doc. 82-3074 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[SAC 054898]

California; Partial Termination of Proposed Withdrawal and Reservation of Land; Correction

January 27, 1982.

In **Federal Register** Document No. 81-14459 appearing on pages 26701 and 26702 of the issue of May 14, 1981, the seventh line of the second paragraph reads "Sec. 34, S½SW¼NW¼." It is corrected to read, Sec. 34, S½SW¼NW¼ except: A parcel of land in Section Thirty-four (34) Township Thirty-two (32) North, Range Six (6) West, Mount Diablo Meridian, County of Shasta, State of California, having an area of 5.0 acres, more or less, and being all that portion of the Southwest quarter of the Northwest quarter (SW¼ of NW¼) of said Section 34, that is more particularly described as follows:

Commencing at the southwest corner of the Northwest quarter (NW¼) of said Section 34, said corner being marked by a brass cap set by the Bureau of Land Management in 1957, thence along the south line of said Northwest quarter (NW¼) North 88°14' East 1309.9 feet, thence leaving said south line and running along the east line of said Southwest quarter of the Northwest quarter (SW¼ of NW¼) North 5°23' East 180.3 feet to the true point of beginning of this description, thence leaving said east line North 84°37' West 485.0 feet, thence North 5°23' East 450.0 feet, thence South 84°37' East 485.0 feet to a point on the aforesaid east line of the Southwest quarter of the Northwest quarter (SW¼ of NW¼) of said Section 34, thence along said east line South 5°23' West 450.0 feet to the true point of beginning.

Joan B. Russell,

Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc. 82-3008 Filed 2-4-82; 8:45 am]

BILLING CODE 4301-84-M

[CA 10683]

El Dorado County, California; Conveyance of Public Land

January 25, 1982.

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), Robert and Gail Anderson, 4180 Fort Jim Road, Placerville, California 95667, have purchased by noncompetitive sale public land in El Dorado County, California, described as:

Mount Diablo Meridian, California

T. 10 N., R. 12 E.,
Sec. 20, Lot 6.
Containing 3.00 acres.

The purpose of this notice is to inform the public and interested state and local governmental officials of the issuance of the conveyance document to Mr. and Mrs. Anderson.

Joan B. Russell,

Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc. 82-3006 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[CA 8576]

Conveyance of Public Land; Imperial County, California

Notice is hereby given that pursuant to the Act of October 21, 1976 (90 Stat. 2743; 43 U.S.C. 1713), the Bombay Beach Community Service District, Star Route 1, Box 134, Niland, California 92257, has purchased by noncompetitive sale public land in Imperial County, California, described as follows:

San Bernardino Meridian, California

T. 9 S., R. 12 E.,
Sec. 28, NE¼ and S½.
Containing 480 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the issuance of the conveyance document to the Bombay Beach Community Service District.

Dated: January 28, 1982.

Joan B. Russell,

Chief, Lands Section Branch of Lands and Minerals Operations.

[FR Doc. 82-3007 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[M 1587]

Montana; Termination of Classification of Public Lands for Multiple Use Management

January 29, 1982.

1. On May 26, 1967 (FR Vol. 32, No. 108, p. 8096) the public lands described in the notice, aggregating approximately 175,922 acres in Petroleum County, Montana, were classified for multiple use management under the Act of September 19, 1964 (43 U.S.C. 1411-18). This classification segregated the land from appropriation under the agricultural land laws (43 U.S.C., Parts 7 and 9; 25 U.S.C., sec. 334) and from sales under section 2455 of the Revised Statutes (43 U.S.C. 1171). The lands remained open to all other applicable forms of appropriations, including the mining and mineral leasing laws.

2. Pursuant to the regulations set forth in 43 CFR 2461.5(c)(2), the classification

referred to under paragraph one above is hereby terminated. At 8 a.m. on March 5, 1982, the lands described in said notice on May 26, 1967, shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on March 5, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in order of filing.

Inquiries concerning these lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Kannon Richards,

Acting State Director.

[FR Doc. 82-3075 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[Nev-049863]

Nevada; Classified Vacated

Pursuant to the authority designated by Bureau Order 701 and amendments thereto, small tract classification Nev-049863 is hereby vacated in its entirety. The following township is affected:

Mount Diablo Meridian, Nevada

T. 14 N., R. 20 E.

The land affected comprises approximately 2.50 acres in Carson City, Nevada.

The Small Tract Act was repealed by section 702 of the Federal Land Policy and Management Act of 1976. Accordingly, the classification is no longer applicable and is hereby terminated. The segregative effect of the classification order is removed upon February 5, 1982.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82-3002 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[Nev-049908]

Nevada; Classification Vacated in Part

Pursuant to the authority designated by Bureau Order 701 and amendments thereto, small tract classification Nev-049908 is hereby vacated in part as to the following land:

Mount Diablo Meridian

T. 16 N., R. 21 E.,
Sec. 28, W½SW¼, W½W½E½SW¼;
Sec. 29, E½E½, NE¼SW¼NE¼, NW¼NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, N½NW¼SE¼, N½SW¼NW¼SE¼, E½SE¼NW¼SE¼;
Sec. 32, N½NE¼, SE¼NE¼;
Sec. 33, NW¼NW¼, W½W½NE¼NW¼, N½SW¼NW¼, W½NW¼SE¼NW¼.

The land affected comprises approximately 420.00 acres in Carson City, Nevada.

The Small Tract Act was repealed by section 702 of the Federal Land Policy and Management Act of 1976. Accordingly, the classification is no longer applicable and is hereby terminated. The segregative effect of the classification order is removed on February 5, 1982.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 82-3001 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 51970]

New Mexico; Application

January 29, 1982.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Transwestern Pipeline Company has applied for a 10-inch natural gas pipeline right-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 32 E.
Sec. 15: SE¼SE¼l
Sec. 21: SE¼NE¼, NE¼SW¼, E½SE¼SW¼, N½SE¼;
Sec. 22: N½NE¼, NE¼NW¼, S½NW¼.

This pipeline will convey natural gas across 1.984 miles of public land in Lea County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

John Gregg,

District Manager, Roswell District Office.

[FR Doc. 82-3073 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

[NM 14934]

New Mexico; Amended Application

January 28, 1982.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied to amend the existing right-of-way for replacement of a 10 inch natural gas pipeline with a 24 inch pipeline across the following public lands:

New Mexico Principal Meridian, New Mexico

T. 25 S., R. 24 E.
Section 34: NE¼SW¼, E½SE¼;
Section 35: SW¼SE¼.
T. 26 S., R. 24 E.
Section 1: SW¼SW¼;
Section 12: S½SE¼, NW¼SE¼, SW¼NE¼, E½NW¼, NW¼NW¼;
Section 13: E½NE¼.
T. 26 S., R. 25 E.
Section 18: Lots 1, 2, 3, E½SW¼;
Section 19: SE¼, W½NE¼, NE¼NW¼;
Section 29: W½SW¼, SW¼NW¼;
Section 30: E½NE¼.

This pipeline will convey natural gas across 5.199 miles of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

John Greeg,

District Manager, Roswell District Office.

[FR Doc. 82-3072 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

Lakeview Grazing District Advisory Board; Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR 4120.6-1(e) that the first meeting of the Lakeview Grazing District Advisory Board will be held on March 2, 1982 at 10:00 A.M. in the BLM's Conference Room at 1000 S. 9th Street, Lakeview, Oregon 97630.

The agenda will include the following topics:

1. Selection of a Chairperson and Vice Chairperson.

2. Review of the Board's duties, activities, etc.

3. Discussion of allotment categorization.

4. The BLM maintenance policy.

The meeting will be open to all interested parties who desire to attend. Interested persons may make oral statements to the Board or file a written statement for the Board's consideration. Persons wishing to make statements should notify the District Manager at the above address by February 26, 1982.

Summary minutes of the Board meeting will be maintained in the District Office and available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: January 27, 1982.

Richard A. Gerity,

District Manager.

[FR Doc. 82-3005 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-84-M

OCS Oil and Gas Sale No. 67; Tract Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Tract Withdrawal.

SUMMARY: Notice is hereby given that tract No. 67-61 (Vermilion Block 17) scheduled to be offered in OCS Sale 67 on February 9, 1982, is hereby withdrawn. The legal description of the tract that appeared in the Federal Register notice of January 8, 1982 (47 FR 1076) was incorrect. This tract may be offered in OCS Sale 69.

FOR FURTHER INFORMATION CONTACT: Robert Samuels, Division of Offshore Resources, BLM, 18th and C Streets, Room 2521, Washington, D.C. 20240; (202) 343-5121

Dated: February 4, 1982.

Robert F. Burford,

Director, Bureau of Land Management.

[FR Doc. 82-3354 Filed 2-4-82; 12:02 pm]

BILLING CODE 4310-84-M

Bureau of Reclamation

Contract Negotiations with H&RW Irrigation District; Intent To Begin Amendatory Contract Negotiations

The Department of the Interior, through the Regional Director of the Lower Missouri Region, Bureau of Reclamation (Bureau), intends to begin negotiations with the H&RW Irrigation District (District) for conversion of the existing water service and repayment contract No. 7-07-70-W0045 (formerly 14-06-700-1242), as amended, to a water service contract. The proposed contract is being negotiated pursuant to the Reclamation Project Act of 1939 (53 Stat. 1187), as amended by the Act of September 21, 1959 (73 Stat. 584).

The District, located in southwestern Nebraska, with its headquarters at Culbertson, Nebraska, depends on Enders Reservoir in Chase County for most of its water supply. Extensive ground-water development upstream of Enders Reservoir has depleted the reservoir inflow over the past several years by nearly 60 percent. Geological Survey study "Quantitative Hydrogeology of Upper Republican Natural Resources District, Southwest Nebraska," Water Resource Investigation 78-38, June 1978, concludes that perennial flow of Frenchman Creek entering Enders Reservoir will be eliminated by 1992 if ground-water development continues. The study also concludes that even with no further ground water development, the perennial flow entering Enders Reservoir will be less than 10 percent of the 1975 flow by year 2000. In either case, the depletion of the inflow to the reservoir will reduce the water supply to and the payment capacity of the District.

Therefore, the District is seeking a revision of the terms of repayment in the existing contract to be commensurate with the quantity of water received and the irrigators' ability to repay. The United States is seeking to minimize loss of the capital investment, while irrigation water is still available and sufficient funds are forthcoming to operate and maintain the system.

All meetings scheduled by the Bureau with the District to discuss terms and conditions of the proposed amendatory water service contract will be open for the general public as observers. Advance notice of the meetings will be furnished to those parties having furnished a written request for such notice at least 1 week prior to a scheduled meeting. When a draft contract form has been negotiated, it will be made available to the public for a 30-day review and comment period. During the review period, the public is invited to submit written comments. However, unless significant public interest in the negotiations is stimulated by this notice or local publicity, the availability of the proposed contract for public review and comment may not be publicized further.

Written comments and requests for information should be directed to Robert D. Kutz, Project Manager, Bureau of Reclamation, P.O. Box 1607, Grand Island, Nebraska 68801, telephone (308) 382-3660. All written correspondence concerning the proposed contract amendment will be made available pursuant to the provisions of the Freedom of Information Act (80 Stat. 383), as amended.

Dated: Feb. 1, 1982.

Eugene Hinds,

Assistant Commissioner, Bureau of Reclamation.

[FR Doc. 82-2990 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-09-M

Contract Negotiations for Water Service Contracts From New Melones Unit; Intent To Initiate Contract Negotiations

The Department of the Interior, through the Bureau of Reclamation, intends to initiate contract negotiations for water service from New Melones Unit, Central Valley Project (CVP), California. New Melones Reservoir was constructed by the Corps of Engineers as authorized under the Flood Control Acts of December 22, 1944 (58 Stat. 887), and October 23, 1962 (76 Stat. 1173). Following construction of New Melones Reservoir, the Corps turned the project over to the Bureau of Reclamation for operation as an integral unit of the CVP. The proposed water service contracts will be negotiated pursuant to the authorities of the Acts of December 22, 1944, October 23, 1962, and the Reclamation Project Act of August 4, 1939 (53 Stat. 1187).

As required by the Act of October 23, 1962, the Secretary of the Interior designated the Stanislaus River Basin and projected the quantity of water necessary to be reserved to satisfy the existing and anticipated future needs within the basin. The approved plan is based on a special report entitled "Stanislaus River Basin Alternatives and Water Allocation" and an accompanying final environmental statement filed with the Environmental Protection Agency. In accordance with the approved plan, the reservoir will be operated to provide 180,000 acre-feet of conservation yield to meet present and future agricultural and municipal and industrial (M&I) water needs until approximately the year 2020. Project annual agricultural water use is approximately 116,000 acre-feet for use within the basin and 49,000 acre-feet for use outside the basin. Projected annual M&I use within the basin is 15,000 acre-feet. The projected allocations by basin subareas are as follows: Copperopolis subarea in Calaveras County—15,000 acre-feet; the Lower Tuolumne County—9,000 acre-feet; the Farmington subarea in Stanislaus and San Joaquin Counties—61,000 acre-feet; and the portion of Cooperstown subarea in Stanislaus County—46,000 acre-feet.

The proposed contracting program will be in accordance with the approved plan and will consist of 3 basic water service contracts; the long-term (40-year) contracts, the long-term *interim* contracts, and the temporary (1-year) contracts.

Pursuant to the authorizing legislation, any diversion outside the Stanislaus River Basin is "subordinate" to

quantities required to satisfy all existing and anticipated future needs of the basin. Therefore, the Department is required to reserve those quantities despite the time necessary for full utilization of that water. In order to protect the repayment of the CVP, the Department is marketing, on an interim basis, those quantities of project water reserved for future use within the basin. As demand within the basin develops, quantities contracted for on an interim basis will be withdrawn for inbasin use.

An interim water supply of 85,000 acre-feet has been allocated, as long as available, on a conjunctive use basis, to the Central San Joaquin Water Conservation District, the Stockton-East Water District, and the South Delta Water Agency. This interim supply would be considered a long-term interim water supply and would be available first to Central San Joaquin Water Conservation District and then to Stockton-East Water District in wet, above-normal, normal, and below-normal water years. In dry and critically dry-water years, it is proposed that the entire interim water supply would be available to South Delta Water Agency, contingent on the agency's contractual commitment to pay CVP Delta water charges and to comply with Reclamation law. The water supply available on an interim basis will decrease as inbasin demand for a firm water supply develops. Any firm or interim supply available and not desired by the basin area or local adjacent areas would be made available on an interim basis first to the Montpelier subarea. Any remaining water would be included in the CVP marketing program and contracted as additional CVP supply.

Because New Melones Dam and Reservoir will be integrated into CVP, the proposed contracting program will follow the proposed Central Valley Project water rate policy. The authorizing legislation for the New Melones Unit did not include provisions for Federal construction of conveyance and distribution systems. It is the water user's responsibility to develop and construct conveyance and distribution systems to transport New Melones Unit water. Therefore, the water rate will be based on storage costs only and will be the minimum CVP water rate; $3.50 per acre-foot for agricultural water use and $9.00 per acre-foot for M&I water use. A 5-year rate adjustment provision will be in each contract to account for any increase in the cost of service, with the first adjustment effective January 1, 1986.

All meetings scheduled by the Bureau of Reclamation with potential contractors for the purpose of discussing terms and conditions of a proposed water service contract shall be open to the general public as observers. Advance notice of meetings shall be furnished only to those parties having previously furnished a written request for such notice to the office identified below at least 1 week prior to any meeting. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public. Unless significant public interest is evidenced in response to this notice, the availability of proposed contracts shall not be formally publicized. The Commissioner of Reclamation will review comments submitted, and based on the number, source, and nature of the comments, he will decide whether to hold a public hearing on the proposed contract.

For further information on scheduled negotiation sessions and the proposed contract, please contact Mr. Merv deHaas or Mrs. Betty Riley, Repayment Specialists, Division of Water and Power Reseources Management, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, telephone number (916) 484–4878 or (916) 484–4620.

Dated: February 1, 1982.

Eugene Hinds,

Assistant Commissioner of Reclamation.

[FR Doc. 82–2986 Filed 2–4–82; 8:45 am]

BILLING CODE 4310–09–M

Douglas County Project, Oregon; Intent To Prepare an Environmental Impact Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior proposes to prepare an environmental impact statement for the Douglas County Project, Oregon. Under provisions of the Small Reclamation Projects Act (Pub. L. 84–984 as amended), Douglas County proposes to develop a dam, reservoir, powerhouse, and related facilities within the Cow Creek basin. The proposed project includes storage for irrigation, municipal and industrial water supply, stream enhancement, flood control, and hydroelectric power generation. The primary objective of the project is to provide a water supply to the southern portion of Douglas County.

Four damsites are being considered. The preferred site is at Galesville, Oregon, on Cow Creek, approximately eight miles upstream from Azalea. Based on feasibility studies, a project at this location would include a 158-foot high dam, have a capacity of 38,000 acre feet, a 620-acre normal pool surface, and 1.8 MW installed hydroelectric generating capability. The right abutment would be on BLM land. Relocation of up to eight private residences might be required.

Two alternative sites on West Fork Cow Creek would meet most of the same objectives as the preferred site. The Gold Mountain site is located on privately-owned timberland and BLM managed lands approximately 7.5 miles from the confluence with main stem Cow Creek. The Honeysuckle site is on both private and BLM lands approximately three miles from the confluence with main stem Cow Creek. Neither site would require relocation of residences.

A third alternative, the Applegate site, is not equivalent to the other three. An impoundment at this location, on Applegate Creek approximately 0.5 mile from its confluence with Cow Creek, would have a capacity of only 9,000 acre feet, 170-acre surface area, and no power generation. Property is owned privately and by the U.S. Forest Service. One residence would require relocation.

The present investigation has been underway since early 1981. During this time, considerable input has been and will continue to be received from interested agencies and individuals. In addition, public meetings were held on August 12, 1981, in Riddle, Oregon, and on August 13, in Portland. Scoping information on the concerns and issues which need to be addressed in the environmental statement was sought during these meetings. Consequently, it is not anticipated that formal scoping sessions will be scheduled. However, to further insure that the full range of issues related to this proposal are discussed in the environmental statement and all significant issues are identified, additional comments and suggestions are invited. The contact person is Ms. Gaye Lee, Environmental Protection Specialist, Bureau of Reclamation (Attention: 150), Box 043, 550 West Fort Street, Boise, Idaho 83724 (Telephone: (208) 334–1926).

The draft environmental statement is expected to be completed and available for review and comment by early 1983.

Dated: February 1, 1982.

Eugene Hinds,

Assistant Commissioner.

[FR Doc. 82-2989 Filed 2-4-82; 8:45 am]

BILLING CODE 4310-09-M

INTERNATIONAL COMMUNICATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "El Greco of Toledo" (included in the list [1] filed as a part of this determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to an agreement between the foreign lender and the participating United States museums. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Gallery of Art, Washington, D.C., beginning on or about July 3, 1982, to on or about September 6, 1982; the Toledo Museum of Art, Toledo, Ohio, beginning on or about September 26, 1982, to on or about November 21, 1982; and the Dallas Museum of Fine Arts, Dallas, Texas, beginning on or about December 12, 1982, to on or about February 6, 1983, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 29, 1982.

Charles Z. Wick,

Director.

[FR Doc. 82-3080 Filed 2-4-82; 8:45 am]

BILLING CODE 8230-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** on December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. Applications maybe protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operatations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later become unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275-7326.

Volume No. OP1-15

Decided: January 25, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 16011, filed January 15, 1982. Applicant: LOUIS GAULD, d.b.a. LC TRUCKING, 2244 Greenbrae, Apt. 221, Sparks, NV 89431. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverage and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160171, filed January 18, 1982. Applicant: REMEL SIMS, 312 S. Jackson, East Wenatchee, WA 98801. Representative: Remel Sims (same address as applicant) (509) 884-6092. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP1-17

Decided: January 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating in part.)

MC 112241 (Sub-5), filed January 22, 1982. Applicant: HUSSEY'S MOVING & STORAGE, INC., 1720 Broadway, Vallejo, CA 94590. Representative: Daniel W. Baker, 100 Pine Street, #2550, San Francisco, CA 94111 (415) 986-1414. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., and (2) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 154631 (Sub-2), filed January 21, 1982. Applicant: TRANSPORT SPECIALISTS, INC., 545 Front Street, Woonsocket, RI 02895. Representative: Richard J. Wood, Jr. (same address as

applicant) (401) 765–3800. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *food and other edible products, and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, and (3) *used household goods* for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

MC 160071, filed January 12, 1982. Applicant: TRANSPORTATION ALTERNATIVES COMPANY, 5333 West 144th St., Hawthorne, CA 90250. Representative: Robert A. Forman, 6606 LBJ Freeway, Suite 5135, Dallas, TX 75240 (214) 934–0963. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 160170, filed January 19, 1982. Applicant: CALVIN COLE & STEPHANIE HOWARD, 247 20th Ave. Coos Bay, OR 97420. Representative: Calvin Cole (same address as applicant) (503) 233–5766. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP2–21

Decided: January 29, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 160012, filed January 8, 1982. Applicant: CART TRANSPORT, INC., P.O. Box 699, Laurel, DE 19956. Representative: Wilmer B. Hill, 805 McLachlen Bank Bldg., 666 Eleventh St., N.W., Washington, DC 20001, 202–628–9243. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 160013, filed January 8, 1982. Applicant: TRANS MARK, INC., P.O. Box 351, Hazlet, NJ 07730. Representative: Robert L. Cope, Suite 501, 1730 M St., N.W., Washington, DC 20036, 202–296–2900. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 160052, filed January 11, 1982. Applicant: NATIONWIDE BROKERAGE, A DIVISION NATIONWIDE SPECIAL COMMODITIES, INC., 1606–109th St., Grand Prairie, TX 75050. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062 (214) 255–6279. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 160053, filed January 11, 1982. Applicant: SAM PECORILLA, Pecorilla Trucking, Rt. 2 Box 141, Monroe, OR 97456. Representative: Sam Pecorilla (same address as applicant) 503–847–5681. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 160103, filed January 13, 1982. Applicant: CAL-VALLEY BROKERAGE, INC., 860 Skokie Hwy., Lake Bluff, IL 60044. Representative: James R. Madler, 120 W. Madison St., Chicago, IL 60602, 312–726–6525. As a *broker of general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–3025 Filed 2–4–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after February 9, 1981, are governed by Special Rule of the Commission's Rules of Practice, see 49 CFR 1100.251. Special Rule 251 was published in the **Federal Register** of December 31, 1980, at 45 FR 86771. For compliance procedures, refer to the **Federal Register** issue of December 3, 1980, at 45 FR 80109.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.252. A copy of any application, including all supporting evidence, can be obtained from applicant's representative upon request and payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated a public need for the proposed operations and that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

Please direct status inquiries to the Ombudsman's Office, (202) 275–7326.

Volume No. OP1–14

Decided: January 25, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 30650 (Sub-2), filed January 15, 1982. Applicant: C. HARRELL, INC., Garrison Road, R.D. 3, Elmer, NJ 08381. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., PO Box 1240, Arlington, VA 22210 (703) 525–4050. Transporting *such commodities* as are dealt in or used by manufacturer and distributor of farm products, between points in the U.S. (except AK and HI), under continuing contract(s) with Agway, Inc., of Syracuse, NY.

MC 87861 (Sub-14), filed January 18, 1982. Applicant: BDX, INC., 4075 East

15th Place, P.O. Box 2600, Gary, IN 46403. Representative: Gregory S. Reising, 607 South Lake Street, Gary, IN 46403, (219) 938–8080. Transporting *iron and steel articles,* between Chicago, IL, on the one hand, and, on the other, points in WI, IA, MO, OH, KY, TN, IL, IN, WV, PA, MN and MI. Condition: The person or persons who appear to be engaged in common control of another regulated carrier must either file an application under 49 U.S.C. 11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to team 1, Room 6358.

MC 119631 (Sub-47), filed January 15, 1982. Applicant: DEIOMA TRUCKING COMPANY, P.O. Box 335, East Sparta, OH 44626. Representative: Lawrence E. Lindeman, 4660 Kenmore Ave., Suite 1203, Alexandria, VA 22304, (703) 751–2441. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with North American Refractories Co., of Cleveland, OH.

MC 124170 (Sub-195), filed January 18, 1982. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Representative: William J. Boyd, 2021 Midwest Road, Suite 205, Oak Brook, IL 60521, (312) 629–2900. Transporting *such commodities* as are dealt in by wholesale and retail chain, grocery and food business houses, between points in Waukesha County, WI, Freeborn County, MN, Johnson County, KS, Grimes County, TX and Doughtery County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138891 (Sub-10), filed January 15, 1982. Applicant: FRANK TRANSFER & STORAGE, INC., 324 East 8th St., Sioux Falls, SD 57102. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101, (605) 335–1777. Transporting (1) *food and related products,* between points in IA, MN, and SD, on the one hand, and, on the other, points in AL, AR, IA, KS, LA, MI, MN, MS, MO, NE, OH, OK, SD, TN, TX, and WI, (2) *machinery,* between points in Lake County, SD, on the one hand, and, on the other, points in the U.S., and (3) *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), (a) between points in Minnehaha County, SD, on the one hand, and, on the other, points in MN, WI, IL, IN, MI, and IA, and (b) between Omaha, NE, on the one hand, and, on the other, those points in SD on and east of the Missouri River, and those in IA on and north of a line beginning at the NE–IA State line and extending along U.S. Hwy 6 to junction U.S. Hwy 69, then along U.S. Hwy 69 to the IA–MN State line.

MC 145701 (Sub-20), filed January 18, 1982. Applicant: D. C. TRANSPORT, INC., 916 South Riverside, St. Clair, MI 48079. Representative: James J. Sheehan (same address as applicant), (313) 329–2211. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the lower peninsula of MI, on the one hand, and, on the other, points in the U.S.

MC 154210 (Sub-1), filed January 18, 1982. Applicant: A & R TRANSPORTATION CO., INC., 21 Ridgecrest Drive, Hudson NH 03051. Representative: Samuel L. Watts, 54 Middlesex Turnpike, Burlington, MA 01803, (617) 273–3530. Transporting *iron and cable products,* between points in the U.S., under continuing contract(s) with Hendrix Wire and Cable Co., of Milford, NH.

MC 156070 (Sub-1), filed June 22, 1981, previously noticed in the **Federal Register** issue of July 29, 1981. Applicant: SIRMAN'S WORLD TRAVEL AGENCY, 435 Race Street, Cambridge, MD 21613. Representative: Eleanor G. Sirman, 809 Radiance Drive, Cambridge, MD 21613, (301) 228–9014. As a *broker* at Cambridge, MD, in arranging for the transportation of *passengers and their baggage,* in the same vehicle with passengers, between points in Dorchester County, MD, on the one hand, and, on the other, points in the U.S., including AK and HI.

Note.—This republication clarifies the territorial description.

Condition: Issuance of a license in this proceeding is subject to the coincidental cancellation, at applicant's written request, of License No. MC–156070 Sub 1, issued December 29, 1981.

MC 157371 (Sub-1), filed January 11, 1982. Applicant: CHEM-WASTE, INC., 4435 Washington Road, P.O. Box 250, Evans, GA 30809. Representative: Robert M. Haynie (same address as applicant), (404) 863-8685. Transporting *hazardous waste,* between points in Richmond and Columbia Counties, GA, on the one hand, and, on the other, Greenville, SC, and points in Sumter County, SC. Conditions: The person or persons who appear to be engaged in common control of another regulated carrier must either file and application under 49 U.S.C. §11343(A) or submit an affidavit indicating why such approval is unnecessary to the Secretary's office. In order to expedite issuance of any authority please submit a copy of the affidavit or proof of filing the application(s) for common control to Team 1, Room 6358. The Certificate in this proceeding shall expire 5 years from date of issuance.

MC 159800, filed December 21, 1981. Applicant: ONTARIO FREIGHT LINES CORP., P.O. Box 517, Florida, NY 10921. Representative: Arthur J. Piken, Queens Office Tower, 95–25 Queens Blvd., Rego Park, NY 11374–4565, (212) 275–1000. Transporting *general commodities* (except classes A and B explosives), between New York, NY, and points in Fairfield County, CT, on the one hand, and, on the other, points in NY.

MC 160100, filed January 15, , 1982. Applicant: DALE TAYLOR, d.b.a. TAYLOR TRUCKING, P.O. Box 1057 Green River, WY 82935. Representative: Irene Warr, 311 S. State St. Ste. 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *Mercer commodities,* between points in WY, CO, UT, and NV.

Volume No. OP1–16

Decided: January 28, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier, (Member Parker not participating in part.)

MC 2900 (Sub-453), filed January 25, 1982. Applicant: RYDER TRUCK LINES, INC., P.O. Box 2408, Jacksonville, FL 32203, Representative: S. E. Somers, Jr. (same address as applicant), (904) 353–3111. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Kraft, Inc., of Glenview, IL, and Mobay Chemical Corporation, of Pittsburgh, PA.

MC 24060 (Sub-4), filed January 21, 1982. Applicant: HARRY MAHALLY, JR. d.b.a. MAHALLY TRUCKING SERVICE, P.O. Box 1294, Read 289 New Grant St., Wilkes-Barre, PA 18703. Representative: Daniel W. Krane, P.O. Box E, Shiremanstown, PA 17011, (717) 761–0520 or 232–8324. Transporting *general commodities* (except classes A and B explosives), (1) between points in Stark County, OH, on the one hand, and, on the other, points in Howard County, MD, and (2) between Philadelphia, PA, and points in Wayne, Pike, Monroe, Lackawanna, Luzerne, Susquehanna, Wyoming, Carbon, Northampton, Lehigh, Schuykill, Berks, Columbia and Dauphin Counties, PA, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA, and those in TX and NM.

MC 59590 (Sub-11), filed January 11, 1982. Applicant: CLIPPER TRANSPORTATION COMPANY, 8

Porete Ave., North Arlington, NJ 07032. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934, (201) 435–7140. Transporting (1) *Clay, concrete, glass or stone products,* and (2) metal products,between points in the U.S., under continuing contract(s) with Formigli Corporation, of Berlin, NJ, in (1) above, and Charles F. Guyon, Inc., of Harrison, NJ, in (2) above.

MC 62821 (Sub-1), filed January 22, 1982. Applicant: CROFUTT & SMITH STORAGE WAREHOUSES, INC., 247 Snyder St., Orange, NJ 07050. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ, (201) 435–7140. Transporting *household goods and furniture,* between points in ME, NH, VT, MA, CT, RI, NY, NJ, PA, MD, DE, VA, WV, OH, IN, IL, KY, TN, NC, SC, GA, AL, MS, FL, WI, and DC.

MC 90511 (Sub-8), filed January 21, 1982. Applicant: CONSTABLE TRANSPORT LIMITED, P.O. Box 248, Thorold, Ontario, CN L2V 3Y9. Representative: Robert D. Gunderman, Can-Am Building, 101 Niagara St., Buffalo, NY 14202 (716) 854–5870. Transporting *pulp, paper, and related products,* between ports of entry on the international boundary line between the U.S. and Canada in NY and MI, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 113651 (Sub-351), filed January 20, 1982. Applicant: INDIANA REFRIGERATOR LINES, INC., 10838 Old Mill Road, Suite 1, Omaha, NE 68154. Representative: James F. Crosby, 7363 Pacific St., Suite 210B, Omaha, NE 68114, (403) 397–9900. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of food and related products, between points in Fresno and Merced Counties, CA, Morgan County, IL, Grayson County, TX, Gibson County, TN, and Green, Dodge, and Waupaca Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 124230 (Sub-45), filed January 15, 1982. Applicant: C. B. JOHNSON, INC., P.O. Drawer S, Cortez, CO 81321. Representative: David E. Driggers, 1600 Lincoln Center Bldg., 1660 Lincoln Street, Denver, CO 80264, (303) 861–4028. Transporting (1) *machinery, equipment, materials and supplies* used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum, and their products and by-products, (2) *machinery, equipment, materials and supplies* used in, or in connection with the construction, operation, repair, servicing, maintenance and dismantling of pipe lines, including the stringing and picking up thereof, and (3) *machinery,* between points in AZ, CO, KS, MT, NE, NV, NM, ND, OK, SD, TX, UT, and WY.

MC 127820 (Sub-22), filed January 18, 1982. Applicant: TRANS-SERVICE, INC., 1943 South Lawn Ext., Coshocton, OH 43812. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *forest products, lumber and wood products and building materials,* between points in the U.S.

MC 129491 (Sub-1), filed January 18, 1982. Applicant: OGRAC CARGO, INC., 526 S. Main St., New Lexington, OH 43764. Representative: James Duvall, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *metal products,* between Detroit, MI, on the one hand, and, on the other, points in OH.

MC 134681 (Sub-10), filed January 21, 1982. Applicant: VULCRAFT CARRIER CORPORATION, 4425 Randolph Road, Charlotte, NC 28211. Representative: Samuel Siegel (same address as applicant), (704) 366–7000. Transporting *scrap metals, iron and steel articles, and crushed auto bodies for recycling,* between points in the U.S., under continuing contract(s) with The David J. Joseph Co., of Cincinnati, OH.

MC 139170 (Sub-6), filed January 18, 1982. Applicant: FRANK W. MADDEN COMPANY, 2070 Wright Road, Akron, OH 44320. Representative: James E. Davis, 611 West Market St., Akron, OH 44303, (216) 376–8111. Transporting *machinery,* between points in Summit County, OH, on the one hand, and, on the other, points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KY, LA, ME, MD, MA, MI, MN, MS, NH, NJ, NY, NC, OH, OK, PA, RI, SC, TN, TX, VT, VA, WV, and WI.

MC 140071, filed January 21, 1982. Applicant: MID-AMERICAN CARTAGE, INC., 1280 Kirk St., Elk Grove Village, IL 60007. Representative: Joel H. Steiner, 29 South LaSalle Street, Suite 905, Chicago, IL 60603, (312) 236–9375. Transporting *floor coverings and floor materials,* between points in IL, IN, IA, MI, and WI.

MC 141700 (Sub-5), filed January 21, 1982. Applicant: KENNETH SCHUCK TRUCKING, INC., R. D. No. 8, Box 392, Allentown, PA 18104. Representative: Robert J. Brooks, Suite 1111, 1828 L Street NW., Washington, DC 20036, (202) 466–3892. Transporting *general commodities* (except household goods and classes A and B explosives), between points in the U.S., on the one hand, and, on the other, points in ME, NH, VT, MA, CT, RI, NY, NJ, DE, MD, VA, WV, PA, OH, IN, IL, MI, WI, and DC.

MC 143821 (Sub-2), filed January 22, 1982. Applicant: KRIS'S TRUCK TRANSPORT, INC., 37521 Willow St., Newark, CA 94560. Representative: Betha Kristiansen (same address as applicant), (415) 793–4221. Transporting *transportation equipment,* between points in the U.S. (including AK, but excluding HI).

MC 148791 (Sub-20), filed January 22, 1982. Applicant: TRANSPORT-WEST, INC., 2125 North Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *tires and wheels,* between points in the U.S., under continuing contract(s) with Charlie Case Tire Company, of Phoenix, AZ.

MC 148831 (Sub-10), filed January 21, 1982. Applicant: STUMPS REFRIGERATED EXPRESS, INC., R.R. No. 1, Box 57, Tiro, OH 44887. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, (614) 228–1514. Transporting *food and related products,* between points in St. Martin Parish, LA, Wilson County, NC, and El Paso County, TX, on the one hand, and, on the other, points in the U.S.

MC 154631 (Sub-1), filed January 21, 1982. Applicant: TRANSPORT SPECIALISTS, INC., 545 Front St., Woonsocket, RI 02895. Representative: Richard J. Wood, Jr. (same address as applicant), (401) 765–3800. Transporting (1) *plastic articles,* between points in the U.S., under continuing contract(s) with Clearshield Plastics Corporation, of Leominster, MA, and Nypro, Inc., of Clinton, MA, (2) *artificial Christmas trees and related products,* between points in the U.S., under continuing contract(s) with Mr. Christmas, Inc., of East Douglas, MA, and (3) *cereals,* between points in the U.S., under continuing contract(s) with Weetabix-Van Brode Cereals, of Clinton, MA.

MC 157411, filed January 19, 1982. Applicant: CARR AND ORMSBY TRANSPORT, INC., 2215 Pacific Hwy. E., Tacoma, WA 98424. Representative: Kenneth R. Mitchell, 2320A Milwaukee Wy., Tacoma, WA 98421, (206) 383–3998. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Borden Chemical of Bellevue, WA, and Petroleum Reclaiming, Inc., of Tacoma, WA.

MC 157430 (Sub-1), filed January 25, 1982. Applicant: G.T.&T. TRANSPORTATION, INC., 280 Henderson St., Store No. 9, Jersey City,

NJ 07302. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, (212) 263–2078. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Non Ferrous International Corp., of New York, NY.

MC 157720 (Sub-1), filed January 21, 1982. Applicant: B.E.I. TRANSPORT, INC., 799 Garver Road, Monroe, OH 45050. Representative: H. Neil Garson, 3251 Old Lee Hwy., Fairfax, VA 22030, (703) 691–0900. Transporting (1) *pulp, paper and related products, and wste and scrap materials,* between points in AL, AR, CA, CO, DE, FL, GA, IL, IN, IA, KY, LA, ME, MD, MA, MI, MO, NE, NH, NJ, NC, NY, OH, PA, RI, SC, TN, TX, VT, VA, WV, and WI, (2) *rubber and plastic products, furniture and fixtures, textile mill products, pulp, paper and related products, metal products, chemicals and related products, rubber and plastic products, chemicals and related products, and machinery,* between points in IL, IN, KY, MI, MO, NY, OH, OK, PA, TN, TX, VA, WV, WI, and DC, (3) *lumber and wood products, furniture and fixtures, metal products, and machinery,* between points in IL, IN, KY, MD, MN, MS, NC, OH, PA, SC, TN, VA, WV, WI, and DC, and (4) *tobacco products,* between points in CA, IN, MI, MO, NJ, NC, OH, PA, VA, and WI.

MC 158381 (Sub-3), filed January 20, 1982. Applicant: YELLOW LAKE, INC., P.O. Box 1364, Auburndale, FL 33823. Representative: Elbert Brown, Jr., P.O. Box 1378, Altamonte Springs, FL 32701–1378, (305) 869–5936. Transporting (1) *food and related products,* (2) *such commodities* as are dealt in by grocery, department and drug stores, and (3) *metal products,* between points in the U.S., under continuing contract(s) with Lykes Pasco Packing Co, of Dade City, FL, in (1) above, Stop & Shop Companies, Inc., of Boston, MA, in (2) above, and Davidson Metals, Inc., of Youngstown, OH, in (3) above.

MC 158930 (Sub-5), filed January 22, 1982. Applicant: U.S. TRANSPORTATION, INC., 585 Valley Blvd., Bloomington, CA 92316. Representative: Frederick J. Coffman, 1834 N. Kelly Ave., P.O. Box 1455, Upland, CA 91786, (714) 981–9981. Transporting *juice concentrates,* between points in Fresno County, CA, on the one hand, and, on the other, points in the U.S.

MC 159331 (Sub-1), filed January 18, 1982. Applicant: J.T.I. TRANSPORTATION CO., P.O. Box 78, Fairmont, NE 68354. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. Transporting *food and related products,* between points in Hall and Lancaster Counties, NE, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 159950, filed January 21, 1982. Applicant: WALSH TRUCKING CO., INC., 346 W. Crawford St., Elkhart, IN 46514. Representative: Robert W. Loser II, 1101 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204, (317) 635–2339. Transporting *building materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Universal Forest Products, Inc., of Grand Rapids, MI.

MC 160150, filed January 18, 1982. Applicant: WEAVERTOWN TRANSPORT LEASING, INC., 206 Weavertown Road, Canonsburg, PA 15317. Representative: William A. Gray, 2310 Grant Bldg., Pittsburgh, PA 15219, (412) 471–1800. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Petromark, Inc., of Pittsburgh, PA.

MC 160181, filed January 20, 1982. Applicant: SUNRISE FOREST PRODUCTS CO., 6443 S.W. Beaverton Highway, Raleigh Hills, OR 97225. Representative: Timothy W. Whitman, P.O. Box 25060, Portland, OR 97225, (503) 297–4557. Transporting *(1) lumber and wood products, and (2) building and construction materials,* between points in CA, ID, OR, and WA.

MC 160190, filed January 20, 1982. Applicant: PETER BALL TRK & WHSE., INC., 17 Summit Street, Peabody, MA 01960. Representative: David E. McCabe, P.O. Box 402, Kittery, ME 03904, (207) 439–1847. Transporting *general commodities* (except classes A and B explosives), between points in CT, MA, NH, NY, and RI.

MC 160211, filed January 21, 1982. Applicant: F.B.N. TRUCKING CO., P.O. Box 23873, Oakland, CA 94623. Representative: Richard M. Stess (same address as applicant), (415) 232–0892. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission and commodities in bulk), between points in the U.S., under continuing contract(s) with Rocky Mountain Express, Inc., of Oakland, CA.

MC 160221, filed January 22, 1982. Applicant: CARMEN M. PARISO, INC., 273 South Roycroft, Buffalo, NY 14225, (716) 853–0200. Representative: William J. Hirsch, 1125 Convention Tower, 43 Court Street, Buffalo, NY 14202, (716) 853–0200. Transporting *those commodities which because of their size or weight require the use of special handling or equipment,* between points in CO, CT, FL, GA, IL, KY, MA, MI, MO, MN, NJ, NY, NC, OH, OK, PA, SC, VA, VT, WV, and WY.

Volume No. OP2–18

Decided: January 25, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 5723 (Sub-9), filed January 8, 1982. Applicant: VANGUARD INTERSTATE TOURS, INC., 1 Westerly Road, Ossining, NY 10510. Representative: Jeremy Kahn, Suite 733 Investment Bldg., 1511 K St., NW, Washington, DC 20005, (202) 783–3525. Transporting *passengers and their baggage, in the same vehicle with passengers,* in special and charter operations, between points in the U.S. (including AK but excluding HI), under a continuing contract(s) with Action Bus, Inc., of Briarcliff Manor, NY.

MC-139112 (Sub-25), filed January 11, 1982. Applicant: CALEX EXPRESS, INC., Route 29, R.D. 2, Hunlock Creek, PA 18621. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17108, (717) 233–5731. Transporting *such commodities* as are dealt in by department stores, between points in the U.S. (except AK and HI).

MC-139973 (Sub-95) filed January 6, 1982. Applicant: J. H. WARE TRUCKING, INC., 909 Brown St., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, 515–244–2329. Transporting (1) *electrical machinery,* and (2) *metals,* between points in Nassau County, NY, on the one hand, and, on the other, points in the U.S.

MC 139973 (Sub-96), filed January 6, 1982. Applicant: J.H. WARE TRUCKING, INC., 909 Brown St., P.O. Box 398, Fulton, MO 65151. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, 515–244–2329. Transporting *food and related products,* between the facilities of Hereford BI–Products, Inc., at points in the U.S., on the one hand, and, on the other, points in the U.S.

MC 139973 (Sub-97), filed January 6, 1982. Applicant: J. H. WARE TRUCKING, INC., 909 Brown St., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309, 515–244–2329. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the facilities of Delaware Valley Shippers Association, Inc., at points in the U.S.,

on the one hand, and, on the other, points in the U.S.

MC 151992 (Sub-2), filed January 5, 1982. Applicant: STOTTLEMIRE TRUCKING CO., INC., 2365 Refugee Pk., Mellman Industrial Pk., Columbus, OH 43207. Representative: Paul F. Beery, 275 East State St., Columbus, OH 43215, (614) 228–8575. Transporting (1) *such commodities* as are dealt in or used by grocery and food business houses, and containers, between Detroit, MI, and points in Franklin and Montgomery Counties, OH, and Kent and Ottawa Counties, MI, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR and LA, and (2) *general commodities* (except classes A and B explosives), between the facilities used by Ralston Purina Company and its subsidiaries, at points in the U.S., on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP2–19

Decided: January 26, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 107012 (Sub-760), filed January 11, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same address as applicant), 219–429–2234. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Electrovert, Inc., of Elmsford, NY.

MC 110252 (Sub-68), filed January 15, 1982. Applicant: J.J.W. TRUCKING, LTD., d.b.a. JAMES J. WILLIAMS, 5711 E. 3rd Ave., Spokane, WA 99206.Representative: John D. Robertson (same address as applicant), 509–535–2411. Transporting *fertilizer and fertilizer ingredients,* between points in WA, ID, OR, MT, WY, UT, and NV.

MC 127303 (Sub-91), filed January 8, 1982. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 11th St. NW, Washington, DC 20001, 202–628–9243. Transporting *ores and minerals, and clay, concrete, glass or stone products,* between points in Bureau, Putnam, and La Salle Counties, IL, on the one hand, and, on the other, points in IL, WI, MI, OH, PA, NY, IN, MS, TN, KY, and MO.

MC 134493 (Sub-11), filed January 11, 1982. Applicant: CHICAGO-ST. LOUIS TRANSPORT CO., 808 S. Joliet St., Joliet, IL 60436. Representative: James C. Hardman, 3 N. LaSalle St., Chicago, IL 60602, 312–236–5944. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, KY, MO, OH, and WI.

MC 142693 (Sub-6), filed January 11, 1982. Applicant: CUSTOM DELIVERIES, INC., 30800 Telegraph Rd., Suite 4900, Birmingham, MI 48010. Representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, 216–566–5639. Transporting *general commodities* (except classes A and B explosives), between points in the U.S., under continuing contract(s) with Chrysler Corporation, of Highland Park, MI.

MC 144592 (Sub-11), filed January 11, 1982. Applicant: WAYDENS HEAVY HAULERS, INC., 1400 North 6th Ave., Hiawatha, IA 52233. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, 515–274–4985. Transporting *such commodities* as are dealt in or used by wholesale dealers of lumber and building materials, between points in the U.S., under continuing contract(s) with Iowa Lumber Dealers, Inc., of Cedar Rapids, IA.

MC 148062 (Sub-3), filed January 8, 1982. Applicant: FAR WEST EXPRESS, INC., 2323 Federal Way, Boise, ID 83705. Representative: Irene Warr, 311 S. State St. Ste. 280, Salt Lake City, UT 84111, 801–531–1300. Transporting *general commodities* (except classes A and B explosives), between points in UT, ID, OR and WA.

MC 152393, filed January 15, 1982. Applicant: SCOTT B. WARN, d.b.a. OVERNITE EXPRESS, P.O. Box 24, Danville, CA 94526. Representative: Armand Karp, 743 San Simeon Drive, Concord, CA 94518, 415–825–1774. Transporting (1) *automobile parts and accessories* used in the manufacture, sale, and distribution of trucks, between points in the U.S., under continuing contract(s) with Mack Trucks, Inc., of Allentown, PA, and (2) *copper and brass tubing,* between points in the U.S., under continuing contract(s) with Reading Tube Division, Reading Industries, Inc., of San Leandro, CA.

MC 152813 (Sub-1), filed January 11, 1982. Applicant: FRESH EXPRESS, INC., 55 Produce Row, St. Louis, MO 63103. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, (402) 475–6761. *Food and related products* (except commodities in bulk), between the facilities of Anderson Clayton Foods, at points in the U.S., (except AK and HI), on the one hand, and, on the other, points in the U.S., (except AK and HI).

MC 155742 (Sub-1), filed January 5, 1982. Applicant: COBB TRANSPORT COMPANY, INC., d.b.a. THE COBB COMPANY, 6122 North 76th St., Milwaukee, WI 53218. Representative: Daniel R. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203, 414–273–7410. Transporting *machinery, metal products, and those commodities which because of their size or weight require the use of special handling or equipment,* between points in Waukesha and Ozaukee Counties, WI, and Milwaukee, WI, on the one hand, and, on the other, points in the U.S.

MC 157463, filed January 12, 1982. Applicant: SOUTHERN MISSOURI TOWING SERVICE, INC., 2230 N. Packer Rd., Springfield, MO 65803. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804, 417–883–7311. Transporting *wrecked, disabled and replacement vehicles, and trailers,* between points in the U.S.

MC 159832, filed January 11, 1982. Applicant: PAR TRUCKING, INC., 1008 E. Morven, Lancaster, CA 93535. Representative: Robert Fuller, 13215 E. Penn St. Suite 310, Whittier, CA 90602, 213–945–3002. Transporting (1) *cement, chemicals, and oilwell cementing materials, equipment, and supplies,* between points in CA and NV, on the one hand, and, on the other, points in AZ, CA, NM, NV, TX, and UT, (2) *cement, fly ash, plant machinery and equipment,* between points in AZ, CO, and NV, on the one hand, and, on the other, points in CA, (3) *magnesite, diatomaceous earth and related chemicals, plant machinery and equipment,* between points in NV, on the one hand, and, on the other, points in Los Angeles and San Bernardino Counties, CA, and (4) *soda ash, salt, refractory materials and petroleum coke,* between points in CA, on the one hand, and, on the other, points in Clark County, NV.

MC 159932, filed January 5, 1982. Applicant: CLARENCE KENNEDY, JR., d.b.a. KENNEDY & SON TRUCKING, Rte. 1, Box 81, Tryon, NC 28782. Representative: Eric Meierhoefer, Suite 1000, 1029 Vermont Ave. NW., Washington, DC 20005, 202–347–9332. Transporting *textile mill products,* between points in Orange, Los Angeles, and Ventura Counties, CA, on the one hand, and, on the other, points in NC, SC, GA, TN, AL, VA, DE, PA, NJ, and TX.

MC 160042, filed January 11, 1982. Applicant: GEORGE J. STORRIE, INC., 25454 Graceland Circle, Dearborn, MI 48125. Representative: John W. Bryant, 900 Guardian Building, Detroit, MI 48226, (313) 963–3750. Transporting *such commodities* as are manufactured, distributed, or dealt in by food stores, between points in Seneca County, OH,

on the one hand, and, on the other, points in IL, IN, MI, KY, PA, WV and NY.

MC 160092, filed January 13, 1982. Applicant: R.C.S. TRANSPORT, INC., 9130 Griffith-Morgan Lane, Pennsauken, NJ 08110. Representative: George R. Partridge, Jr., 1600 North American Bldg., 121 S. Broad St., Philadelphia, PA 19107, 215–545–5300. Transporting *such comodities* as are dealt in or used by manufacturers and distributors of pet food, between Pennsauken, NJ, on the one hand, and, on the other, points in the United States on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the International Boundary line between the U.S. and Canada.

Volume No. OP2–22

Decided: January 29, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 109533 (Sub-143), filed January 20, 1982. Applicant: OVERNITE TRANSPORTATION COMPANY, 1000 Semmes Ave., Richmond, VA 23224–2299. Representative: John C. Burton, Jr., P.O. Box 1216, Richmond, VA 23209–1216, 804–231–8281. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S.

MC 148103 (Sub 1), filed January 18, 1982. Applicant: BIG JOHN TRANSPORTATION COMPANY, 5805 Greenash, Houston, TX 77081. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, 713–437–1768. Transporting (1) *machinery, equipment, materials, and supplies used in, or in connection with, the discovery, development, production, refining, manufacture, processing, storage, transmission and distribution of natural gas and petroleum and their products and byproducts, and machinery, materials, equipment, and supplies used in, or in connection with the construction, operation, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof,* between points in (a) AR, CA, LA, MS, NM, OK, and TX, and (b) AR, CA, LA, MS, NM, OK, and TX, on the one hand, and, on the other, points in the U.S., (2) *agricultural machinery, implements and parts,* between points in (a) *AL, AR, CA, GA, FL, LA, TX, OK, and NM, and (b) AL, AR CA, GA, FL, LA, TX, OK, and NM, on the one hand, and, on the other, points in the U.S., (3) road construction machinery and equipment,* between points in (a) AL, AR, CA, GA, FL, LA, TX, OK, and NM, and (b) AL, AR, CA, GA, FL, LA, TX, OK, and NM, on the one hand, and, on the other, points in the U.S., (4) *industrial machinery, equipment and parts,* between points in (a) AL, AR, CA, GA, FL, LA, TX, OK, and NM, and (b) AL, AR, CA, GA, FL, LA, TX, OK, and NM, on the one hand, and, on the other, points in the U.S., (5) *earth drilling machinery and equipment, and machinery, equipment, materials, supplies and pipe incidental to, used in or in connection with* (a) *the transportation, installation, removal, operation, repair, servicing, maintenance, and dismantling of drilling machinery and equipment,* (b) *the completion of holes or wells drilled,* (c) *the production, storage and transmission of commodities resulting from drilling operations at well or hole sites, and* (d) *the injunction or removal of commodities into and from holes and/or wells,* between points in (a) AL, AR, CA, GA, FL, LA, TX, OK, and NM, and (b) AL, AR, CA, GA, FL, LA, TX, OK, and NM, on the one hand, and, on the other, points in the U.S., (6) *iron and steel articles,* between points in TX, MO, NM, OK, and LA, and (7), *metal buildings, parts and equipment,* (a) between Houston, TX, on the one hand, and, on the other, points in the U.S., and (b) between Houston, TX, on the one hand, and, on the other, Galveston, Freeport, Corpus Christi, Brownsville, Barbers Cut, Port Arthur, Beaumont and Orange, TX, Lake Charles, New Orleans, and Baton Rouge, LA, Gulfport, Biloxi, and Pascagoula, MS, and Mobile, AL.

MC 150942 (Sub 2), filed January 13, 1982. Applicant: STAGE COACH LEASING CO., INC., d.b.a. STAGE COACH CHARTERING SERVICES CO., 3536 Windermere Dr., Hephzibah, GA 30815. Representative: Walter C. Lawton (same address as applicant), 404–790–9157. Transporting *passengers and their baggage,* in the same vehicle with passengers, in special and charter operations beginning and ending at points in Burke, Columbia, Jefferson, McDuffie and Richmond Counties, GA, and Aiken, Bamberg, Barnwell, Edgefield, Orangeburg and Richland Counties, SC, and extending to points in the U.S. (except AK and HI).

MC 160043, filed January 11, 1982. Applicant: RICHARD GREER TRUCKING, INC., P.O. Box Box 10864, Mehlville, MO 63129. Representative: B.W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105, 314–727–0777. Transporting *sugar,* between points in the U.S., under continuing contract(s) with International Distributing Corp., of St. Louis, MO.

MC 160133, filed January 15, 1982. Applicant: KAYLINE, INC., 3153 So. 30 West, Salt Lake City, UT 84115. Representative: William A. Giles (same address as applicant), 801–484–0421. Transporting *rubber and plastic products,* between points in PA, on the one hand, and, on the other, points in Weber and Salt Lake Counties, UT.

MC 160142, filed January 15, 1982. Applicant: CLASSIC CARTAGE, 13599 Desmond St., P.O. Box 66, Pacoima, CA 91331. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609, 213–945–2745. Transporting *electronic parts and equipment,* between points in the U.S., under continuing contract(s) with Teledyne Systems Company, of Northridge, CA.

Volume No. OP4–29

Decided: January 26, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 13027 (Sub-28), filed January 22, 1982. Applicant: SHORTWAY LINES, INC., 1 Keeshin Drive, Toledo, OH 43612. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755–9500. Transporting *passengers and their baggage* in charter operation, between points in the U.S., under continuing contract(s) with KPI Tours and Travel, Inc., of New York, NY and Toledo, OH.

MC 39416 (Sub-6), filed January 21, 1982. Applicant: THE GRAY LINE COMPANY, P.O. Box 17306, Portland, OR 97217. Representative: Lawrence V. Smart, Jr., 419 NW 23rd Ave., Portland, OR 97210, (503) 226–3755. Transporting *passengers and their baggage* in charter and special operations, beginning or ending at points in OR and WA, and extending to points in the U.S, including AK, but excluding HI.

MC 116127 (Sub-11), filed January 20, 1982. Applicant: GEORGE D. CYRUS, INC., RFD 1, Iola, KS 66749. Representative: Charles H. Apt, P.O. Box 328, Iola, KS 66749, (316) 365–3161. Transporting *petroleum products,* between points in the U.S., under continuing contract(s) with Phillips Petroleum Company, of Bartlesville, OK.

MC 118866 (Sub-16), filed January 22, 1982. Applicant: PAUL L. ZAMBERLAN & SONS, INC., 30 Main St., Lewis Run, PA 16738. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th St., N.W., Washington, D.C. 20005, (202) 296–3555. Transporting (1) *salt and salt*

products; Mercer commodities; metal products; building materials; rubber and plastic products; lumber and wood products; textile mill products; machinery; and *clay, concrete, glass or stone products,* between points in NY, PA, and OH, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK, and TX; and (2) *clay, concrete, glass or stone products,* between points in Cook, Lake McHenry, Will, Kendall and DuPage Counties, IL, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, KS, OK, and TX.

MC 120616 (Sub-8), filed January 21, 1982. Applicant: A. V. DEDMON TRUCKING, INC., Hwy. 150 East, Shelby, NC 28150. Representative: Elliott Bunce, Suite 1301, 1600 Wilson Blvd., Arlington, VA 22209, (703) 522–0900. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between the points in the U.S., under continuing contract(s) with The Clorox Company, of Oakland, CA.

MC 136077 (Sub-35), filed January 21, 1982. Applicant: REBER CORPORATION, 2216 Old Arch Rd., Norristown, PA 19401. Representative: Richard L. Thurston, One Franklin Plaza, Philadelphia, PA 19102, (215) 854–6444. Transporting *salt and salt products,* between Jersey City, NJ, Baltimore, MD, and points in Schuyler County, NY, on the one hand, and, on the other, points in NJ and PA.

Volume No. OP4–30

Decided: January 29, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 12347 (Sub-76), filed January 21, 1982. Applicant: CURTIS TRANSPORT, INC., P.O. Box 427, Arnold, MO 63010. Representative: David G. Dimit (same address as applicant), (314) 464–1300. Transporting *textile mill products,* between Richmond, VA, El Paso, TX, Winston-Salem, NC and points in Edgecombe County, NC, Greenwood and Marlboro Counties, SC, Coshocton County, OH and Claiborne Parish, LA, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, and NM.

MC 144756 (Sub-11), filed January 22, 1982. Applicant: DEDICATED TRUCKING CORP., P.O. Box 1383, Chehalis, WA 98532. Representative: Henry C. Winters, 12600 S.E. 38th St., Suite 200, Bellevue, WA 98006, (206) 644–2100. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AZ, CA, CO, ID, KS, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, VT, WA, and WY.

MC 160166 (Sub-18), filed January 18, 1982. Applicant: VALS LIVERY SERVICE, 152 Paradise Ave., Hamden, CT 06514. Representative: Angelo Valentino (same address as applicant), (203) 248–2371. Transporting *passengers and their baggage,* in the same vehicle with passengers points in CT, MA, RI, Newark, NJ, and New York, NY.

MC 160226, filed January 22, 1982. Applicant: CFH ASSOCIATES, INC., Farrington Rd., Francestown, NH 03043. Representative: Charles F. Holbrook (same address as applicant), (603) 547–3581. To engage in operations, in interstate or foreign commerce as a *broker,* at Francestown, NH, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* between points in the U.S.

MC 160236, filed January 25, 1982. Applicant: ROMEO EXPEDITORS, INC., 15355 E. 32 Mile Rd., Romeo, MI 48065. Representative: Robert E. McFarland, 2855 Collidge, Ste. 201A, Troy, MI 48084, (313) 649–6650. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the Lower Peninsula of MI, on the one hand, and, on the other, points in PA, OH, IL, IN, WI, NY, KY, and TN.

FF 416 (Sub-3), filed January 21, 1982. Applicant: IMPERIAL CARRIERS, INC., 57 Freeman St., Newark, NJ 07105. Representative: Stephen A. Alterman, 1730 RI Ave., NW., Washington, DC 20036, (202) 293–1030. As a freight forwarder, in connection with the transportation of *general commodities* (except classes A and B explosives, household goods and motor vehicles), between points in the U.S.

Volume No. OP4–32

Decided: February 2, 1982.

By the Commission, Review Board No. 2, members Carleton, Fisher, and Williams.

FF 586, filed January 26, 1982. Applicant: MIDWEST CONSOLIDATORS, INC., 2711 N. Fairview Ave., St. Paul, MN 55113. Representative: Steven D. Fernlund, P.O. Box 4427, St. Paul, MN 55104, (612) 631–9041. As a freight forwarder, in connection with the transportation of *general commodities* (except classes A and B explosives), between points in the U.S. (except AK and HI).

MC 37896 (Sub-56), filed January 25, 1982. Applicant: YOUNGBLOOD TRUCK LINES, INC., P.O. Box 1048, Fletcher, NC 28732. Representative: Charles Ephraim, 406 World Center Bldg., 918 16th St., Washington, DC 20006, (202) 833–1170. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S., under continuing contract(s) with Great Dane Trailers, Inc., and its subsidiaries, of Savannah, GA.

MC 15546 (Sub-4), filed January 25, 1982. Applicant: KIRCHWEHM BROS. CARTAGE CO., INC., 1700 W. Carroll Ave., Chicago, IL 60612. Representative: Abraham A. Diamond, 29 S. La Salle St., Chicago, IL 60603, (312) 236–0548. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, IA, KY, MI, MO, OH, and WI, on the one hand, and, on the other, points in the U.S.

MC 120646 (Sub-32), filed January 27, 1982. Applicant: BRADLEY FREIGHT LINES, INC., P.O. Box 5875, Asheville, NC 28803. Representative: Henry E. Seaton, 929 Pennsylvania Bldg., 425 13th St., NW., Washington, D.C. 20004, (202) 347–8862. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Pickens and Oconee Counties, SC, and Rabun County, GA, on the one hand, and, on the other, points in the U.S.

Note.—Applicant intends to tack the authority herein with its irregular-route authority in MC–120646 Sub 30X.

MC 123476 (Sub-74), filed September 15, 1982, previously published in the **Federal Register** issue of September 30, 1981, and republished this issue. Applicant: CURTIS TRANSPORT, INC., 23 Grandview Industrial Ct., Arnold, MO 63010. Representative: David G. Dimit (same address as applicant), (314) 464–1300. Transportating *textile mill products,* between the facilities of Union Underwear Company, at points in the U.S. on and east of U.S. Hwy 85, on the one hand, and, on the other, points in the U.S. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation, at applicant's written request, of the certificate in No. MC–123476 Sub 74, served November 30, 1981. To expedite issuance of any authority please submit a copy of applicant's written request for cancellation to Team 4, Room 2410.

Note.—The purpose of this republication is to correct the territorial description.

MC 142186 (Sub-9), filed January 25, 1982. Applicant: WHEELS WEST, INC., 11631 Waddle Creek Rd. S.W., Olympia, WA 98502. Representative: Henry C. Winters, 12600 S.E. 38th St., Suite 200, Bellevue, WA 98006, (206) 644–2100. Transporting *transportation equipment,* between points in the U.S., under

continuing contract(s) with Webb Division-Marmon Industries, Inc., of Cullman, AL, and Titan Trailer Corporation of Woodland, CA.

MC 143776 (Sub-41), filed January 18, 1982. Applicant: C.D.B. INCORPORATED, 155 Spaulding, S.E., Grand Rapids, MI 49506. Representative: Karl L. Gotting, 1200 Bank of Lansing Bldg., Lansing, MI 48933, (517) 482–2400. Transporting *non-ferrous materials,* between points in the U.S.

MC 150726 (Sub-1), filed January 21, 1982. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA 93662. Represenative: Thomas M. Loughran, 100 Bush, 21st Floor, San Francisco, CA 94104, (415) 986–5778.Transporting *commodities in bulk,* between points in AZ, CA, CO, ID, and WA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, and WY.

MC 150776 (Sub-8), filed January 21, 1982. Applicant: ALFRED DANIELS, INC., P.O. BOX 869, Jackson, OH 45640. Representative: Stephen J. Habash, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *food and related products* between points in the U.S., under continuing contract(s) with Jeno's Inc., of Duluth, MN

MC 150806 (Sub-6), filed January 18, 1982. Applicant: WECO, INC., 500 Scott St., P.O. Box 5128, Kansas City, KS 66119. Representative: Erle W. Francis, 719 Capitol Federal Bldg., Topeka, KS 66603, (913) 232–0601. Transporting *paper and paper products, art supplies, binders, office supplies, and school supplies,* between points in the U.S., under continuing contract(s) with Stuart Hall Company, Inc., of Kansas City, MO.

MC 151136 (Sub-2), filed January 19, 1982. Applicant: CYCLE TRANSPORT, INC., 1418 East Lake St., Minneapolis, MN 55407. Representative: James B. Hovland, 525 Lumber Exchange Bldg., 10 South 5th St., Minneapolis, MN 55402, (612) 340–0808. Transporting *motorcycles,* between Chicago, IL, on the one hand, and, on the other, points in SD and MN.

MC 151566 (Sub-19), filed January 18, 1982. Applicant: PERRY TRANSPORT, INC., 14375 172nd Ave., Grand Haven, MI 49417. Representative: Richard O. Peel (same address as applicant), (616) 842–3550. Transporting *steel bedsprings,* between points in the U.S., under continuing contract(s) with Holland Wire Products, of Holland, MI.

MC 155026, filed January 25, 1982. Applicant: JOY McNAMARA d.b.a. SHAMROCK EXPRESS, 2406 N.E. Taylor St., Minneapolis, MN 55418. Representative: Stephen F. Grinnell, 1600 TCF Tower, Minneapolis, MN 55402, (612) 333–1341. Transporting (1) *metal products,* and (2) *waste or scrap materials* not identified by industry producing, between points in IA, IL, MN, ND, SD, and WI.

MC 156536, filed January 25, 1982. Applicant: RISER TRANSPORTATION, INC., Rt. 4, Box 2, Keithville, LA 71047. Representative: Raymond R. Riser (same address as applicant), (318) 925–9079. Transporting *liquefied petroleum products,* between points in LA, TX, AR, OK, MS, AL, and FL, under continuing contract(s) with Aero Energy, Inc., of Shreveport, LA.

MC 155796 (Sub-4), filed January 27, 1982. Applicant: TRANSPORTATION SPECIALISTS, LTD., 440 Commercial Federal Tower, 2120 North 72nd St., Omaha, NE 68124. Representative: Arthur J. Cerra, 2100 Charter Bank Center, P.O. Box 19251, Kansas City, MO 64141, (816) 842–8600. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Ovaltine Products, Inc., of Villa Park, IL.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-3026 Filed 2-4-82; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as reqiured by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal: BASF Aktiengesellchaft, 6700 Ludwigshafen/Rhein, West Germany.

2. Wholly-owned subsidiaries which will participate in the operations, and addresses of their respective principal offices:

(a) BASF Wyandotte Corporation, 100 Cherry Hill Road, Parsippany, New Jersey 07054

(b) Badische Corporation, P.O. Box Drawer D, Williamsburg, Virginia 23185

(c) BASF Canada Incorporated, P.O. Box 430, Station St. Laurent, Quebec, Canada H4L 4V8

(d) Fritzsche, Dodge & Olcott, 76 Street 9th Avenue, New York, New York 10011

(e) BASF Systems Corporation, Crosby Drive, Bedford, Massachusetts 01730.

(f) Limbacher Paint & Color Works, 3301 Bourke Avenue, P.O Box 38307, Detroit, Michigan 48238.

1. Principal: Harris Corporation, 1025 NASA Boulevard, Melbourne, Florida 32919.

2. Wholly-owned subsidiaries which will participate in the subject transportation:

Harris Data Communications, Inc., 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Harris Domestic International Sales Corporation, 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Harris Far East Ltd., 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Harris International Sales Corporation, 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Harris Italiana, Inc., 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Harris Semiconductor, Inc., 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Harris Video Systems, Inc., 1025 NASA Boulevard, Melbourne, Florida 32919, a California Corporation

Convid International, 1025 NASA Boulevard, Melbourne, Florida 32919, a California Corporation

Digital (DISC) Inc., 1025 NASA Boulevard, Melbourne, Florida 32919, a California Corporation

DRACON Disc, 1025 NASA Boulevard, Melbourne, Florida 32919, a California Corporation.

Harris Installation Corporation, 1025 NASA Boulevard, Melbourne, Florida 32919, a Delaware Corporation

Farinon Electric (DISC), 1025 NASA Boulevard, Melbourne, Florida 32919, a California Corporation.

1. Parent corporation and address of principal office: IT Corporation, 336 West Anaheim Street, Wilmington, California 90744.

2. Wholly-owned subsidiaries which will participate in the operations, and states of incorporation:

(i) IT Transporation Corporation—California

(ii) IT Corporation—California

(iii) IT Analytical Services—California

(iv) Chemcial Carriers Inc.—California.

1. Parent Corporation and address of principal office: Jovan, Inc., 875 North Michigan Avenue, Chicago, Illinois 60611.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

i. Bocalav, Inc. (Illinois)

ii. Yardley of London, Inc. (Illinois)

iii. Omni Cosmetics Corporation (Illinois)

iv. Beecham Cosmetics and Fragrances, Inc. (Illinois)
v. Lancaster Cosmetics, Inc. (Illinois)
vi. Hermark, Inc. (Illinois)
1. Parent corporation and address of principal office: MacCaferri Gabion Manufacturing Co., Inc., Governor's Lane Blvd., Box 43A Williamsport, MD 21795.
2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:
a. Gabion Construction, Inc.—New York
b. MacCaferri Gabion Inc.—New York
1. Parent Corporation: Polar Manufacturing Company, 247 West Main Street, Lewisville, TX 75067.
2. *Wholly-Owned Subsidiaries Which Will Participate in the Operation:*
(a) Polar Tank Trailers, Inc., R. R. 1, Holdingford, MN 56340
(b) American Trailers, Incorporated, 910 Morgan Road, P.O. Box 12770, Oklahoma City, Oklahoma 73157
(c) American Trailers, Inc., P.O. Box 368, West Park Addition, Air Industrial Park, Great Bend, KS 67530.
1. Name and Address of Parent Corporation: Trans Mountain Industries, Inc., a Colorado Corporation, P.O. Box 9, Evans, Colorado 80620.
2. Wholly-Owned Subsidiaries which will participate in the operations and State of incorporation:
(i) Saunders Equipment Company, A Colorado corporation.
(ii) Peidmont Exploration, a Colorado corporation
(iii) Bell & Mooney, Inc., a Wyoming corporation
(iv) Saunders Chemical Company, a Colorado corporation
(v) Saunders Petroleum Company of Colorado, a Colorado corporation.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-3022 Filed 2-4-82; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29801]

Louisville and Nashville Railroad Co.; Exemption; Purchase 5.9-Mile Portion of Track From Cleveland, Cincinnati, Chicago, and St. Louis Railway Co. and Penn Central Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 the purchase by Louisville and Nashville Railroad Company of a 5.9-mile portion of the Evansville, Mt. Carmel and Northern Branch from Cleveland, Cincinnati, Chicago and St. Louis Railroad Company and Penn Central Corporation.

DATES: This exemption will be effective March 8, 1982. Petition to stay the effective date must be filed by February 16, 1982, and petitions for reconsideration must be filed by February 25, 1982.

ADDRESSES:
(1) Interstate Commerce Commission, Section of Finance, Room 5417, Washington, D.C. 20423
(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

For copies of the full decision write to: Interstate Commerce Commission, Room 2227, Washington, DC 20423, or call toll free: (800) 424-5403.

Pleadings should refer to Finance Docket No. 29801.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly, (202) 275-7245.

SUPPLEMENTARY INFORMATION: For further information, see the Commission's decision in Finance Docket No. 29801.

Decided: January 29, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Gresham, and Clapp.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-3024 Filed 2-4-82; 8:45 am]
BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-No. 85)]

Southern Railway Co., Exemption for Contract Tariff ICC-SOU-C-0094

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioner is granted a provisional exemption under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e). The contract tariff to be filed may become effective on one day's notice. This exemption may be revoked if protests are filed within 15 days of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Donald J. Shaw, Jr.
or
Jane F. Mackally, (202) 275-7656.

SUPPLEMENTARY INFORMATION: The Southern Railway Company (SOU) filed a petition on January 27, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory notice provisions of 49 U.S.C. 10713(e). It requests that we permit its contract tariff ICC-SOU-C-0094 to become effective on one day's notice. The tariff was filed to become effective on February 26, 1982. The contract involves volume movements of coal for export to foreign customers.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. There is no provision for waiving this requirement. CF. former section 10762(d)(1). However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. In a supporting statment also filed January 27, 1982, the shipper emphasizes that in order to consummate its contracts with foreign customers, it has been necessary to guarantee delivery within certain time periods. Since it takes shipper 3 weeks to load coal in railcars at the mines, and an additional week for the rail carrier to transport the coal to the port, it is essential to begin movement of coal under the contract immediately to assure meeting the scheduled arrival of export ships in late February. Additionally, shipper needs to move this coal under the contract provisions in order to meet the minimum volume requirement of the contract. We find that to be the type of exceptional circumstance which warrants a provisional exemption.

SOU's contract tariff may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings.

If the Commission permits the contract to become effective on one day's notice, this fact neither shall be construed to mean that this is a Commission approved contract for purposes of 49 U.S.C. 10713(g) nor shall it serve to deprive the Commission of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to disapprove it.

Subject to compliance with these conditions, under 49 U.S.C. 10505(a) we find that the 30-day notice requirement in these instances is not necessary to carry out the transportation policy of 49 U.S.C. 10101a and is not needed to protect shippers from abuse of market power. Further, we will consider revoking this exemption under 49 U.S.C. 10505(c) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10505)

Dated: February 1, 1982.

By the Commission, Division 1, Commissioners Clapp, Gresham, and Taylor. Commissioner Taylor is assigned to this Division for the purpose of resolving tie

votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-3023 Filed 2-4-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29772]

Guilford Transportation Industries, Inc.—Control—Delaware & Hudson Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of the filing of an application for the approval of control, and establishment of procedural schedule for this proceeding.

SUMMARY: Guilford Transportation Industries, Inc. (GTI), a non-carrier that currently controls the Maine Central Railroad Company (MEC), a class I rail carrier, has filed with the Commission an application to control the Delaware and Hudson Railway Company (D&H), a class I rail carrier. The application is filed under 49 U.S.C. 11343 and 11344. In addition, GTI filed an application on October 28, 1981, to control the Boston and Maine Corporation (B&M), also a class I carrier. GTI has made its application to purchase the D&H contingent upon its acquisition of the B&M. Because the GTI–B&M case must be decided by April 26, 1982, the Commission will not consolidate it with this proceeding. This proceeding will be expedited because section 1164 of the Northeast Rail Service Act of 1981, Pub. L. 97–35, requires the Commission to issue a final decision on or before July 28, 1982.

DATE: A detailed procedural schedule is attached as an appendix to this publication.

ADDRESS AND COPIES: An original and 10 copies of all pleadings in this proceeding should be sent to: Section of Finance, Room 5414, Interstate Commerce Commission, Washington, DC 20423; Copies of the full decision are available from: Office of the Secretary, Room 2227, ICC, Washington, DC 20423; or by calling toll-free: (800) 424–5403.

FOR FURTHER INFORMATION CONTACT: Richard A. Kelly (202) 275–7245; or Ernest B. Abbott (202) 275–3002

SUPPLEMENTARY INFORMATION: The Commission has issued a detailed decision in this proceeding to coincide with publication of this notice. The decision describes the application in greater detail and presents crucial information concerning applicable substantive and procedural legal principles. All interested parties should familiarize themselves with this decision.

By the Commission, Chairman Taylor, Vice-Chairman Gilliam, Commissioners Gresham and Clapp.

Dated: February 2, 1982.

Agatha L. Mergenovich,

Secretary.

Appendix

January 29, 1982. Primary application for control of D&H by GTI along with supporting evidence is filed with the Commission.

February 5, 1982. Notice of filing and a procedural schedule for the proceeding are published in the **Federal Register**, and a decision is served providing more specific information about this proceeding.

February 24, 1982. Persons interested in participating must submit a concise position statement and provide their name, address, and telephone number, as well as the name, address, and telephone number of their representative (for details concerning the information required to be included in these position statements, see the Commission decision).

Railroads which intend to file responsive applications must give specific prefiling notice.

Written requests for cross-examination of applicants' witnesses (whose verified statements were filed on January 29, 1982) must be submitted.

March 11, 1982. An official service list will be issued.

If any cross-examination is deemed necessary, an order setting a date, time, and place for oral hearing will be issued.

March 22, 1982. [Tentative date for any oral hearing which might be found to be necessary in an order of March 11, 1982.]

April 1, 1982. Responsive applications, including supporting evidence in the form of verified statements, are due.

All evidence (in the form of verified statements) from private parties other than applicants in support of or opposition to the application is due.

April 21, 1982. Verified statements in opposition to the responsive applications are due.

Verified statements of public bodies, including the Departments of Justice and Transportation, are due.

Written requests for cross-examination of witnesses whose verified statements were filed on April 1, 1982 should be submitted.

April 30, 1982. The Commission will issue an order setting the schedule for the remainder of the evidentiary phase of this proceeding, including information concerning the submission of reply statements and briefs, and the scheduling of any further oral hearings warranted by the record.

May 5, 1982. [Tentative date for any oral hearing which might be found necessary in the order of April 30, 1982].

July 28, 1982. Final decision will be issued.

[FR Doc. 82-3253 Filed 2-4-82; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C 16, Justice sets forth below a *Comment* and its *Response* thereto on the proposed Final Judgment filed in the case of *U.S. v. Bristol-Myers Company*, Civ. No. 822–70 (D.D.C.).

Joseph H. Widmar,

Director of Operations Antitrust Division.

January 27, 1982

Richard H. Stern, Esq.,

818 Connecticut Avenue, NW., Suite 700, Washington, D.C. 20006

Re: United States v. Bristol-Myers Company Civ. No. 822–70 (D.D.C.); M.D.L. Docket No. 50 (Misc. 45–70); DOJ File No. 60–358–154

Dear Mr. Stern: This letter is written in response to your letter of December 18, 1981, which comments on the government's proposed settlement of the *Ampicillin* litigation. You contend that the proposed decree and/or the related competitive impact statement are inadequate in four distinct ways. First, you contend that the government should have discussed and/or explained in the competitive impact statement why it settled its damage claim for $3 million. Second, you contend that the government did not assure that the documents concerning fraudulent patent procurement are maintained so as to provide access for future plaintiffs. Third, you contend that there is a loophole in the mandatory bulk sales provision that would allow Bristol to avoid any obligation to sell pharmaceuticals in bulk form. Fourth, you contend that the competitive impact statment does not provide an adequate explanation of why the proposed judgment does not preclude Bristol from entering or maintaining other patent licenses that contain bulk sales or trademark restrictions analogous to those in the Bristol-Beecham agreements in this litigation. I will respond to these arguments *seriatim.*

A. The Statute Does Not Require That the Competitive Impact Statement Discuss the Settlement of the Damage Claim in Greater Detail

You state that years ago the government was offered more than $3 million in settlement of its damage claim, and that the competitive impact statement is deficient for failing to explain in greater detail why the government ultimately settled for $3 million. In response, the competitive impact

statement notes that the government received a monetary settlement of its damage claim (46 FR at 52055) and the $3 million amount was disclosed when the stipulation was published in the Federal Register alongside the proposed judgment and the competitive impact statement. This is sufficient under the statute which Congress enacted to provide for district court review of proposals for injunctive relief to determine whether or not they are in the public interest.

The competitive impact statement, as its name would suggest, is intended primarily to provide information relevant to assessing the effects on competition resulting from the proposed relief, including the effects on others damaged by the alleged violation. The precise amount of the settlement herein has no effect at all on competition in the marketplace or the remedies available to potential private plaintiffs damaged by the challenged conduct. Therefore, the damage settlement need not be discusses in extensive detail in a competitive impact statement filed pursuant to 15 U.S.C. 16(b).

Nor is a detailed discussion of the damage claim relevant to this court's public interest determination pursuant to 15 U.S.C. 16(e). The amount of the damage settlement does not have the type of impact on the "public generally" upon which the stature is intended to focus. The damage claim involved in the litigation is not an act by the United States in its sovereign capacity, nor is it an act brought in a representative capacity to obtain damages for injury to its citizens. Rather, the damage claim is brought by the United States in its own proprietary interest to recover damages resulting from the government's own direct purchases of ampicillin.

In any event, it is true that the government had previously considered settlement based on a higher sum. The reason that settlement was rejected at that time had nothing to do with its competitive impact. Rather, the United States determined that it would not be appropriate to enter into a separate settlement that excluded other governmental plaintiffs, including various city, county, and state governments, which were relying upon our aid in preparing the litigation for trial. Eventually, these other governmental agencies settled their claims, and we considered ourselves free to consider settling ours.

When negotiations began again, the higher sum previously discussed was no longer available. However, the $3 million eventually agreed upon is considered a fully satisfactory damage settlement from the government's perspective. While our patent fraud claim is tenable, in our opinion the evidence accumultated to date could not be a basis of an unequivocal prediction of victory. With respect to the antitrust claim that did not involve alleged patent fraud, there was extensive factual discovery remaining, and even if we prevailed on the claim, we would not be assured in excess of $3 million in damages.

In addition, the proposed settlement has the benefit of resulting in an immediate payment of $3 million dollars and immediate equitable relief that is essentially equivalent in scope to the full equitable relief requested in the complaint. If we did not settle on these terms now and instead proceeded to trial, even if we were victorious on the issue of liability we were not assured of receiving equivalently broad equitable relief and, in addition, any relief and any damage payment would be postponed until some unknown future date.

B. The Record of the Government's Patent Fraud Evidence Is Being Preserved

You contend that the proposed decree is defective because it neither provides for cancellation of the patents involved nor for preservation of the record concerning the patent fraud charge. You conclude that the defendant is unlikely to "voluntarily preserve the damaging evidence" itself (Letter at 3). In response, the evidence the government developed in support of its charge of fraudulent patent procurement is being adequately preserved to aid future litigants making the same or a similar charge.

First, the government will maintain for a reasonable time and will make available to any private litigant, upon written request and subject to applicable protective orders, copies of relevant deposition transcripts and related exhibits, and copies of all documents produced by defendants and identified in the governent's interrogatory answers relating to the patent fraud claim.

Second, defendant has indicated to the district court that the document depository which contains all documents in this case will be maintained until the expiration of the statute of limitations covering actions based on alleged patent fraud. Memorandum of Bristol-Myers Company Concerning Proposed Consent Judgment, dated January 6, 1982, at 5.

Third, the government set forth its substantive contentions and related evidence concerning the patent fraud charge in considerable detail in the following publicly available papers:

(a) Government's Answers to Certain of Defendant's First Set of Joint Interrogatories, As Modified; Interrogatory Nos. 286–289, 297, and 298; dated June 15, 1972 (7 pages);

(b) Answers and Responses of the United States to Defendant's Joint Interrogatories, First Set; Interrogatory Nos. 291, 292, 300, 302, and 308; dated February 16, 1973 (7 pages);

(c) Supplemental and Amended Answers and Responses of the United States to Certain of Defendants' Joint Interrogatories, First Set; Interrogatory Nos. 297, 298, 300, and 308; dated May 18, 1973 (6 pages); and

(d) Further Answers and Responses of the United States to Defendants' Joint Fraud; Interrogatories Nos. 286–289, dated April 27, 1978 (31 pages).

All publications referred to in those papers are publicly available. Some of those publications and certain United States as well as foreign patents, affidavits, and other documents referred to in the government's interrogatory answers are part of the Patent Office record of the prosecution of the ampicillin patent, or are otherwise available at the Patent Office.

C. There Is No "Loophole" in the Mandatory Bulk Sales Provision

You contend that there is a loophole in the bulk sale obligation included in Section V of the proposed decree which would permit Bristol to avoid its obligation to sell certain products in bulk form simply by channeling all sales to third parties through a Bristol subsidiary. Your interpretation is not consistent with the terms of the porposed decree. The provision in Section V(B)(2) that limits the bulk sale obligation to 15 percent of the amount of those drugs that Bristol sells "to any person other than its subsidiary" merely permits Bristol to avoid counting the same product twice when it sells a product to a subsidiary and the subsidiary ultimately sells the product to an unrelated firm or to unrelated individuals. It does not result in the ultimate sales by that subsidiary not counting as a sale by Bristol. Indeed, Section III(a) of the decree specifically provides that "the provisions of this Final Judgment shall apply to Bristol [and] to each of its subsidiaries. * * *" therefore, under the terms of the decree all sales to the public by Bristol or a Bristol subsidiary would be counted as a sale by Bristol for purposes of the 15 percent bulk sales obligation. In its Memorandum of January 6, 1982, Bristol acknowledges to the court that it so interprets Section V(B)(2).

D. No Further Explanation Is Required in the Competitive Impact Statement Concerning the Injunctive Relief

You contend that the competitive impact statement does not adequately explain why the injunctive relief relating to bulk sales and trademark license restrictions covers only existing Bristol-Beecham semisynthetic penicillin agreements and does not cover Bristol agreements with other drug companies, future agreements, or agreements involving other ethical drugs. You contend that a bulk sales restriction in a patent license has anticompetitive effects equivalent to a price fixing agreement or a group boycott and therefore should similarly be classified as *per se* illegal.

In response, the competitive impact statement does adequately explain the Antitrust Division's rationale for so limiting the relief. Unlike horizontal price fixes and group boycotts involving unpatented products, we explained in the competitive impact statement that bulk sales restrictions in patent licenses are not necessarily anticompetitive in all situations and therefore that a *per se* approach is not appropriate. You do not find this explanation adequate, however, and allege that it is an "about face" from the policy of previous Administrations which requires a further explanation. While the position is different than the Antitrust Division has suggested in some other situations in the past, it is the same basic position taken by the Administration that preceded this one. On June 5, 1980, the Division filed its Preliminary Memorandum of the United States concerning Main Theories of Violation, in which we explain in detail our legal theory in this litigation. Therein, we did not contend that the bulk sales restraints were *per se* illegal, but rather contended then, as we do in the competitive impact statement now, that these provisions were unlawful because in the particular fact

pattern involved the restrictions functioned anticompetitively.

In any event, the proposed judgment contains all of the relief necessary to cure the ill effects of the violation alleged in this case. In this context, the public comment-government response provision of the statute is not an appropriate forum to conduct a comprehensive theoretical dialogue concerning the proper interpretation of the antitrust laws with respect to patent licenses not involved in this litigation. Some limited comments, however, do seem appropriate.

A *per se* illegal approach such as you propose ignores basic economic facts and, by so doing, can result in the antitrust laws functioning anticompetitively rather than promoting competition. First, the patent laws permit the patentee to exclude all firms from competing in the sale of a product covered by a valid patent. Therefore, a license under a patent, even if it permits only dosage sales of the product and not bulk sales, can be procompetitive to the extent that it permits competition in dosage sales which the patentee, under the patent laws, had the power to prevent.

Second, not only can such a license potentially spur competition in the sale of a patented product, but it also can spur competition between the patented product and products with which the patented product competes. For example, a potential licensee may have lower costs than the patentee for dosage sales of a patented pharmaceutical because of a more efficient tabletting process or because of efficiencies resulting from an established sales force which regularly promotes the potential licensee's products to a large number of physicians. In such a case a license permitting the more efficient firm to sell the product in dosage form can have the effect of lowering the cost of sales of the product. Lower costs can result in lower prices to consumers and, thereby, can place the patented product in an improved competitive position vis-a-vis products with which it competes.

In this regard, you are incorrect in your assertion that the economic lesson taught in the Supreme Court's discussion of the procompetitive benefits of vertical restraints in *Continental T.V. Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36 (1977), is totally inapposite to an antitrust analysis of a patent license. In fact, the procompetitive benefits that a patent license will bring to inter-product competition are an important part of the antitrust analysis for the same basic reasons that the Supreme Court in Continental T.V. found relevant the procompetitive benefits that the distributorship arrangement brought to inter-brand competition. Indeed, because the patentee has the power to prevent the sale of the patented product, and analysis similar in part to that used in a vertical context is appropriate when assessing possible procompetitive benefits of the patent license.

On the other hand, a patent license that includes a bulk sales restraint also potentially can produce significant anticompetitive effects. For example, such a license can have the effect of encouraging the licensee to abandon the development or the marketing of a product that can compete with the licensed products and of discouraging an attack on the validity of the patent involved. Whether the anticompetitive effects that are produced actually outweigh the procompetitive effects stemming from the license will vary from case to case depending upon the particular facts including the structure of the markets involved. However, the crucial point is that the anticompetitive effects stemming from the license do not always necessarily outweigh the procompetitive effects. Therefore, the adoption of a *per se* illegal approach will be anticompetitive in that in certain circumstances it will result in patentees being prevented from entering into licenses that are procompetitive in effect. This is obviously contrary to Congress' intent in adopting the antitrust laws.

For all of the reasons set forth above, the United States continues to believe that the competitive impact statement as filed was proper and that entry of the proposed decree is in the public interest. I thank you for your interest in the enforcement of the antitrust laws.

Sincerely yours,

Roger B. Andewelt,

Chief, Intellectual Property Section Antitrust Division.

818 Connecticut Avenue, N.W., Suite 700, Washington, D.C. 20006, December 18, 1981

Certified Mail 2096914, return receipt requested

Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530, Attn.: Roger B. Andewelt, Esq., Assistant Chief, Intellectual Property Section, SAFE 704.

Re: Proposed consent settlement of *U.S.* v. *Bristol-Myers Co.*, Civ. No. 822–70 D.D.C.

Gentlemen: This letter is written in response to the Government's statutorily-required invitation for public comment on the proposed settlement of the Government's *Ampicillin* litigation, 46 FR 52046–56 (Oct. 23, 1981). The writer does not represent any party connected with this litigation, and the views expressed herein are therefore solely those of the writer as a private person interested in the proper administration of the antitrust laws.

In most respects, the proposed settlement appears to bring an effective and desirable conclusion to more than ten years of hard-fought litigation. The present administration of the Antitrust Division thus deserves high praise for pursuing this matter to a resolution so successful in those respects, in the face of widespread and doubtless unjust criticism that it lacks any commitment to vigorous enforcement of the antitrust laws.

In several other respects, however, the proposed settlement of this case appears to fail to comply with the governing statute (the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h)); to contain possible loopholes that might defeat the stated purposes of the judgment; or have other flaws that require correction or at least deserve reconsideration.[1] In summary, these problems with the proposed decree are as follows:

—The Competitive Impact Statement does not discuss the $3 million settlement of the Government's claims, which is a figure less than half that of Bristol's previous settlement offer. The government had rejected the higher, prior offer as inadequate to satisfy the public interest. Failure to mention and explain the cash aspect of the relief to be obtained by the consent judgment would appear to violate the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)(3). Accordingly, the statutory 60-day waiting period has still to begin.

—The Final Judgment does not provide for cancellation of the patents that the Government asserted were procured by fraud. The Competitive Impact Statement states that cancellation is unnecessary because the Final Judgment's licensing relief is equivalent to cancellation and private litigants are free to invalidate the patents in private litigation. But the Final Judgment does not provide for preservation and availability of the Government's fraud evidence for necessary use by such private litigants. Clearly, the defendant will not voluntarily preserve the damaging evidence. Hence, the Competitive Impact Statement's assurance that private litigants are free to deal with the fraud is inaccurate, to say the least.

—The consent judgment provides for *mandatory sale of "bulk" drug chemicals.* This provision in the judgment is necessary and important to foster the availability of less-expensive "generic" versions of these drugs. There is a loophole in this part of the judgment, however, which the defendant might utilize to make the judgment ineffective. It would appear that, if defendant decides to channel its sales, this part of the judgment is a dead letter.

—Finally, the decree leaves defendant free, and appears to signal to the drug industry that it too is free, to use agreements *with "bulk sales"* restrictions to keep other drugs out of the hands of price-cutting "generic" sellers. This would facilitate such agreements to stabilize drug prices at the much higher price levels maintained by brand-name manufacturers. The result would thus be to raise drug prices to the public.

—More specifically, bulk sale restrictions are a form of price fixing or its equivalent. But the Competitive Impact Statement asserts that bulk sale restrictions are not necessarily bad and should be judged on a case-by-case basis. This is an about-face from the policy of at least two prior Republican and one Democratic Administration. A new administration has the prerogative of such an about-face, but it owes a reasoned, principled, articulated explanation of why. The Competitive Impact Statement lacks one. It is doubtful that one exists. Scholarly writings, such as those of Professor Baxter, suggest that any possible explanations of this approach would be unsound or even irrational in the extreme.

I turn now to the specifics in more detail.

I. Payment of $3 Million

Paragraph 2 of the Stipulation (46 FR at 52046) requires defendant Bristol to pay the Government $3 million. For some reason left unclear, the settlement papers in this case

[1] Any focus in this comment on the shortcomings of the proposed settlement should not be understood as an implied criticism of the rest of it.

differ from others (for example, the Beecham settlement of the same lawsuit, Final Judgment, § XV, 43 FR at 51459, Nov. 3, 1978) by placing the defendant's obligation to pay money to the government in the Stipulation instead of the Final Judgment. Even more remarkably, there is no mention in the Competitive Impact Statement (46 FR 52051–56) of the fact that the Government has settled this case with Bristol for $3 million, let alone any explanation of why it did so.

The importance of mention and explanation of the $3 million settlement is highlighted by the fact that, as is generally well known, Bristol made a much better offer during the incombency of the last Republican-appointed Assistant Attorney General in charge of the Antitrust Division. That offer provided both wider equitable relief (*see, e.g.,* 46 FR at 52055, section E; 52056, § H) and also a payment to the Government from Bristol of more than twice the $3 million now agreed to. The Government conferred at that time with a large number of State Attorneys General and their representatives on whether to accept this settlement proposal. After the Government conferred and deliberated, it rejected Bristol's proposed settlement as insufficient to satisfy the public interest.

Those former Government officials may simply have been ill-advised and wrong. The fair settlement value of this case, for example, may at that time have been only the now-agreed-to fraction of what Bristol then perhaps unwisely proffered and the Government then perhaps unwisely rejected. If so, the public is entitled to know this. If, instead, the facts of the *Ampicillin* case or the Government's antitrust enforcement policies have in some important way changed, the public is entitled to know that, too. That is why the Congress passed the Antitrust Procedures and Penalties Act.

Nothing in the Antitrust Procedures and Penalties Act exempts from explanation in the Competitive Impact Statement the financial side of the Government's settlement with a defendant. *See, e.g.,* 15 U.S.C. 16(b)(3). The Congress required the federal antitrust bureaucracy to file and publish thorough and complete explanations ("Competitive Impact Statements") of settlement agreements with antitrust defendants, because the Congress was concerned with such events as the ITT antitrust settlement scandal of the Watergate period, and because the Congress believed that a requirement of thorough public ventilation of the Government's reasons for settling these cases was an important means to prevent the recurrence of such unfortunate events. Regardless of the unquestioned probity of Government officials in this or any other specific case, they should comply with the statute.

Certainly, burying the cash payment provisions of a settlement in the Stipulation, instead of putting them into the Final Judgment, would not take away the Antitrust Procedures and Penalties Act's requirements. Nothing in the Act suggests this, and any such interpretation of the Act would make it an ineffective sieve. For example, antitrust officials could put practically the whole settlement of a case into the Stipulation, rather than the Final Judgment, and use this as a reason to explain nothing in the Competitive Impact Statement.

Since the Government has not properly complied with the Antitrust Procedures and Penalties Act, it would appear that the *60-day statutory waiting period has not yet begun to run.* If that is correct, the Department is without authority to enter into (and the Court is without authority to ratify) a Final Judgment in this case until 60 days after the Government files a Competitive Impact Statement mentioning and in some way explaining the $3 million settlement.

II. Cancellation

The Government has alleged that Bristol procured certain patents by means of fraud on the patent office, and subsequently misused the patents. The proposed consent decree provides royalty-free licensing of these patents. The Competitive Impact Statement (§ VII(A), 46 FR at 52054) concludes that this relief, rather than cancellation of the patents, adequately satisfies the public interest because royalty-free licensing is substantially equivalent in its effect to cancellation.

The Competitive Impact Statement notes two ways, however, in which the two different remedies are not fully equivalent. First, if someone is defrauded out of royalties that he paid under a patent later cancelled because it was fraudulently procured, he has a right to recover the royalties. Moreover, he may have a right, in some States, to punitive damages for the patentee's willful and wanton misconduct. Second, cancellation may be *prima facie* evidence in private litigation.

The Competitive Impact Statement goes on to state, nonetheless, that these factors are not significant, here, because "such a litigant would still be free to pursue its own suit against Bristol" despite the settlement. This conclusion is probably incorrect. The quoted statement seems at least misleading in the present factual context. It is certainly far too optimistic.

The Government has said that the defendants committed a fraud on the patent office and thus on the public. This is a serious charge and presumably is supported by enough documentary or other evidence to have kept the Government litigating this case against Bristol for more than ten years, through one Democratic and three Republican Administrations. When the Government makes such a serious charge, it has a duty to ventilate the facts and prevent a cover-up of the fraud, or else confess error and admit that it should not have falsely or erroneously maligned the defendant. Yet, here it does neither.

In the course of discovery in this case, the defendants have produced many documents in response to document demands and placed them in a document "Depository." Depositions have been taken, some abroad, at which more documents surfaced. References were made to allegedly incriminating documents in various papers that the Government filed over the years and in its oral arguments to the Court.[2] For example, there was said to be a "Smithers Memorandum" that allegedly contained a bald-faced claim by one of the defendant's patent agents that he had put one over on the U.S. patent office. Some of these documents may be alleged to be "confidential" to the defendants. Some of the documents are covered by protective orders. Surely, not all of these documents, if any, are on the public record and readily accessible, and the Competitive Impact Statement does not state that they are.

These are (if, as the Government alleged, they exist) documents that are important to any prospective private litigant. But these documents are probably about to disappear forever. Under this Final Judgment, there is no legal obligation (and no reason) for the defendant not to "deep-six" the documents before the ink on the consent decree is dry. The Final Judgment does not require the defendant to maintain the Depository in existence, so that future private litigants can get the documents. The Competitive Impact Statement does not disclose whether all the documents on fraud are even in the Depository, or whether they are free of any protective order. In all probability, they are subject to a protective order, uncritically barring access to them so that the public cannot see them.

It may be that the Government has some other means of making sure the pertinent documents do not disappear, are ventilated, and remain available for public scrutiny. The Government may well have some means to prevent a cover-up of what it once claimed was a fraud on the patent office. But the Competitive Impact Statement does not explain any facts that show or even suggest this. These documents will not exist for a future private fraud case, unless the Government takes steps (or has already taken undisclosed steps) to preserve them.

In the circumstances, it is a hollow promise to say in the Competitive Impact Statement (46 FR at 52054) that "any potential or actual private litigant . . . would still be free to pursue its own case against" the fraud, if any, that was committed here. That is, really, like assuring them that they are free to climb Mt. Everest. Either the Government should make the promise in the Competitive Impact Statement good by providing and preserving the necessary documents before they disappear, or else it should go ahead and cancel the patent. If it will do neither, it should then explain in its Competitive Impact Statement why it believes that it is in the public interest for it to do neither. There may well be legitimate justifications for what the Antitrust Division is doing; doubtless, there are. But it is the policy of the Antitrust Procedures and Penalties Act that the Antitrust Division should state them and subject them to public comment. This is a flaw and omission in the Competitive Impact Statement and in the Final Judgment that deserves correction.

III. Bulk-Sale Loophole

The Final Judgment (section V(A)) quite sensibly requires Bristol to sell various semisynthetic penicillin drugs in bulk form to those who request Bristol to do so. The

[2] The writer notes that he was one of the Government's counsel, in the early 1970's, that made such arguments.

remedial purpose is to enable small competitors to make "generic" semisynthetic penicillin drug products to be sold in competition against Bristol and its principal licensees and their higher priced brand-name products, which the generic sellers would otherwise be unable to do. *See generally* 43 FR at 52052 n.8. Moreover, the purpose of this relief is to undo the effects of Bristol's prior drug licensing restrictions against sale in bulk form, a type of price-stabilization restriction against which the Complaint in this case was aimed. Indeed, such mandatory bulk sales relief was specifically approved and commanded by the Supreme Court as a means of undoing this type of antitrust violation. *U.S.* v. *Glaxo Group Ltd.*, 410 U.S. 52 (1973).[3]

But section V(B)(2) of the Final Judgment limits Bristol's bulk-selling duty to 15% of the amount of these drugs that Bristol sells "to any person other than its subsidiary." The quoted language appears to open a loophole in the decree. The Final Judgment contains no provision making it applicable to Bristol's subsidiaries or that prevents Bristol from so restructuring its present distribution methods that it sells all of its output of these products only via a subsidiary. Clearly, 15% of zero is zero. Hence, Bristol could, perhaps, choose to make this part of the Final Judgment a complete nullity and destroy any obligation on its part to sell in bulk to price-cutters or other such applicants. It may do so by channeling all sales via a subsidiary. (Section III(A) does not solve this problem, because trying to apply its general provisions here would be inconsistent with putting the subsidiary exception in section V(B)(2) in the first place.)

The Government may therefore wish to consider a modification of section V(B)(2) to prevent Bristol's possible expansion of the exemption to the point of undercutting the main part of section V. Perhaps, language would be more effective that referred to Bristol's sales to a subsidiary without subsequent resale to a third party by the latter. This language may not capture the precise concept at which the Division aims, here, but it suggests a start. The difficulty with section V(B)(2) is only a technical one, not a matter of policy, and the defendant should have no legitimate objection to a change of this type. In any event, I would think that the Government would want to close this possible loophole, by appropriate drafting, so that the beneficial purposes of the Government's requiring Bristol to sell in bulk form would be accomplished.

IV. Scope of Injunctive Relief

Bristol originally agreed to accept a decree that would prohibit all its restrictions against bulk sale of drugs, with any other drug company, on all "ethical" drugs, in the future as well as now; and the Government considered prohibiting these bulk sale restrictions regardless of which party to Bristol's agreements wanted to impose them. *See* 46 FR at 52056. This would correspond substantially to the decree that Bristol's co-defendants accepted in the same case. *See* FR at 51546 (section V–B).

Despite Bristol's willingness to abandon the challenged practice and to sign a broader Final Judgment, the Government now wishes to cut the injunction in the consent decree back; it would apply only to bulk sale restrictions that Bristol imposes on Beecham, only to already existing (not future) agreements, and to just the particular drug products that were covered by the specific Bristol license agreements involved in this suit. The Competitive Impact Statement (46 FR at 52056) gives these reasons for the change:

> We have reconsidered our position . . . . While those agreements including the challenged bulk sale and trademark restrictions are, in our view, clearly anticompetitive and unlawful in the circumstances of this case, patent license agreements containing such restrictions are not necessarily anticompetitive and unlawful in every circumstance. Accordingly, we prefer to evaluate, on a case-by-case basis, the legality of such restrictions imposed on other parties, involving other drugs and presented in other situations.

A footnote (*id.*, n.18) indicates that the same considerations are thought to apply to other drug manufacturers who impose bulk-sale restrictions on Bristol, to which it willingly or even gratefully acquiesces.

A. What Are and Why Are There Bulk Sale Restrictions in Drug Contracts?

The explanation in the Competitive Impact Statement raises more questions than it answers. To clarify the discussion, I will at the outset define the concept of *bulk sales restrictions* more precisely.

1. *"Pills" and "Bulk".* Drugs reach the consumer in "finished" form. This means a capsule, a tablet, or the like—for simplicity I will refer to these forms of a drug as "pills." A pill manufacturer makes the pill by combining the active drug chemical substance with extenders, binders, chemicals that promote dissolution, etc., and then making the mixture up as a pill, which he sells and the consumer eventually buys. The pill manufacturer either himself manufactures the active drug chemical or he buys it from a manufacturer in large quantities, such as 50-gallon drums. This is the "bulk form" of the drug, which for purposes of this Final Judgment must be contrasted with the finished or pill form of the drug.

2. *"Generic" drug sellers.* "Generic" sellers of drugs sell pills under generic names and in competition with brand-name sellers, such as the defendant, and they usually compete by selling more cheaply. They are price-cutters, and the public is the beneficiary of their price-cutting. Their competition is believed to

[3] The Supreme Court said in *Glaxo* (410 U.S. at 63):

> Bulk sales would create new competition . . . [and] lead to price reductions as the result of normal competitive forces. There is, in fact, substantial evidence in the record that other drug companies would not only have entered the market, had they been able to make bulk purchases, but also would have charged substantially lower . . . prices. . . . Only by requiring . . . [bulk sale] will the . . . market become competitive.

be an important brake on the price policies of the brand-name sellers. *See generally* the recent and well-considered *amicus curiae* briefs filed by the United States in *SK&F Co.* v. *Premo Pharm. Labs., Inc.*, 625 F.2d 1055 (3d Cir. 1980), and *Ives Labs., Inc.* v. *Darby Drug Co.*, 638 F.2d 538 (2d Cir. 1981).

Typically, generic sellers do not have their own manufacturing capacity (see 43 FR at 51462) and must buy drugs in bulk form from another source. When, as here, the drug is patented, even if the generic firms could manufacture the drug it would be unlawful patent infringement for them to do so. They must buy patented drugs from a licensed source or a customer of a licensed source. When brand-name sellers can keep the bulk form of a drug from falling into the hands of generic sellers, the generic sellers cannot make and sell pills in competition against the former. Preventing bulk drugs from reaching generic sellers thus effectively prevents generic-seller price-cutting on the drug in question, and maintains the integrity of the brand-name price structure.[4]

3. *Horizontal Bulk Sale Restrictions.* A "bulk sale" restriction is a provision in an agreement for the sale or licensing of a drug under which the buyer or licensee is restrained from selling the drug in bulk form. In this comment, I will focus only on a particular kind of bulk sale restriction, which is the kind that was involved in this lawsuit. I will speak only of "horizontal bulk sales restrictions." By that term I mean a provision of an agreement by which drug manufacturer *A* licenses or sells a drug chemical in bulk form to another drug manufacturer *B*, and *B* is restrained or limited from selling the drug chemical in bulk form to any third drug manufacturer *C*; further, in this context, the three drug manufacturers *A*, *B*, and *C* are all actual or potential competitors in the sale of the drug in question.

This is the kind of bulk sale restriction involved in the instant *Ampicillin* case, and in such earlier bulk sales cases brought by the Government as *U.S.* v. *Cib-Geigy Corp.*, 508 F. Supp. 1118 (D.N.J. 1976), and *U.S.* v. *Glaxo Group Ltd.*, 410 U.S. 52 (1973).[5] There may be still other kinds of bulk sale restrictions, but if so they are quite uncommon. In any event, I will not refer to them in this comment.

B. Horizontal Bulk Sales Restrictions and The Antitrust Laws

1. *What do bulk sales restrictions do?* Horizontal bulk sales restrictions are indistinguishable from the kinds of boycott and price-fix arrangement condemned in *U.S.* v. *General Motors Corp.*, 384 U.S. 127 (1966), and *U.S.* v. *McKesson & Robbins, Inc.*, 351 U.S. 305 (1956). They are agreements between patentee drug manufacturers and competing licensee drug manufacturers to keep the product out of the hands of discounters and price-cutters,[6] who are the competitors of both parties to the agreement. In licenses of this form, the patentee ends up not just selling the right to use the invention, but rather a package that includes that right *and* a "sanctuary" from price competition in the sale of the end product. Whether horizontal bulk sales restrictions are regarded as boycotts or as price-fixing agreements, their clear purpose and effect is to stabilize drug prices, and they are therefore illegal *per se*. The antitrust laws do not evaluate price-fixes and boycotts on a "case-by-case" basis. It would make no sense to do so. The antitrust laws do not recognize any "good" price-fixes or "good" boycotts. Using a "rule of reason" or a "case-by-case evaluation" for a price-fix, or crying for determinations in each case whether the price fix promotes "business efficiency," can accomplish no legitimate purpose. It can only be a euphemism or code word for permitting price fixers to gouge the public and violate the antitrust laws with impunity.

Horizontal bulk restrictions have no redeeming virtues.[7] They are uniformly without procompetitive purposes or effects. They are not in any material way like the intrabrand restrictive vertical distribution agreements for which the Court had kind words in *Cintinental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977).[8] In this context, therefore, the statement in the Competitive Impact Statement that "such restrictions are not necessarily anticompetitive and unlawful in every circumstance," but instead need an evaluation "on a case-by-case basis," is a very puzzling and unsatisfactory explanation for the scope of the injunction in the Final Judgment.

2. *The about-face in antitrust enforcement.* The statement in the competitive impact statement is clearly an about-face from the

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[4] See note 3 *supra*.

[5] In the *Ciba* case, the trial court properly observed: Although these contracts were reached in a vertical, supplier-purchaser context, they in fact were designed to limit horizontal competition . . . ." 508 F. Supp. at 1146.

[6] See note 3 *supra*. *See also Ciba*, 508 F. Supp. at 1149: By imposing the post-sale restraint on its vendees, CIBA had a purpose to prevent any of its HCT [bulk drug] from ending up in the hands of price-cutters. Finally, by denying Abbott the right to make bulk sales under the license, CIBA effectively shut off the last possible source of an HCT supply for price-cutters.

[7] In *Ciba*, 508 F. Supp. at 1147 n. 14, the court pointed out the absence of any possible business justification for bulk sale restraints. In then observed: "In view of the intensive FDA regulation of the drug field, it is difficult to understand how such a defense legitimately could be offered." *Id.*

[8] If there were such a thing as *vertical*, rather than *horizontal* bulk sale restrictions, similar considerations would compel the conclusion that a patentee in that position should not be permitted to improve his financial position by selling his locensees not merely the right to use the invention but a restrictive licensing arrangement that suppressed competition in the drug industry and worsened the position of the members of the public forced by age or illness to deal with that industry. (No consumer buys the semisynthetic penicillin products involved in this case, for example, unless he has a life-threatening infection.)

Furthermore, it would be irrational in the extreme to permit horizontal bulk sale restrictions to be used by a drug manufacturer, such as the present defendant, because of the possible benefit to other, hypothetical patentees who might desire to use vertical bulk sale restrictions. These points are forcefully explained in more detail in Baxter, *Legal Restrictions on Exploitation of the Patent Monopoly: An Economic Analysis*, 76 Yale L.J. 267, 333 n.101 (1966).

antitrust enforcement policy of at least the two preceding Republican and one Democratic Administration. The statement also appears to mean, although obliquely said, that the Antitrust Division intends not to investigate or prosecute any more drug manufacturers that use bulk sales restrictions to prevent generic price competition; and, rather, to leave the public at the mercy of drug price levels set by the major "ethical" drug firms.

A direct reversal of prior policy is not necessarily wrong. The Nixon and Ford antitrust administrators, for example, may have been misguided in their policies (although I do not believe it). But whatever the bottom line may be, the plain fact of so direct and complete a reversal of field as there is here cries out for more explanation than is furnished. Clearly, there must be some rationale for the present policy other than a determination not to enforce the antitrust laws; and the public, this Court, and the Congress are entitled to hear it.

3. *What is the explanation for the about-face?* It may be that those responsible for this proposed Final Judgment, so much more permissive than that to which Bristol already had agreed, failed to realize that horizontal restraints were involved. Or maybe they subscribe to the until-now discredited theory that, since a patent owner may lawfully refuse to sell or license at all, he therefore may equally lawfully sell or license on any restrictive conditions he sees fit.[9] Maybe they subscribe to the equally unsound theory that, because an alternative open to the patentee is not to sell or license at all, it is better to have him sell or license on *any* terms whatsoever than not at all.

None of these theories holds any water. The idea that half a loaf is better than none, in use of patents, may have a superficial appeal. But as Professor Baxter aptly observed in his seminal article on patent restrictions, the idea sounds much worse after careful scrutiny than before.[10] First, he points out, the prediction that fewer patentees will issue licenses should not trouble us at all, because it is not a believable prediction.[11] Second, licensing on a restrictive basis is likely to have worse effects on the public than no licensing at all. It allows the patentee to buy off his competition by enlisting them in a combination against discounters and aganist the public. Licensing "bribes" the licensee not to challenge invalid patents (which historically outnumber the valid patents) by making the licensee, as Professor Baxter put it, "have no incentive to challenge validity." [12] Yet, "the licensees constitute the group most likely to possess knowledge revealing invalidity," [13] so that it is well worth it to the patentee to buy them off with a restrictive license and, in Professor Baxter's apt phrase, bring them "aboard the gravy train." [14] For these and other reasons,[15] Professor Baxter concluded: "With rare exceptions readiness of patentees to license is a mixed blessing for which no substantial price should be paid." [16] He was quite right; his conclusion was well considered and sound. The theories listed as possible explanations for the toleration of these drug restrictions by the present antitrust bureaucracy must be rejected as unsound, indeed wrong-minded.

Maybe there is still another theory or policy that justifies or legitimates these patent restrictions whose purpose and effect is to prevent price competition and to raise drug prices.[17] There must be some theory other than the invidious one of determination not to enforce the antitrust laws. Yet, the Competitive Impact Statement never explains it.

4. *The Government owes the public an explanation.* If the present antitrust bureaucracy's explanation can withstand scrutiny and analysis, it shoud be stated. I repeat—there is nothing wrong with a subsequent administration's jettisoning the policies of several prior administrations, but it owes a statement of the new policy and some degree of reasoned explanation. *See, e.g., Tire Company Cases—U.S. Information Memorandum,* CCH Trade Reg. Rep. ¶ 50,259 (Feb. 23, 1976) (statement of A.A.G. Kauper explaining dismissal of tire cases because they were illfounded). Otherwise, rational oversight of the antitrust bureaucracy, by the public and the Congress, is not possible. By the same token, otherwise, the Court cannot determine, as 15 U.S.C. 16(e)–(f) command that it must, whether entry of the consent judgment "is in the public interest."

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In sum, the proposed consent decree has an injunctive provision of very limited scope against bulk sale restrictions. The premise is that some horizontal bulk sales restraints are desirable and therefore should not be prohibited by a broadere decree. Earlier, the defendant was willing to agree uncategorically to impose no bulk sales restraints again. The Government has turned down the defendant's concession, reversing prior administrations' policies, because allowing the defendant to make the concession is bad policy. Yet, the challenged practice is the functional equivalent of a conspiracy among competing brandname manufacturers of drugs to stabilize prices and suppress generic competition.

There is surely some non-invidious explanation for the Government's action, but it cannot be found in the Competitive Impact Statement. Even apart from the requirements of the Antitrust Procedures and Penalties Act, a decent regard for the opinions of others (for example, the Congress, teh Courts, the Bar, the public, even academics) would dictate a reasoned explanation from the Antitrust Division.

V. Conclusion

There is room for disagreement on matters of policy. Moreover, the selection of policy is the prerogative of the incumbent Executive Branch. On close judgment calls, reasonable minds can differ. To the extent possible, I have in this comment stayed away from a critique of the accuracy of any of the present Antitrust Division bureaucracy's judgment calls. I would fail in my purpose, moreover, if this comment were understood as a mere disagreement with any judgment calls made in this particular case.

Rather, the basic problem I see here is bureaucratic failure to comply with disclosure requirements that the Congress commanded under the Antitrust Procedures and Penalties Act. Among other things, the Act's disclosure and explanation requirements compel reflection before bureaucratic action, discourage unconsidered action, and furnish disintentives to the *Modus operandi of sentence first, verdict afterwards. My concern with some important parts of this consent judgment is that the proposed consent judgment shows antitrust enforcement policy now being made without reasoned articulation of any consistent policy.*[18] *It is, at best, unclear that any*

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[9] *See* United States v. Masonite Corp., 316 U.S. 265, 277 (1942); Motion Picture Patents Co. v. Universal Film Mfg. Co., 243 U.S. 502, 513–14 (1917); Baxter, *Legal Restrictions,* note 8 *supra,* at 276–77:

[S]ound answers . . . cannot be reached . . . by metaphysical assertions that the right to exclude totally necessarily embraces the right to exclude partially or by framing question-begging generalities about what is "nromally and reasonably adapted to secure pecuniary reward."

[10] Baxter, note 8 *supra,* at 279.

[11] *Id.* at 354.

[12] *Id.* at 336.

[13] *Id.*

[14] *Id.*

[15] *See id.* at 336–37.

[16] *See id.* at 355.

[17] Such a theory, of sorts, might be read between the lines of a recent speech by an Antitrust Division spokesman. *Current Antitrust Division Views on Patent Licensing Practices,* Address by A.B. Lipsky Before *ABA Antitrust Section National Institute on Critical Issues in International Antitrust and Unfair Competition Law,* Nov. 5, 1981.

In this speech, Deputy Assistant Attorney General Lipsky states that the present Department of Justice "would reject" the view that it is unlawful for a patentee to require a licensee to adhere to a specified or minimum price on the licensed products. *Id.* at 14. In the specific case of a price fix among competing manufacturers, the patentee and his licensees, Mr. Lipsky perceives an "agonizing choice" because of the patentee's opportunity to set up a cartel reaching to unpatented products. *Id.* at 15. Nonetheless, he concludes that on balance such price-fixes should not be illegal *per se* but instead should be subject to "a fact-sensitive rule of reason approach." *Id.* Earlier, *id.* at 13, he states that generally the Department of Justice should defer to "the patentee's natural and legitimate aspiration to extract" as much money as possible from those who use what the patent controls, and therefore he concludes that the law should prohibit "cartelization" only when it is "unnecessary."

Although the Department's spokesman did not explain how the Department intends to distinguish between "necessary" and "unnecessary" cartels, it seems possible to extrapolate from the speech to this Final Judgment. If on e entertains the belif that direct price-fixing should be subject to a "fact-sensitive" evaluation in each case, one might take the same view of an indirect price-fixing measure, such as these bulk sale restraints. Again, in order not to trample on defendant Bristol's "natural and legitimate aspiration" to enrich itself in the sale of these drugs, one might want not to interfere with Bristol's conduct until it were clearly proved that the resulting cartel was "unnecessary."

It is, of course, not clear that the Department spokesman's words in that speech correctly state the rationale of this proposed Final Judgment. For that, of course, we must look to the Competitive Impact Statement filed on the public record.

[18] Other than perhaps a policy to reverse completely the consistency perceived by Mr. Justice

Continued

reasoned, principled judgment call has been made as to those parts of the decree. There have been drastic changes in the direction of enforcement without explanation, without stated reasons. The premises and assumptions of the Government's present action are also unstated, perhaps unrecognized as well. This should not be done in antitrust enforcement, generally, and it is contrary to the policy of the Antitrust Procedures and Penalties Act to do it when and where a Competitive Impact Statement is required by law, as it is here.

Thus, the fact of the $3 million settlement belongs in the Competitive Impact Statement, along with an explanation of the extraordinary dollar shrinkage in the Government's concept of what the public interest requires from the defendant. A real explanation of why cancellation of the fraudulently procured patents is unnecessary should be made, not one that disregards the obvious facts. Finally, the about-face on the legality of drug manufacturer's price-fixing agreements should be explained in a responsible manner.

The explanations of all these things may be good or bad, sensible or senseless. The Antitrust Procedures and Penalties Act expressly requires that there be a *public* explanation, not that it be a good one. If the explanation rings hollow, or is even foolish, the only sanction is a nonstatutory one—the opinions that others have of those responsible for the explanation. The antitrust bureaucracy is still free to pursue the same policies. Nonetheless, the Act requires a full public explanation of the entire consent settlement. That is considerably more than the Antitrust Division has furnished here. I hope that this comment will stimulate greater reflection on and articulation of reasoned policies in patent antitrust law enforcement. The proposed consent judgment in this case shows that they are badly needed within the Government.

Respectfully submitted,

Richard H. Stern.

cc: Hon. Charles E. Richey, U.S. District Judge, District of Columbia.

[FR Doc. 82-3081 Filed 2-4-82; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council Committees; Meetings and Agenda

The winter meetings of committees of the Business Research Advisory Council will be held on February 23, 1982.

The Committee on Occupational Safety and Health will hold its meeting in room N-4215 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C. The meetings of the Committees on Price Indexes and Wages and Industrial Relations will be held in room 2433, General Accounting Office Building, 441 G Street, NW., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry.

The schedule and agenda of the meetings are as follows:

Tuesday, February 23

9:30 a.m.—Committee on Price Indexes.

1. Status Report on CPI Housing.
2. Postponement of rebasing to 1977=100.
3. Review of 1982 and 1983 budget.
4. Results of BRAC survey on program priorities.
5. Proposal to create futures market for CPI and PPI.
6. Other Business.

Tuesday, February 23

10:00 a.m.—Committee on Occupational Safety and Health.

1. Proposed recordkeeping exemptions.
2. Exogenous factors regarding occupational injuries.
3. 1980 annual survey summary.
4. A discussion of OSHA's proposed voluntary protection program.
5. Other Business.

Tuesday, February 23

1:30 p.m.—Committee on Wages and Industrial Relations.

1. Review of WIR Work in Progress.
2. The WIR Budget Situation.
3. Report by Subcommittee on WIR Program Priorities.
4. Other Business.

The meetings are open to the public. It is suggested that persons planning to attend these meetings as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272-5241.

Signed at Washington, D.C., this 29th day of January 1982.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 82-3164 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-24-M

Business Research Advisory Council; Meeting

The regular winter meeting of the Business Research Advisory Council will be held at 9:30 a.m., February 24, 1982, in room N-5437 of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, D.C.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officers from American business and industry. The agenda for the meeting is as follows:

1. Chairman's Opening Remarks—Noel A. McBride
2. Commissioner's Remarks—Janet L. Norwood
3. Committee Reports:
   (a) Productivity-Foreign Labor (Status reports on construction, general industry, and Federal Government productivity studies)
   (b) Economic Growth (Employment implications of defense buildup, supply-demand prospects for machinist occupations, and procurement of macro model)
   (c) Price Indexes (Progress on rental equivalency work)
   (d) Wages and Industrial Relations (Review of work in progress and results of subcommittee on program priorities)
   (e)Occupational Safety and Health (Proposed recordkeeping exemptions, exogenous factors re injuries, 1980 annual survey)
4. Other Business
5. Chairman's Closing Remarks

This meeting is open to the public. It is suggested that persons planning to attend as observers contact Kenneth G. Van Auken, Executive Secretary, Business Research Advisory Council on Area Code (202) 272-5241.

Signed at Washington, D.C. this 29th day of January 1982.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 82-3165 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

Stewart, United States v. Von's Grocery Co., 384 U.S. 270, 301 (1966).

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,265; West Virginia Malleable Iron Co., Point Pleasant, West Va.
TA-W-12,472; Elk Creek Cedar, Inc., Forks, WA
TA-W-10,908; Rexnord, Inc., Roller Chain Div., Springfield, MA
TA-W-11,776; Rexnord, Inc., Roller Chain Div., Worcester, MA
TA-W-11,136; Parker Hannifin Corp., Parker Seal O-Ring Div., Berea, KY
TA-W-11,334; The Lamson and Sessions Co., Cleveland, OH Office
TA-W-12,318; Cummins Engine Co., Fleetguard Div., Cookeville, TN
TA-W-11,954; Pivot Manufacturing Co., Detroit, MI
TA-W-11,637; Merit Clothing Co., Inc., Mayfield, KY
TA-W-12,373; Ritus Rubber Corp., Milwaukee, WI
TA-W-11,211; American Optical Corp., Southbridge, MA
TA-W-11,211A; American Optical Corp., Frederick, MD

In each of the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to worker separations at the firm.

TA-W-12,181; Paragon Leather Services, Inc., Gloversville, NY
TA-W-11,667; Leader Metal Products, Inc., Masury, OH
TA-W-11,068; Sun Ship, Inc., Chester, PA

In the following case the investigation revealed that criterion (3) had not been met. Aggregate U.S. imports of medium duty and heavy duty trucks did not increase as required for certification.

TA-W-11,994; Ford Motor Co., Kentucky Truck Plant, Louisville, KY

I hereby certify that the aforementioned determinations were issued during the period January 25–29, 1982. Copies of these determinations are available for inspection in Room 10,332, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 9, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82-3151 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (the "Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1982.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 16, 1982.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C., this 29th day of January 1982.

Harold A. Bratt,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
County Fair Toy & Novelty Corp. (company)	Brooklyn, New York	1/20/82	1/11/82	TA-W-13,187	Supplies, carnival.
Crucible Alloy & Stainless Steel Div. of Colt Industries (USWA).	Midland Pa	1/18/82	1/12/82	TA-W-13,188	Sheet & strip alloy; bars—stainless steel; disc—agricultural.
Hermitage, Inc. (workers)	Camden S.C	1/18/82	1/11/82	TA-W-13,189	Gauze—surgical.
Matsushita Industrial Company (company)	Franklin Park, Ill	1/22/82	1/16/82	TA-W-13,190	Receivers—television, color; ovens—wave, micro; T.V.'s projection.
Michigan Plating & Stamping Co. (UAW)	Grand Rapids, Michigan	1/12/82	1/5/82	TA-W-13,191	Bumpers—automotive; tanks—gas, trucks.
Phelps Dodge Corp. (USWA)	Tyrone, New Mexico	1/12/82	1/18/82	TA-W-13,192	Copper—mine, concentrate.
Revere Screw & Rivet Corp. (workers)	Wheeling, Ill	1/13/82	1/1/82	TA-W-13,193	Fasteners & solid rivets.
Triple S. Dynamics Breckenridge, Inc. (workers)	Breckenridge, Texas	1/25/82	1/18/82	TA-W-13,194	Equipment—foundry, grain cleaning; systems—reclamation & equipment—misc.
Zenith Electronics Corp. of Pennsylvania (company)	Watsontown, Pa	1/21/82	1/15/82	TA-W-13,195	Systems—stereo, modular," stereo console, radios; players—tape, radios, cabinets—console.
Zenith Radio Corp. (company)	Glenview, Ill	1/21/82	1/15/82	TA-W-13,196	Research, marketing, selling & engineering of stereo systems

[FR Doc. 82-3160 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-81-252-C]

Freeman United Coal Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Freeman United Coal Mining Company, P.O. Box 100, West Frankfort, Illinois 62896, has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Orient No. 4 Mine located in Williamson County, Illinois, its Crown No. 2 Mine located in Macoupin County, Illinois, its Crown No. 3 Mine located in Montgomery County, Illinois and its Orient No. 3 and No. 6 Mines located in Jefferson County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the use of a locked padlock to lock the battery plug to the receptacle on mobile battery powered machines.

2. Petitioner states that there is an element of danger in having plugs locked together in the event of a short circuit occurring in the machine's electrical components.

3. As an alternative method, petitioner proposes to use the following fasteners in lieu of the locked padlock:

a. Threaded Bolt and Nut or Wing Nut

b. Safety Snap Ring

c. Metal Pin

d. Hair Pin Device

4. Petitioner states that these four devices serve the same purpose as a padlock; the plug could not be pulled apart without removing the necessary fasteners.

5. Petitioner states that the proposed alternative method will provide the same measure of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 8, 1982. Copies of the petition are available for inspection at that address.

Dated: February 1, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-3145 Filed 3-4-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-237-C]

G. M. & W. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

G. M. & W. Coal Company, Inc., P.O. Box 112, Jennerstown, PA 15547 has filed a petition to modify the application of 30 CFR 75.155(b)(2) (qualified hoisting engineer, qualifications) to its Grove No. 3 Mine located in Somerset County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that hoistmen have a minimum of one year's experience in operating electric-driven hoists and six months' experience immediately prior to an application for temporary certification in order to have the Secretary grant temporary certification for electric hoisting engineers.

2. Petitioner states that potential electrical hoisting engineers meeting the experience requirements of the standard are unavailable within the work force. In addition, the state of Pennsylvania has no program of qualifying electric hoisting engineers.

3. As an alternative method, petitioner proposes a program of supervised on-site training, operational training and classroom training. In addition, petitioner requests that the hoist operator trainees be granted six months' temporary qualification at the completion of the initial portion of the training program prior to hoist operation requiring qualification. The specified one year training program shall be completed by all such operators.

4. Petitioner believes that the many safety devices installed with the hoisting system have a positive impact on the modification requested:

a. The hoist contains such features as overspeed, overwind, emergency stop, limit switches such as Brakeproofing On/Off/Wear, etc.

b. Two Sanford-Day Brakeman cars have been purchased, one of which will always remain on the descending end of the mantrip, that permit their brakes to be activated manually from the car at any time and will activate automatically over 6 mph.

c. In addition to regular communications at each hoist landing, a 2-way radio will be installed in the mantrip which will transmit and receive to and from several points on the surface including the hoist room.

5. Petitioner states that the procedures outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virgina 22203. All comments must be postmarked or received in that office on or before March 8, 1982. Copies of the petition are available for inspection at that address.

Dated: February 1, 1982.

Patricia W. Silvey,

Acting Director Office of Standards, Regulations and Variances.

[FR Doc. 82-3146 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-81-70-M]

Noranda Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Noranda Mining, Inc., P.O. Box 1450, Park City, Utah 84060, has filed a petition to modify the application of 30 CFR 57.19-83 (electric hoist requirements) to its Ontario Project located in Sumit County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a torque proving circuit be installed on the mine's No. 6 hoist.

2. The hoist is a Welman Morgan Seaver, manufactured in 1917 and is powered by a 250 hp G.E. motor. The hoist is a reel-type using a ⅜" x 5" flat cable.

3. Petitioner states that installation of a torque proving circuit on the hoist would result in a diminution of safety because:

a. The direct drive hoist has a D.C. motor and a Ward Lenard control system. Since the brakes were designed for "on" or "off" operation only, the

system uses motor plugging to stop and slow down;

b. If the torque proving circuit were installed, the torque applied to the motor to bring the conveyance out of an overtravel condition could cause the conveyance to free fall out of overtravel. The brakes are required to maintain desired speed. At present the motor is plugged to maintain proper speed plugging in the overtravel torque proving mode.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 8, 1982. Copies of the petition are available for inspection at that address.

Dated: February 1, 1982.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 82-3147 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, February 17, 1982, in Room S-4215 C, U.S. Department of Labor, Third and Constitution Avenue, N.W., Washington, D.C.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider the items listed below and to invite public comment on any aspect of the administration of ERISA.

1. Administration of Oath of Office to New Members
2. Administrator's Report
3. Communications Work Group Report
4. Council Work Groups—Composition and Priorities
5. Statements from the Public

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before February 16, 1982, to the Administrator, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room S-4522, Third and Constitution Avenue, N.W., Washington, D.C. 20216.

Persons desiring to address the Council should notify Edward F. Lysczek, Executive Secretary of the Advisory Council, in care of the above address or by calling, (202) 523-8753.

Signed at Washington, D.C., this 31st day of January 1982.

Jeffrey N. Clayton,

Administrator, Pension and Welfare Benefit Programs.

[FR Doc. 82-2853 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2947]

Proposed Exemption for Certain Transactions Involving Alexander & Alexander Services, Inc., Located in New York, New York and Montag & Caldwell, Inc. Located in Atlanta, Georgia

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the performance of services for employee benefit plans by Alexander & Alexander, Inc. (A&A), a wholly owned subsidiary of Alexander & Alexander Services, Inc. when those services may result in additional fees for Montag & Caldwell, Inc. (M&C), also a wholly owned subsidiary of Alexander & Alexander Services, Inc. The proposed exemption, if granted, would affect A&A, M&C and those employee benefit plans that retain A&A or M&C to provide services. A&A has a number of subsidiaries all of which are incorporated by reference when reference is made herein to A&A.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 16, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2947. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Carol D. Gold of the Department of Labor, telephone (202) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406 of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code. The proposed exemption was requested in an application filed by Alexander & Alexander Services, Inc., pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

This application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. A&A provides actuarial, consultant, management search, administrative support, and insurance brokerage services to employee benefit plans. The particular combination of services performed for any given plan is a function of such plan's individual needs and desires. A&A's services are generally performed without a written contract with the plan and are in all cases subject to unilateral termination, without cost or penalty, by the plan at any time. A&A undertakes the provision of services to a plan only upon selection and approval of A&A by the plan sponsor or an independent fiduciary.

2. Actuarial services are performed by actuaries enrolled pursuant to ERISA section 3042 and include the preparation of the actuarial reports mandated by ERISA section 103(d) and Code section 6059 regarding plan compliance with the

minimum funding standards of ERISA section 302 and Code Section 412. A&A actuaries also must determine a projected rate of the return for the plan, and, on an ongoing basis, analyze discrepancies between actual and projected returns. A&A may provide the plan's independent fiduciaries with an assessment of whether such discrepancies result from general market trends, the asset mix of the plan (such as the ratio of fixed income to equities), the performance of the plan's investment managers as contrasted to other managers, or other factors. In the course of reviewing a plan's funding requirements as an actuary, A&A will ordinarily conduct analyses of the plan's liquidity and diversification needs and its current and projected benefit payments.

3. Acting as an actuary/consultant, A&A may provide performance evaluation services and advice that focus on (a) a plan's investment performance; (b) the performance of a plan's various investment managers; (c) the plan's portfolio structure or asset mix; and (d) the allocation of plan assets among investment managers. Insofar as a plan's investment managers are sometimes retained because of recognized ability in the handling of particular classes of assets (such as equities only, as compared to both equities and fixed income), A&A's recommendations regarding portfolio structure may include a reallocation of plan assets among investment managers. A&A may also suggest a particular reallocation among investment managers for consideration by an independent plan fiduciary. Statistical analyses of objective financial data play an important role in A&A's advice on the above matters. A&A's consultant services may also include the provision of advice to the plan sponsor or an independent fiduciary on the cost and types of benefits which are or might be provided by a plan. Once the plan sponsor or fiduciary has decided to establish or revise a plan, A&A as consultant may also assist in drafting a plan or amendments to a plan to comply with ERISA and the Code.

4. Management search services consist of the search for and recommendation to a plan of prospective investment managers, and, in the course of its search, A&A uses statistical analysis of data to evaluate prospective managers in much the same manner as A&A evaluates current managers. In addition, A&A uses its professional knowledge of investment managers to predict the effects of objective changes in the composition and operation of such managers.

5. Acting as consultant or insurance broker, A&A may also provide advice and services to plans regarding the use of insurance company investment vehicles, such as separate accounts, and other insurance products. Once an independent fiduciary has decided to obtain a particular insurance product, A&A, as insurance broker, may execute the transaction between the plan and the insurance company.

6. With respect to all the services described in paragraphs 1 through 5 above, A&A's services consist solely of advice or recommendations to the plan's independent fiduciaries. A&A does not have the authority to implement its advice or recommendations and does not participate in the plan's final deliberations regarding the decision to act on such advice. When A&A's services include a management search, A&A generally recommends more than one manager for selection by an independent plan fiduciary. Furthermore, when a management search results in a recommendation of M&C, the applicant represents that at least two other managers, independent of both A&A and M&C, will also be recommended.

7. A&A may also provide administrative support services to a plan, which may include one or more of the following:

(a) Preparation of the plan's annual reports;

(b) Preparation of summary plan descriptions;

(c) Preparation of employee benefit statements;

(d) Preparation of employee termination statements;

(e) Eligibility of benefit determinations;

(f) Preparation of benefit checks;

(g) Resolution of disputes regarding benefits;

(h) Preparation of employee notices and communications;

(i) Handling of employee communications; and

(j) Maintenance of books and records.

8. With the exception of insurance brokerage, all of the above services are provided by A&A at hourly rates or, in limited instances, for set fees. Compensation for insurance brokerage services is customarily in the form of commissions from insurance companies. The provision of insurance advice and brokerage servies to plans and the receipt of commissions from insurance companies as compensation for such services are not prohibited transactions, if provided in accordance with Prohibited Transactions Exemption 77–9, 42 FR 32395 (June 24, 1977), as amended, 44 FR 1479 (Jan. 5, 1979), and 44 FR 52365, (Sept. 7, 1979).

9. M&C provides investment management services to plans. Investment management services are performed pursuant to a written agreement between M&C and an independent plan fiduciary, and the independent fiduciary is informed of the terms on which M&C will perform the services. Such services involve making investment decisions on a discretionary basis as to the buying, holding, and selling of a plan assets for which M&C as investment manager is responsible; attending to the execution of such investment decisions by appropriate instructions to securities broker-dealers and the plan custodian; and periodically reporting to the independent fiduciary or his designated representative as to the market value and performance of plan assets for which M&C as investment manager is responsible.

10. Fees charged by M&C for investment management services are generally computed as a fraction of the market value of assets under management and are set in a written agreement between M&C and the plan.

11. Both A&A and M&C provide services to employee benefit plans and those services are often in the nature of fiduciary services as described in section 3(21) of the Act and section 4975(e)(3) of the Code. Thus, A&A, and M&C are parties-in interest to the employee benefit plans they provide services to, and Alexander & Alexander Services, Inc. is also a party-in-interest. The provision of services is generally exempt from the prohibitions of section 406(a) of the Act and section 4975(a)(1)(A) through (D) of the Code by operation of the exemption provided in section 408(b)(2) of the Act and section 4975(b)(2) of the Code. The Department's regulations section 2550.408b–2 (and similar Treasury regulations) notes that the exemption, however, does not exempt acts described in 406(b) of the Act. A fiduciary may not use the authority, control, or responsibility which makes such person a fiduciary to cause a plan to pay an additional fee to such fiduciary (or to a person in which such fiduciary has an interest which may affect the exercise fo such fiduciary's best judgment as a fiduciary) to provide a service. A person in which a fiduciary has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary includes, for example, a person who is a party in interest by reason of a relationship to such fiduciary described in section 3(14)

(E), (F), (G), (H), or (I) (emphasis added). Thus, for example, A&A is not afforded exemption by section 408(b)(2) of the Act from an act described in section 406(b)(1) of the Act when it evaluates the performance of its affiliate, M&C, which has been retained to perform investment management to services for a plan.

The applicant has requested an exemption for certain services that appear to be covered by the statutory exemption for the provision of services and that do not appear to involve acts described in section 406(b) of the Act or section 4975(c)(1) (E) or (F) of the Code. An administrative exemption is herein proposed only for those services that are not exempted by the statutory exemption. Other services that are exempted by the statutory exemption must comply with the conditions of that exemption. Specifically, an exemption for the following transactions was requested but is not proposed for the reasons set forth above:

(1) The performance by A&A of acturial services, including the determination by A&A of funding levels for a plan in accordance with ERISA section 302 and Code section 412;

(2) The evaluation by A&A of the investment performance of plans subject to ERISA;

(3) The evaluation by A&A of the composition of the portfolios of plans subject to ERISA and the recommendation of appropriate portfolio compositions by A&A to plans subject to ERISA;

(4) The exercise of investment management services by M&C for plans subject to ERISA.

12. In summary the applicant represents the proposed exemption is in the interest of plans and their participants and beneficiaries because it will assure that independent plan fiduciaries who desire to obtain the services traditionally provided by A&A and M&C may continue to retain both A&A and M&C. It will permit A&A and M&C to continue to provide the full range of traditional actuarial/consultant and investment management services to plans, and the applicant represents, plan fiduciaries have expressed a strong interest in obtaining all of the services described.

The applicant represents that the proposed exemption will be protective of plan participants and beneficiaries because no recommendation by A&A will be adopted and no evaluation by A&A will be followed until acted on by an independent fiduciary who has been provided by A&A with sufficient objection information explaining the basis for the advice.

Finally, the applicant represents that the proposed exemption is administratively feasible because it establishes objective criteria for its application, and compliance with such criteria could be readily determined and audited.

Notice to Interested Persons

Within 10 days of publication in the Federal Register, notice of the pending exemption will be provided by A&A or M&C by hand delivery or first class mail to the plan administrators of all employee benefit plans currently served by both A&A and M&C and to the plan administrator of any plan that has since May 30, 1980 received any of the three services described in the "Proposed Exemption" section of this notice.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not believe a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Section I. Covered Transactions.

If the exemption is granted, effective May 30, 1980, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code shall not apply to:

1. The evaluation by A&A of the performance of M&C as an investment manager retained by an employee benefit plan;

2. The evaluation by A&A of the allocation of plan assets among investment managers, including M&C, retained by employee benefit plans and the recommendation by A&A of an appropriate allocation of plan assets among such investment managers;

3. The selection and retention of M&C by employee benefit plans that follows the evaluation and recommendation of prospective investment managers, including M&C, by A&A to independent fiduciaries of those plans.

Section II. Conditions.

The exemption provided for transactions described in Section I is available only if each of the following conditions is met:

(1) In the case of any recommendation or evaluation by A&A described in Section I, the reasons, including the objective criteria forming the basis for such recommendation or evaluation, are provided by A&A to an independent fiduciary of the plan to which such recommendation or evaluation is provided.

(2) Any recommendation or evaluation by A&A described in Section I is not adopted or followed by the plan until acted upon by an independent

fiduciary of the plan to which such recommendation or evaluation is provided.

(3) Any evaluation or recommendation of M&C by A&A described in Section I shall contain a simple statement notifying the recipient of their corporate affiliation in a manner that neither emphasizes nor minimizes that affiliation.

(4) Except as herein exempted, the provision of the services described in Section I to employee benefit plans meets the conditions of the general statutory exemption for services set forth in section 408(b)(2) of the Act and section 4975(d)(2) of the Code and the regulations written thereunder.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3125 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2581]

Proposed Exemption for Certain Transactions; Bee Line Cooling, Ltd., Employees Pension Plan, Bronx, New York

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, effective January 1, 1981 and for a period of two years thereafter, the lease (the Current Leases) of certain real properties (the Bee Line Stores) by the Bee Line Cooling, Ltd. Employees Pension Plan (the Plan) to Bee Line Cooling, Ltd. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries and other persons participating in the transactions.

EFFECTIVE DATE: The effective date of this exemption is January 1, 1981.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 19, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2581. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by John Kovacs and Robert Katz, the trustees (the Trustees) of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA procedure 75-1 (40 FR 18471, April 28, 1975). Effective Decemer 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a pension plan with approximately four participants and total assets, as of December 31, 1979, of $128,630. The Employer is in the business of sales, installation and servicing of commercial refrigeration and air conditioning equipment. The Trustees are employes of the Employer.

2. On December 22, 1975, the Plan purchased certain real properties (the Properties) for $62,500 from Samuel and Celia Rosenblatt (the Rosenblatts), parties unrelated to the Employer or the Plan. The Properties consist of eight contiguous buildings used as small retail stores. At the time of the purchase, the Properties were leased by the Rosenblatts to individual tenants. Two buildings of the Properties, the Bee Line Stores, were leased to the Employer. The remaining six buildings of the Properties were leased to tenants unrelated to the Employer. Upon acquisition by the Plan of the Properties, the leases of the Properties, remained in effect. The leases for all the Properties, including the Bee Line Stores, were for renewable terms of two years. In August of 1980, the Employer applied to the Department for an exemption for the lease since December 22, 1975 of the Bee Line Stores by the Plan to the Employer. In January of 1981, the Department denied the exemption request. The applicants represent that the Employer will pay all applicable excise taxes as imposed by the Internal Revenue Service by reason of the lease from December 22, 1975 until January 1, 1981 of the Bee Line Stores by the Plan to the Employer within 90 days of the publication of the grant of this exemption.

3. In January of 1981, the Current Leases for the Bee Line Stores were executed by the Plan to the Employer. The applicants are now requesting an exemption for the Current Leases. The Current Leases for the two Bee Line Stores are for two year terms expiring in January of 1983 with rentals of $170 and $230 per month. The rentals charged under the Current Leases were determined to be the fair market rental value of the Bee Line Stores, as of January 1, 1981, by Thomas Romero (Romero). Romero is a licensed real estate broker located in Bronx, New York who has been practicing in the area since 1951 and as a result is familiar with property values, commercial lease rates and real estate management practices customary in the area. Romero is independent of the parties to the transactions. The rentals under the Current Leases were also identical to rentals charged the other six tenants of the Properties, as of January 1, 1981, for substantially identical space.

4. Romero was appointed independent fiduciary for the Plan prior to the execution of the Current Leases of the Bee Line Stores. Romero negotiated the

terms of the Current Leases on the Plan's behalf and determined on January 1, 1981 that the Current Leases of the Bee Line Stores were in the best interests of the Plan and its participants and beneficiaries. Romero has monitored, since January 1, 1981, and will continue to monitor, the terms of the Current Leases of the Bee Line Stores.

5. In summary, the applicants represent that the transactions meet the statutory criteria of section 408(a) of the Act because: (1) Mr. Romero, a party independent of the parties to the transactions, negotiated the Current Leases of the Bee Line Stores and determined that they would be in the best interests of the Plan and its participants and beneficiaries; (2) Mr. Romero has monitored the Current Leases of the Bee Line Stores since their inception in January of 1981 and will continue to monitor the Current Leases throughout their duration; (3) the Current Leases of the Bee Line Stores by the Plan to the Employer are on the same terms as leases by the Plan to other unrelated tenants of the Properties; (4) the Current Leases of the Bee Line Stores are for relatively short terms of two years each; and (5) the Employer will pay all applicable excise taxes imposed by the Internal Revenue Service by reason of the lease from December 22, 1975 until January 1, 1981 of the Bee Line Stores by the Plan to the Employer within 90 days of the publication of the grant of this exemption.

Notice to Interested Persons

Notice of the proposed exemption will be given to all participants and beneficiaries of the Plan within 10 days following the publication of the proposed exemption in the **Federal Register.** The notice will include a copy of the notice of pendency of the proposed exemption as it appears in the **Federal Register** and a statement informing interested persons of their right to comment and/or request a hearing on the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the Current Leases effective January 1, 1981 and two years thereafter, provided the terms of the Current Leases were and will remain at least as favorable to the Plan as the Plan could obtain in similar transactions with unrelated parties.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration; Department of Labor.

[FR Doc. 82–3098 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2749]

Proposed Exemption for Certain Transactions; Boyd, Veigel and Gay, Inc., Money Purchase Pension Plan and Trust, McKinney, Texas

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The proposed contribution to the Boyd, Veigel and Gay, Inc. Money Purchase Pension Plan and Trust (the Plan) by Boyd, Veigel and Gay, Inc. (the Employer), the sponsor of the Plan, of certain parcels of real property (Buildings 3 and 4); and (2) the proposed lease (the Lease) of Buildings 3 and 4 and certain other parcels of real property (Buildings 1, 2, 5 and 6) contiguous to Building 3 and 4 by the Plan to the Employer. The proposed exemption, if granted would affect the Employer, the participants and beneficiaries of the Plan and other parties participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 24, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2749. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a money purchase pension plan with 19 participants and total assets, as of June 30, 1980, of $980,975. The Republic Bank of Dallas, N.A., which is completely independent of the Employer, is the trustee (the Trustee) of the Plan. The Employer is a professional corporation engaged in the practice of law. Buildings 1 through 6 (collectively, the Buildings) consist of six contiguous buildings used by the Employer as its law offices.

2. Buildings 1 and 2 were purchased by the Employer in 1959. In 1971, Buildings 1 and 2 were contributed by the Employer to the Plan and subsequently leased back to the Employer pursuant to a year to year renewable triple net lease which is currently in effect. Buildings 3 and 4 were leased by an unrelated party to the Employer from 1971 until January of 1978. In January of 1978, the Employer purchased Buildings 3 and 4 and the Plan purchased Buildings 5 and 6 from this same unrelated party. Buildings 5 and 6 were then leased by the Plan to the Employer pursuant to an oral month to month triple net lease which is currently in effect. The applicant has determined that the past lease of Buildings 1 and 2 was entitled to relief as provided by the transitional rules of section 414 of the Act for leases entered into prior to July 1, 1974. In April of 1981, the Department denied the applicant's exemption request for the past lease by the Plan to the Employer of Buildings 5 and 6. The applicant represents that it will pay all applicable excise taxes which are imposed by the Internal Revenue Service as a result of the past lease of Buildings 5 and 6 within 90 days of the publication in the **Federal Register** of the grant of this exemption.

3. The applicant now requests an exemption for the contribution by the Employer to the Plan of Buildings 3 and 4 and the Lease by the Plan to Employer of the Buildings. Upon the grant of this exemption, the past leases for Buildings 1, 2, 5 and 6 will be terminated and the Lease will be executed for the Buildings.

4. The Lease will be a year to year renewable triple net lease which renewabls will extend for a maximum of twenty years. Early B. Milstead, SRA (Milstead), an independent appraiser of McKinney, Texas, valued the Buildings, as of June 27, 1980, at $350,000 with a fair market rental of $3,500 per month. As a result of Milstead's appraisal, the applicants represent that the initial monthly rental payments under the Lease will be $3,500. Rental payments under the Lease will be adjusted at least every three years, or more frequently at the discretion of the Trustes, to reflect the then current fair market rental value of the Buildings. For contribution purposes, Milstead valued Buildings 3 and 4 at $150,000. The applicant represents that the contribution of Buildings 3 and 4 would not exceed the maximum deduction the Employer is entitled to pursuant to the Code.

5. The Trustee has examined the terms and conditions of the proposed transactions and represents that the proposed transactions are protective and in the best interests of the Plan and its participants and beneficiaries. The Trustee also represents that the contributions of Buildings 3 and 4 would consolidate the ownership of the Buildings and provide the Plan with an additional source of income. The Trustee further represents that because the Employer has utilized the business location of the Buildings for the past 21 years, it would be extremely difficult to locate a tenant for the Buildings that could provide the Plan with such a stable source of income or give the same type of care and maintenance to the Buildings as has the Employer. The Trustee will monitor and enforce the terms and conditions of the Lease and will have sole responsibility for the collection of rentals under the Lease.

6. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) The Trustee, an independent entity, has determined that the transactions are in the best interests of the Plan; (2) the contribution of Buildings 3 and 4 to the Plan will consolidate the ownership of the Buildings and will represent an additional source of income to the Plan; (3) the fair market value of Buildings 3 and 4 has been determined by an independent appraiser; (4) the contribution of Buildings 3 and 4 will not exceed the maximum deduction the Employer is entitled to pursuant to the Code; (5) the Trustee will monitor and enforce the terms and conditions of the Lease; (6) the initial rentals to be received by the Plan under the Lease were determined by an independent appraiser; (7) rentals to be received by the Plan under the Lease will be adjusted at least every three years to reflect the fair market rental value of the Buildings; (8) the Trustee represents that it would be difficult to locate a tenant other than the Employer for the Buildings; and (9) the applicant will pay all applicable excise taxes imposed by the Internal Revenue Service as a result of the past lease of Buildings 5 and 6.

Notice to Interested Persons

Within 15 days of the publication of the notice of pendency in the **Federal Register** notice will be provided to all Plan participants and beneficiaries by first class mail or by posting at locations within Employer's premises which are customarily used for Employer notices to employees. Notice will include a copy of the notice of pendency as published in the **Federal Register** a statement informing interested persons of their right to comment or request a hearing on the pending exemption within the period set forth in the notice of pendency.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the contribution of Buildings 3 and 4 by the Employer to the Plan, provided that the Employer's federal tax deduction for the contribution of Buildings 3 and 4 will not be greater than their fair maket value on the date of the contribution and the contribution of Buildings 3 and 4 will be valued at their fair market values by the Plan on the date of contribution; and (2) the Lease of the Buildings, provided that the terms and conditions of the Lease are and will remain at least as favorable to the Plan as the Plan could obtain in a similar transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3110 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2143]

Proposed Exemption for Certain Transactions; CCR Marine, Inc. Profit Sharing Plan and Trust, Seattle, Washington

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The proposed sale to the CCR Marine, Inc. Profit Sharing Plan and Trust (the Plan) of an interest in a land sale contract by CCR Marine, Inc. (the Employer); and (2) an extension of credit resulting from an agreement by officers and shareholders of the Employer to place collateral with an independent trustee for purposes of securing the Plan's interest in the event of default. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Employer, persons holding interests in the contract, and other persons who would participate in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 15, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2143. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence E. Beaver of the Department of Labor, telephone (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this

notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. On December 7, 1971, the Employer executed a real estate contract (the 1971 Contract) with the fee owners, Alfred and Margarete Biermanski (Biermanski), for the purchase of the Highland Medical Plaza (the Property) located at 1306 North 175th Street, Seattle, Washington. The terms of the 1971 Contract provided for a purchase price of $500,000 with a down payment of $60,000 and monthly installments of $3,500, including interest at 7 percent.

2. The Employer sold the Property on January 20, 1977, to John and Berit Sjong, and others (Sjong) under a real estate contract (the 1977 Contract) for $680,000, of which $150,000 was paid at closing, with the balance of $530,000, to be paid in monthly installments of $4,000, including interest at 8¾ percent. The terms of the 1977 Contract also provide that on or before January 16, 1985, Sjong is obligated to make a balloon payment for all amounts outstanding on the 1977 Contract and to assume the balance owing on the 1971 Contract.

3. The Employer proposes to sell to the Plan for $85,000 the right to receive the amount by which the principal receivable under the 1977 Contract exceeds the principal payable under the 1971 Contract. The purchase price is represented to be the fair market value of the Employer's interest in the contracts and is partially based on offers the Employer received from unrelated third parties for its interest in the Property.

4. An independent investment manager, Robert L. Sheppard III, CFP, of Oakland Financial Group Northwest, stated in a letter dated December 18, 1980, that the purchase of the Employer's interest in the contracts is an excellent investment opportunity for the Plan. Mr. Sheppard also stated that the contract appears to be adequately secured by the Property which has appreciated in value as reflected by a June 1979, sales price of $858,000.

5. Jack E. Chambers, Ralph F. Chambers and Norman Runions, officers and shareholders of the Employer (the officers and shareholders), will deposit securities in an amount equal to 200 percent of the purchase price paid by the Plan in an escrow account maintained by an independent trustee to secure performance under the 1971 and 1977 Contracts. An independent fiduciary, Peter A. Wickstrand of Paine, Webber, Jackson and Curtis, has been selected to oversee the Plan's investment with the power to sell any collateral necessary to cure any default. All securities placed in the collateral account will be marketable and will be publicly traded.

6. All payments under the contracts will be made to the Seattle First National Bank located in Seattle, Washington (the Bank). Biermanski and the Bank have agreed to notify Mr. Wickstrand in writing in the event of a default under the 1971 Contract. Upon receipt of a notice of an installment payment in default, Mr. Wickstrand must notify the officers and directors by certified mail of the default. If Mr. Wickstrand is not notified of the curing of the defect within 10 days of the mailing of the notice, he is to sell that portion of the securities as is necessary to cure the default and remit the proceeds to the Bank.

7. If the amount of securities held in the escrow account is at any time less than 200 percent of the purchase price paid by the Plan, Mr. Wickstrand must immediately make a written demand to the officers and shareholders to deposit additional securities in the account. In the event the securities are not deposited within 15 days of the written demand, Mr. Wickstrand is instructed to sell the securities and deposit the proceeds to the Plan.

8. The Employer further represents that the Plan will not be liable under the 1971 Contract as a result of its purchase of the Employer's interest in the Property. The legal obligation under that contract remains between the Employer and Biermanski. If payments are in default under the 1977 Contract, the Employer remains obligated to make payments under the 1971 Contract. If the Employer does not make the required payments, the independent fiduciary is authorized to sell the collateral to cure the default. In effect, the Plan is agreeing to make payments to Biermanski only to the extent it receives payments due on the 1977 Contract.

9. The Employer represents that the rate of return for the investment to the Plan will be 30.94 percent per year. Furthermore, the amount of plan assets involved in the proposed transaction will be less than 30 percent.

10. In summary, it is represented that the proposed transaction satisfies the statutory criteria of section 408(a) due to the following:

(a) The trustees state that the proposed transaction is in the best interests of the Plan's participants and beneficiaries,

(b) An independent investment advisor has stated that the investment is an excellent investment for the Plan and the Plan's interests are adequately secured,

(c) The Property has appreciated significantly in value, reflected by its June 1979, sales price of $858,000, and

(d) An independent plan fiduciary will oversee the transaction with power over an escrow account in an amount equal to 200 percent of the value of the purchase price paid by the Plan to secure performance under the 1977 Contract.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the pending exemption will be provided to all interested persons, including all participants and beneficiaries of the Plan. The notice will include a copy of the notice of pendency published in the **Federal Register** and will inform each recipient of his right to comment on or request a hearing regarding the pending exemption. The notice will be provided within 10 days of the publication in the **Federal Register** and will be delivered by hand to participants and beneficiaries.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transsaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the

Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the sale by the Employer of its interest in the 1971 and 1977 Contracts; and (2) the guarantee of the Plan's interest in the 1971 and 1977 Contracts by Jack E. Chambers, Ralph F. Chambers and Norman Runions.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Department of Labor.

[FR Doc. 82–3102 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2793]

Proposed Exemption for Certain Transactions; Charter Mortgage Co., Jacksonville, Florida

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) Transactions relating to the origination, maintenance and termination of mortgage pool investment trusts (Mortgage Pools) sponsored by Charter Mortgage Company (Charter); and (2) the acquisition and holding of certain multi-family dwelling mortgage-backed pass-through certificates (Certificates) of Mortgage Pools under certain circumstances by employee benefit plans (Plans) when Charter or Chemical Bank, the trustee (Trustee) of the Mortgage Pools, is a party in interest with regard to the Plans. The proposed exemption, if granted, would affect the Plans and their participants and beneficiaries, Charter, the Trustee and other persons engaging in the transactions described herein.

DATES: Written comments and requests for a public hearing must be received by the Department on or before March 5, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2793. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b) (1) and (2) and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an applicaiton filed by Charter, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. Charter is a wholly owned subsidiary of the Jacksonville National Bank, Jacksonville, Florida. Charter presently ranks among the nation's 25 largest mortgage banking companies in terms of volume of mortgage loans serviced for others. The Trustee, a subsidiary of Chemical New York Corporation, conducts a complete domestic and international banking and trust business throughout Greater New York and in foreign money markets.

2. The Government National Mortgage Association (GNMA) is a government corporation operating under the direction of the Secretary of Housing and Urban Development. GNMA operates several multi-family direct mortgage purchase programs which are designed to make low interest rate FHA insured mortgage loans (Project Loans) available to multi-family housing

projects and certain health care facilities during periods of monetary stringency. GNMA accomplishes this objective by committing in advance, generally prior to commencement of construction, to purchase after completion of construction such low interest rate Project Loans at prices substantially above prices at which such mortgage loans could otherwise be sold in the private secondary market. The Project Loans generally have an outstanding principal balance of not less than $200,000 nor more than $20,000,000. The Project Loans normally have a 40 year maturity and an average life of 18 to 20 years. Also, pursuant to FHA regulations, the loan to value ratio on a Project Loan can be no higher than 90 percent. Periodically, as the inventory of these loans builds, GNMA sells the Project Loans in the private market at prevailing commercial rates, which may reflect a substantial discount from the face principal amount. The resulting loss is borne by the U.S. Treasury and is, in fact, a housing subsidy program.

3. The sale of Project Loans is accomplished through an auction procedure. Approximately one month prior to the date selected by GNMA for an auction, GNMA sends an auction invitation to all FHA approved mortgagees, such as Charter. GNMA warrants to each purchaser of a Project Loan that, as of the settlement date with GNMA, such Project Loan (a) is not delinquent under the original or modified terms thereof to the extent of more than one monthly installment of interest, principal or escrow deposits (subject to certain limited exemptions) and is not otherwise in default; (b) is not subject to any defect which would prevent recovery in full or in part against FHA as insured; and (c) is not subject to any outstanding advance or advances by the mortgagee to the mortgagor. GNMA's obligation under this warranty is limited to the correction of such defects as shall be specified in a written notice furnished to it by the purchaser within 90 days of the settlement date with GNMA, or to the repurchase of the related Project Loan in the event that such defects are not corrected promptly.

4. Charter will purchase Project Loans and form Mortgage Pools. The Project Loans in a Mortgage Pool would be secured by geographically dispersed property, thereby reducing the chance that unfavorable economic developments in one geographic area would adversely affect Mortgage Pool yields. Project Loans which are to be assembled in a Mortgage Pool are transferred to the Trustee, whereupon the Trustee authenticates the Certificates. The rate of return (the Pass-Through Rate) to be provided by the Certificates is the Project Loan mortgage rate less Charter's servicing fee. The Certificates are then sold to investors including the Plans at a discount so that the Pass-Through Rate, together with the effect of the discount on the purchase price, produces a current market rate of return to investors. Each Certificate would represent a fractional undivided interest of ½s or integral multiples thereof in a Mortgage Pool. The applicant represents that the total value of Certificates purchased by a Plan with assets with regard to which Charter or the Trustee is a fiduciary will not exceed 25 percent of the amount of the Certificates in a Mortgage Pool, and, furthermore, at least 50 percent of the aggregate amount of such Certificates will be acquired by persons independent of Charter or the Trustee.

5. A Mortgage Pool will terminate upon (a) the later of the final payment or other liquidation of the last Project Loan in such Pool or the disposition of all property acquired upon foreclosure of any Project Loan; or (b) the repurchase by Charter of all Project loans and all property acquired in respect of any Project Loan remaining in the Mortgage Pool. In no event, however, will a Mortgage Pool continue beyond a period of 60 years from its date of formation.

6. Charter or the Trustee or one of their affiliates may have a pre-existing relationship as a service provider or fiduciary to the Plans. However, all decisions relating to the sale, exchange or transfer of Certificates will be made on the Plans' behalf by fiduciaries independent of Charter or the Trustee or any affiliate thereof.

7. The Certificates are issued pursuant to a Pooling and Servicing Agreement, which is made available to investors for their review prior to investment. The Mortgage Pool consists of: (a) The Project Loans, which are insured by the FHA; (b) the Certificate Account, a non-interest bearing account which contains all collection of principal and interest, as well as any payments under FHA Insurance; (c) any property acquired by foreclosure of a Project Loan or deed in lieu of foreclosure; (d) any FHA debentures received upon the assignment of a Section 221 Loan at the twenty year redemption point (discussed below); and (e) the FHA obligations for the insurance of the Project Loans.

8. The applicant emphasizes that although the Certificates are not insured or guaranteed by any agency or instrumentality of the U.S. Government, the Project Loans underlying the Certificates are insured by the FHA. In addition, Charter would be obligated under the Pooling and Servicing Agreement, to maintain for each Project Loan, or each property acquired upon foreclosure, fire insurance with extended coverage in an amount at least equal to the amount required by the FHA.

9. If a mortgagor defaults on a Project Loan payment, the mortgagee may either assign the mortgage to the FHA or acquire title through foreclosure proceedings, and convey title to such property to the FHA. If the mortgagee elects to assign the mortgage to the FHA, the insurance benefits payable to the mortgagee (either in cash or FHA Debentures which are discussed below) are equal to the sum of (a) the amortized principal balance of the defaulted Project Loan; plus (b) interest accrued from the end of the grace period at the interest rate of FHA Debentures, the rate of which is determined by the higher of the prevailing rate at the time (a) when the commitment for FHA mortgage insurance was issued; or (b) when the Project Loan was initially endorsed for FHA mortgage insurance; *less* (a) an assignment fee of 1% of the principal balance; and (b) legal costs and other expenses associated with the assignment of the Project Loan. The insurance proceeds may be further reduced, however, according to the terms of the GNMA Insurance Proceeds Participation Certificate (IPPC), as discussed more fully below.

10. In the event that the mortgagee elects to acquire title to the mortgaged property and convey title to such property to the FHA, the insurance benefits payable to the mortgagee are computed as above-described except that such benefits are not subject to the 1% assignment fee. The mortgagee is, however, required to pay the costs of foreclosure. Since foreclosure proceedings can be expensive and in some cases, time consuming (during which time, for purposes of insurance proceeds, interest accrues at the applicable FHA Debenture rate rather than at the generally higher Pass-Through Rate), the majority of mortgagees elect to assign the mortgage to the FHA (and incur the 1% assignment fee) rather than foreclose and convey title to the property to the FHA.

11. For defaulted Project Loans, the FHA generally pays 90% of the insurance claim within 15 days of the recordation of the assignment or conveyance (which action may take 30 to 90 days) and the balance of the claim, after completion of an audit, within

three to six months after such recordation.

12. The Certificateholders, in the event of a default on a Project Loan and its subsequent assignment to the FHA, bear the risk of: (a) The loss of 30 days interest during the grace period; (b) forgoing principal and interest payments pending recovery from the FHA in the event Charter does not advance such payments; (c) the accrual of interest at the FHA Debenture rate which is generally lower than the Pass-Through Rate; and (d) the incidence of legal and other expenses associated with the assignment.

13. Insurance proceeds paid on the account of the Project Loans will be payable in cash. The winning bidder on a Project Loan for which FHA insurance proceeds are payable in cash, must sign an Insurance Proceeds Participation Certificate (IPPC) providing for the sharing of a portion of the FHA insurance proceeds with GNMA upon default on a Project Loan, during the first 36 months following the date the Project Loan was purchased from GNMA. The reason for the IPPC is to prevent a potential windfall to a mortgagee due to the fact that a Project Loan is purchased at a discounted price from GNMA because of the low interest rate, while FHA insurance is based on 100% of the principal of the Project Loan.

14. A number of the Project Loans will be Section 221 Loans, under which a mortgagee has the right, pursuant to 24 CFR Section 221.770, to assign such Section 221 Loan to the FHA at the expiration of 20 years from the date of final endorsement of the related mortgage, if the Section 221 Loan is not in default at such time. Such option to assign a Section 221 Loan to the FHA may be exercised at any time during the one year period following the twentieth anniversary of the final endorsement of the related mortgage.

15. Any mortgagee electing to assign a Section 221 Loan to the FHA will receive in exchange therefor, FHA Debentures having a total face value equal to the then outstanding principal balance of the Section 221 Loan plus accrued interest to the date of assignment. The FHA Debentures will mature 10 years from the date of assignment of the related section 221 Loan and will bear interest at the "going Federal rate" on such date. The "going Federal rate" is defined to be the annual rate of interest specified by the Secretary of the Treasury for the six month period which includes the issuance date of the Debentures.

16. In connection with the Mortgage Pools, Charter agrees to service and administer the Project Loans pursuant to the Pooling and Servicing Agreement. As loan servicer, Charter will have the full power and authority to do any and all things in connection with such servicing and loan administration which it may deem necessary or desirable. In addition, Charter may advance delinquent payments on Project Loans to Certificateholders.

17. As compensation for its activities pursuant to the Pooling and Servicing Agreement, Charter is entitled to retain its servicing fee from interest payments on the Project Loans. The aggregate of such servicing fees is an amount equal to the difference between the Pass-Through Rate and the interest rate for each Project Loan in the Mortgage Pool, which would be approximately .10% per annum of the aggregate balance of the Project Loans. In addition to its servicing fee, Charter is entitled to certain other compensation as described in the Pooling and Servicing Agreement. The applicant represents that the sum of all payments made to Charter in connection with a Mortgage Pool will not be more than adequate consideration for the sale of the Certificates, plus reasonable compensation for services provided by Charter to the Mortgage Pool. As its entire compensation for services rendered under the Pooling and Servicing Agreement, the Trustee may invest, for its own benefit, without obligation to pay interest thereon, the cash float-buildup in the Certificate Accounts which results from the delays between the collection of mortgagors' payments and the distribution of such payments to the Certificateholders.

18. In summary, the applicant represents that the transactions discussed herein satisfy the statutory criteria of section 408(a) due to the following:

(a) The Mortgage Pools will be high-yielding investments which will provide a steady flow of income to the Plans;

(b) The Project Loans will be insured by the FHA and will be secured by geographically disbursed property, thereby reducing the chance that unfavorable economic developments in one geographic area will adversely affect Mortgage Pool yields;

(c) Investment in the Certificates will represent a sound method by which the Plans may be able to diversify their investments to include investments in real estate mortgages;

(d) All of the transactions for which Charter seeks exemptive relief will be governed by the terms of the Pooling and Servicing Agreement, which is made available to the Plans' fiduciaries for their review prior to investment;

(e) If Charter or the Trustee is a fiduciary with respect to an investing Plan, the purchase by the Plan of Certificates will be expressly approved by a fiduciary independent of Charter or the Trustee;

(f) The total value of Certificates purchased by a Plan with assets with respect to which Charter or the Trustee is a fiduciary will not exceed 25% of the amount of the Certificates in a Mortgage Pool, and at least 50% of the aggregate amount of such Certificates will be acquired by persons independent of Charter or the Trustee; and

(g) The applicant emphasizes that the exemption requested herein is substantially identical to the class exemption granted as PTE 81-7. The principal difference is that the Charter sponsored Mortgage Pools will consist of first mortgages or deeds of trust on multi-family residential property as opposed to single family residential property in PTE 81-7. The applicant represents that the risk to Plans investing in Mortgage Pools is no greater than the risk in investing in single family, residential property mortgage pools.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest, or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemption, if granted, will be supplemental to, and

not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be availabe for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

On the basis of the facts and representations set forth in the application, the Department is considering granting the following exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1:

I. Transactions

A. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the following transactions involving Mortgage Pools:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates between Charter and a Plan when Charter or the Trustee of such Pool is a party in interest with respect to such Plan, provided that the Plan pays no more than fair market value for such Certificates, and provided further that the rights and interests evidenced by such Certificates are not subordinated to the rights and interests evidenced by other Certificates of the same Mortgage Pool; and

(2) The continued holding of Certificates acquired pursuant to subparagraph (1) above, by a Plan.

B. The restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the following transactions involving Mortgage Pools:

(1) The direct or indirect sale, exchange or transfer of Certificates in the initial issuance of Certificates when Charter or the Trustee is a fiduciary with respect to the Plan assets invested in such Certificates provided:

(a) Such sale, exchange or transfer is expressly approved by a fiduciary independent of Charter or the Trustee who has authority to manage and control those Plan assets being invested in such Certificates;

(b) The Plan pays no more for the Certificates than would be paid in an arm's-length transaction with an unrelated party;

(c) No investment management, advisory or underwriting fee or sales commission or similar compensation is paid to Charter with regard to such sale, exchange or transfer;

(d) The total value of Certificates purchased by a Plan does not exceed 25% of the amount of the issue; and

(e) At least 50% of the aggregate amount of the issue is acquired by persons independent of Charter or the Trustee.

C. The restrictions of sections 406(a), 406(b)(1) and (2) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c) of the Code shall not apply to transactions in connection with the servicing and operation of a Mortgage Pool provided that:

(1) Such transactions are carried out in accordance with the terms of the Pooling and Servicing Agreement; and

(2) Such Pooling and Servicing Agreement is made available to investors for their review before they purchase Certificates issued by the Mortgage Pool.

D. The restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transactions to which such restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest (including a fiduciary) with respect to a Plan by virtue of providing services to the Plan (or who has a relationship to such service provider described in section 3(14)(F), (G), (H) or (I) of the Act, solely because of the ownership of a Certificate by such Plan.

II. General Conditions

A. The relief provided under section I, above, is available only if the following conditions are met:

(1) The Trustee for each Mortgage Pool must not be an affiliate of Charter provided, however, that the Trustee shall not be considered to be an affiliate of Charter solely because the Trustee has succeeded to the rights and responsibilities of Charter pursuant to the terms of the Pooling and Servicing Agreement providing for such succession upon the occurrence of one or more events of default by Charter; and

(2) The sum of all payments made to and retained by Charter in connection with a Mortgage Pool and all funds inuring to the benefit of Charter as a result of the administration of the Mortgage Pool, must represent not more than adequate consideration for selling the Certificates and underwriting the sale of the Certificates, plus reasonable compensation for services provided by Charter to the Mortgage Pool.

III. Definitions

A. For the purposes of this exemption, the term "Mortgage Pool" means an investment pool the corpus of which

(1) Is held in trust; and

(2) Consists solely of

(a) Interest bearing obligations secured by multi-family residential property;

(b) Property which had secured such obligations and which has been acquired by foreclosure; and

(c) Undistributed cash.

B. For the purposes of this exemption, the term "Certificate" means a certificate representing a beneficial undivided fractional interest in a Mortgage Pool and entitling the holder of such Certificate to pass-through payment of principal and interest from the pooled mortgage loans, less any fees retained by Charter.

C. For the purposes of this exemption, the term "affiliate" of another person means:

(i) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with such other person;

(ii) Any officer, director, partner, employee or relative (as defined in section 3(15) of the Act) of such other person; and

(iii) Any corporation or partnership of which such other person is an officer, director or partner.

For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

D. For the purposes of this exemption, a person will be "independent of Charter or the Trustee" only if:

(1) Such person is not an affiliate (as defined in paragraph III(C) of this exemption) of Charter or the Trustee; and

(2) Neither Charter nor the Trustee, nor any affiliate thereof, is a fiduciary who has investment management authority or renders investment advice with respect to any of the assets of such person.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3108 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 81-37; Exemption Application No. D-2767]

Exemption from the Prohibitions for Certain Transactions Involving Crocker National Bank, San Francisco, California

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the use of assets of multiemployer pension plans (the Plans) or group trusts (the Group Trusts) consisting of multiemployer pension plans for permanent loans to persons (the Borrowers) who will use the loan proceeds to pay off construction loans originated by Crocker National Bank (Crocker), which serves as corporate co-trustee or as trustee for such Plans and Group Trusts.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 6, 1981, notice was published in the **Federal Register** (46 FR 55168) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (D) of the Code, for the above-described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. No public comments were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and Group Trusts and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans and the Group Trusts.

Accordingly, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the use of the assets of the Plans and the Group Trusts for permanent loans to the Borrowers, who will use the loan proceeds to pay off construction loans originated by Crocker.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 28th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3113 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-35; Exemption Application Nos. D-2695 and D-2696]

Exemption from the Prohibitions for Certain Transactions Involving the East Tennessee Orthopedic Clinic P.C. Money Purchase Pension Plan and the East Tennessee Orthopedic Clinic P.C. Profit Sharing Plan, Knoxville, Tennessee

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits: (1) The proposed purchase of certain real property (the Property) by the East Tennessee Orthopedic Clinic P.C. Money Purchase Plan (the Money Purchase Plan) and the East Tennessee Orthopedic Clinic P.C. Profit Sharing Plan (the Profit Sharing Plan, collectively, the Plans) from C.G.C. & B. Properties (the Partnership), which is a party in interest with respect to the Plans, and (2) the proposed subsequent

leasing of the Property by the Plans to the East Tennessee Orthopedic Clinic (the Employer), the sponsor of the Plans.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, (202) 523–8881. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 20, 1981, notice was published in the **Federal Register** (46 FR 57180) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1) (A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete satement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant ahs represented that it has satisfied the notification requirements as set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 19780 transferred the authotiry of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the proposed purchase of the Property by the Plans for $800,000 from the Partnership provided that this price is not more than the fair market value of the Property at the time of sale, and (2) the leasing of the Property by the Plans to the Employer provided that the terms and conditions of such lease are at least as favorable to the Plans as those which the Plans could receive in a similar transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3115 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Exemption Application Nos. D–2724, D–2725, D–2726, D–2727, and D–2728]

Ern Construction Co., Inc., et al.; Exemption Applications

AGENCY: Office of Pension and Welfare Benefit Programs; Labor.

ACTION: Notice of proposed exemption.

SUMMARY: In the matter of proposed exemption for certain transactions involving Ern Construction Co., Inc. Employees' Profit Sharing Plan, Pollution Control Co., Inc. Employees' Profit Sharing Plan, Gordon's Corner Water Company Employees' Profit Sharing Plan, Gordon's Corner Water Company Money Purchase Retirement Plan, A. C. Schultes & Sons, Inc. Pension Plan (collectively, the Plans) located in New Jersey. This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt loans totalling $463,500 by the Plans to Gordon's Corner Water Company (Gordon's Corner), a party in interest with respect to the Plans and the guarantee of repayment by all the stockholders of Gordon's Corner (the Stockholders). The proposed exemption, if granted, would affect participants and beneficiaries of the Plans, Gordon's Corner, the Stockholders and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 19, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and

Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application Nos. D–2724, D–2725, D–2726, D–2727 and D–2728. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sectioin 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by legal counsel for the Plans, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. As of December 31, 1980, the assets of each Plan were as follows:

Name of plan	Plan assets	Number of participants
Ern Construction Co., Inc., employees' profit sharing plan (Ern plan)	$264,096	12
Pollution Control Co., Inc., employees' profit sharing plan (Pollution plan)	167,090	10
Gordon's Corner Water Company, employees' profit sharing plan (Gordon's Corner P/S plan)	153,224	12
Gordon's Corner Water Company, money purchase retirement plan (Gordon's Corner ret. plan)	77,517	12
A.C. Schultes & Sons, Inc., pension plan (Schultes pension plan)	589,305	60

2. Gordon's Corner is a public utility as defined under New Jersey Statutes (N.J.S.) § 48:2–13, engaged in the business of supplying water. As of December 31, 1980, Gordon's Corner had total assets of $5,018,291. Gordon's Corner is 50% owned by Rochford A. Ern and his family (the Erns) and 50% owned by A.C. Schultes, Jr., James Schultes, Joseph P. Schultes and their families (the Schultes). Ern Construction Co., Inc. is 100% owned by the Erns. Pollution Control Co., Inc. is 50% owned by the Erns. A.C. Schultes & Sons, Inc. is 100% owned by the Schultes.

3. Gordon's Corner, in order to meet increasing demand for service from its customers, needs to borrow $1 million to expand and improve its existing facilities. The Plans have agreed to provide $463,500 of this amount (Ern Plan $105,500, Pollution Plan $50,500, Gordon's Corner P/S Plan $61,000, Gordon's Corner Ret. Plan $31,500 and Schultes Pension Plan $215,000). Each of the above loans is less than 40 percent of the total assets of the Plan making the loan. The remaining $536,500 will be provided by Rochford H. Ern ($197,750), Andrew V. Aldi ($100,000), A.C. Schultes, Jr., James Schultes and Joseph Schultes or their nominees ($238,750).

4. The borrowed funds will be used by Gordon's Corner for drilling a new well; purchasing 500 new water meters; sandblasting and painting stand pipe; extending two company loop mains to maintain water pressure; repairing two existing wells; upgrading filter effluent; making improvements to well No. 10 and obtaining certain variances, both pursuant to township order; making miscellaneous repairs; constructing a new recharge well; retiring existing debt; and such other capital improvements directly or indirectly related to the foregoing or such other items as approved by the Board of Public Utility Commissioners of the State of New Jersey (the Commission).

5. During the week of August 10, 1981, Gordon's Corner filed an application with the Commission for approval of the aforesaid loans and for the granting to each of the lenders of a pro rata security interest in Gordon's Corner's assets. Until such time as the Commission approves the loans and security interest, said loans will be due and payable every month, and will be, at the option of the lenders, renewable for consecutive one month periods.

6. The loans will be advanced as follows:

(a) $463,500 from the Plans, which loans will be made within 60 days after an exemption has been issued by the Department.

(b) The loans from the individuals will be made as funds are required.

7. Gordon's Corner will pay each Plan a commitment fee of ½ percent of the principal amount of the loan made by such Plan.

8. The loans by each of the Plans and by each of the individuals will be evidenced by a promissory note in the full amount of the loan, which note will be payable to the order of each lender and will be executed by Gordon's Corner. Each note will contain the following terms:

(a) Prior to the time the loans are approved by the Commission each note will be due and payable within 5 business days after the Commission approves or disapproves of the loans (hereinafter the "Renewable Notes").

(b) Until such time as the Commission renders its decision with respect to the Renewable Notes, interest due will be payable on the 15th day of every month after the first advance made by any lender. For purposes of the foregoing, interest will be computed upon the average daily principal balance outstanding during such period.

(c) The Renewable Notes may not be renewed or extended for a period of more than six months after the date the Department issues its determination, but in no event later than June 30, 1982.

(d) Interest is to be computed at the rate of 1 percent above the prime lending rate in effect at Citibank N.A., New York, on the day that the advance by the Plans is made and such interest rate will be recomputed on the first day of each succeeding calendar quarter thereafter. Notwithstanding the foregoing, in no event will the rate of interest be less than 10 percent per annum.

(e) All payments made on the Renewable Notes are to be first applied to interest and the balance, if any, towards a reduction of principal.

(f) The Renewable Notes will be secured by personal guarantees of the following individuals:

(1) As to fifty percent by Rochford H. Ern, F. Carole Ern, Gary R. Ern, Robert A. Ern, Gail Ern Altiere and Rocque S. Ern, jointly and severally; and

(2) As to fifty percent by August C. Schultes, Jr., Joseph B. Schultes, Yvonne V. Schultes, Rita Mae Schultes, Ann Marie Schultes, Janice Hall, Elaine Schultes, Richard Schultes, August C. Schultes III as Custodian for each of Claire M., Yvonne M., and Theresa M. Schultes, August C. Schultes III, Denise Schultes, Kathleen Schultes, Monica Schultes, James Schultes, Jr. as Custodian for Susan Schultes, Linda Petraglia, Nancy Lingenfelter, Joseph M. Schultes, Gertrude Duardo, Mary Ann Nostro, Elizabeth S. Lawton, Arthur

Schultes, Edward Schultes, James F. Schultes and Victoria Schultes, jointly and severally. The foregoing individual guarantors are all of the shareholders of Gordon's Corner.

(3) Net worth statements submitted by the applicant on behalf of the Schultes and the Erns indicates that each group of guarantors has a net worth in excess of $3 million.

(g) The Stockholders have agreed to deliver to First National State Bank of New Jersey (Bank) all of the shares of stock of Gordon's Corner duly endorsed for transfer, to be held by said Bank as further security for the full payment of the loans.

9. Upon the approval by the Commission of the loans and the granting of a security interest in Gordon's Corner's assets, the Renewable Notes will be paid and fully satisfied by other notes (hereinafter "Term Notes"), which will be due and payable in 120 consecutive monthly installments, the first installment being due on the 15th day of the first month following the date of the Term Notes. On each installment due date, .8333 percent of the outstanding principal balance and interest thereon will be paid, and full payment of the entire outstanding balance will be due with the 120th consecutive monthly installment. However, in all respects other than security for the loans, terms of the Term Notes will be the same as those for the Renewable Notes.

(a) Each Term Note will be secured by a pro rata security interest in the real and personal property owned by Gordon's Corner.

(b) The security interest in the personal property will be evidenced by a Security Agreement and Financing Statement (U.C.C.–1) executed in accordance with the provision of Uniform Commercial Code, N.J.S. § 12A:9–101 et seq. The security interest on the real property will be evidenced by a mortgage on the real property owned by Gordon's Corner, which mortgage will be duly recorded.

(c) Gordon's Corner agrees to maintain the aforesaid security at a level at least equal to 150 percent of the outstanding principal balance on the Term Notes.

10. Gordon's Corner agrees that so long as any amount is due on the loans from any of the Plans, compensation to any officer of Gordon's Corner will not be in excess of a reasonable amount and any increases in compensation must be approved by the Commission.

11. If Gordon's Corner fails to pay an installment of principal or interest when due, it further agrees that it will not pay any officers' compensation until all payments of principal and interest which are past due are paid.

12. The principal amount of the loans, the interest rate and the repayment terms are substantially similar to a loan commitment Gordon's Corner received from First Peoples Bank of New Jersey (Peoples). The security interest, personal guarantees, escrow and restrictions on officers' compensation are greater than that required by Peoples. The applicants represent that Peoples is not related through ownership of stock, through common directors or officers or through any other common management or ownership relationship. Gordon's Corner presently has one loan with Peoples which would be fully repaid with a portion of the principal received from the proposed loans.

13. On August 4, 1981, Mr. David R. Monie of FPM Associates, Inc. (water engineering and management consultants), an independent party, determined that the minimum value of Gordon's Corner's assets assuming a forced sale would be $1,539,706.

14. The terms of this proposed transaction have been reviewed by the Bank as independent fiduciary for the Plans. The applicant represents that the Bank is not related through ownership of stock, through common directors or officers or through any other common management or ownership relationship with Gordon's Corner, any of the Plans or their sponsors. The Bank will monitor the terms of the loans throughout their duration to assure that the rights of the Plans making the loans are fully enforced. The Bank is given the power and authority to enforce all of the Plans' rights, declare an acceleration of the loans in the case of default, hold and retain the security for the loans and do any and all other acts necessary to protect the Plans' rights.

15. The Bank reviewed the terms and conditions of the proposed loans and made the following representations:

(a) It has reviewed the terms and conditions of the proposed loans and all the documents related thereto;

(b) With respect to each Plan the Bank has determined that said loan is a suitable investment and that based on the availability of alternate investment vehicles that this investment would be in the best interests of each Plan;

(c) To the best of the Bank's knowledge at the present time, and to be reconfirmed by the Bank prior to the making of the loans, each of the Plans would have sufficient liquid assets to pay all expenses and benefits arising during the term of the loan; and

(d) At the time the loans are actually made, the Bank expects that each Plan will continue to have sufficient liquid assets to pay all expenses and future benefits arising during the term of the loans. The Bank agrees to take all steps it deems proper to assure the repayment of the loans including but not limited to obtaining appraisals to verify that the security interest is at least 150 percent of the outstanding debt due, reviewing financial statements and securing such other reports or statements as it deems necessary and taking such other action as it determines to be appropriate to assure the integrity of the loans and the corporation's ability to repay.

16. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The loans will be approved and monitored by an independent fiduciary;

(b) The loans will be secured by collateral which at all times will be equal to at least 150 percent of the outstanding balances of the loans and by personal guarantees;

(c) The Plans will receive an interest rate of 1 percent over prime with a guaranteed minimum of 10 percent; and

(d) The independent fiduciary has determined that the transactions are appropriate for the Plans and are in the best interests of the Plans' participants and beneficiaries and protective of their interests.

Notice to Interested Persons

Within ten days after the notice of pendency is published in the **Federal Register** notice will be given to all the Plans' participants, beneficiaries, and other interested parties by mail, personal delivery, or by posting in locations where participants work and which are customarily used for notices to employees. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform interested persons of their right to comment and request a hearing within the time period set forth in the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act,

which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to loans totalling $463,500 by the Plans to Gordon's Corner and to the personal guarantee of repayment by the Stockholders, provided that the terms of the transactions are not less favorable to the Plans than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of the transactions.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3094 Filed 2–4–82; 8:45 am]

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[Application No. D–2684]

Proposed Exemption for Certain Transactions; Frederick E. Fried, M.D., P.C. Profit Sharing Plan, Medford, Oregon

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of certain items of artwork (the Artworks) by the Frederick E. Fried, M.D., P.C. Profit Sharing Plan (the Plan) to Frederick E. Fried, M.D., (Fried), a disqualified person with respect to the Plan. The proposed exemption, if granted, would affect Fried, and the beneficiaries of the Plan. Because Fried is the sole owner of Frederick E. Fried, M.D., P.C., the sponsor of the Plan, and is the sole Plan participant, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3–3(c)(1). However, there is jurisdiction under Title II of the Act and under section 4975 of the Code.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 9, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20216, Attention: Application No. D–2684. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by Fried, pursuant to section 4975(c)(2) of the Code, and in accordance with procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan in which Fried is the sole participant. The Western Bank (Western) of Medford, Oregon is the trustee of the Plan. Plan investments are made by Western at the direction of Fried. As of July 31, 1981, the Plan had total assets of $30,959.00.

2. The Artworks consist of two etchings by Boulanger entitled *Ballerina Etching* and *Take Care When You Walk Over the Prairie. Ballerina Etching* was purchased from an unrelated party in October of 1978 for $475. *Take Care When You Walk Over the Prairie* was purchased from an unrelated party in July of 1979 for $1,500. Since their purchase *Ballerina Etching* and *Take Care When You Walk Over the Prairie*

have been offered for sale by The Art Show of Jacksonville, Oregon (the Art Show), a local art gallery, at prices of $875 and $1,700, respectively. The Art Show has been unsuccessful in its attempts to sell the Artworks at these prices.

3. In December of 1980, Western notified Fried that in light of its fiduciary responsibility to the Plan it had concluded that investments in any work of art not in Western's immediate possession was no longer appropriate and that due to Western's lack of storage space it was impossible for Western to retain possession of the Artworks. Western requested that Fried sell the Artworks. Fried has attempted unsuccessfully to locate a successor trustee to Western who would accept the Artworks as part of the Plan's investment portfolio. Fried requests an exemption to permit the cash sale of the Artworks by the Plan to himself for the total price of $2,575.00. This price was determined to be the fair market value of the Artworks, as of August 12, 1981, by the Art Show.

4. In summary, the applicant represents that the proposed transaction meets the criteria for an exemption under section 4975(c)(2) of the Code because: (1) The sale of the Artworks was requested by Western; (2) the Plan has been unable to find a successor trustee who would accept the Artworks as part of the Plan's investment portfolio; (3) the Art Show has been unsuccessful in its attempts to sell the Artworks on behalf of the Plan; (4) the Plan will sell the Artworks at their fair market value as determined by an independent appraiser; (5) the sale will be a one time transaction for cash; and (6) a profit to the Plan will be realized on the sale of the Artworks.

Notice to Interested Persons

The publication of the notice of pendency of the proposed exemption will serve as notice to interested persons.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person of certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of the Artworks by the Plan to Fried provided that the sales price is at least the fair market value of the Artworks at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3097 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D-2919]

Proposed Exemption for Certain Transactions; Gearhart Employees' Trust Plan, Fort Worth, Texas

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale of certain real property (the Property) by the Gearhart Employees' Trust Plan (the Plan) to Gearhart Industries, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the participants and beneficiaries of the Plan and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 15, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2919. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of

sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedure set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan which, as of October 5, 1981, had 1525 participants and assets of approximately $32,000,000. First National Bank of Ft. Worth (the Bank) in Ft. Worth, Texas is the trustee of the Plan and has the responsibility for making the investment decisions for the Plan.

2. The Employer is requesting an exemption that will permit the cash sale of the Property by the Plan to the Employer. The Property consists of a 19.359 acre tract of land located in Ft. Worth, Texas. The Plan purchased the Property on November 1, 1976 for $309,744 from a party independent of the Plan and/or the Employer. The Property produces no income and the Plan pays all of the carrying costs on the Property. The Employer will pay the Plan $925,000 for the Property. The Property was appraised on July 27, 1981 by an independent appraiser, Mr. Meade B. Crane, MAI (Crane) of Ft. Worth, Texas. Crane represents that the fair market value of the Property as of July 27, 1981 was $925,000. The Property was also appraised on August 3, 1981 by an independent appraiser, Mr. Byron B. Searcy, MAI (Searcy) of Ft. Worth, Texas. Searcy represents that the fair market value of the Property as of August 3, 1981 was $850,000.

3. The applicant represents that the proposed sale will benefit the Plan in that the Plan will be able to sell the Property which produces no income at a substantial profit. The applicant also represents that the Plan will pay no sales commissions or closing costs in the transaction. In addition, prior to the Plan entering into the transaction, the Bank must certify that the proposed transaction is in the best interests of the participants and beneficiaries of the Plan and that the terms and conditions of the transaction are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party.

4. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act as follows: (1) The trustee of the Plan represents that the transaction will be in the best interests of the participants and beneficiaries of the Plan; (2) the price of the Property was determined by an independent appraiser; (3) the Plan will pay no sales commission or closing costs in the sale; and (4) the Plan will be able to sell a Plan asset which produces no income at a substantial profit.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be posted in a manner so that they can be seen by all currently employed participants of the Plan. The same information within the same time frame will be mailed to all other participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and request for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1(A) through (E) of the Code shall not apply to the cash sale of the Property by the Plan to the Employer for $925,000 provided that this amount is at least the fair market value of the Property at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to

be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3104 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2730]

Proposed Exemption for Certain Transactions; Hinderliter Profit Sharing Plan and Trust, Tulsa, Oklahoma

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the proposed exchange between the Hinderliter Profit Sharing Plan and Trust (the Plan) and the Hinderliter Energy Equipment Corporation (the Employer), the Plan sponsor, of preferred stock of the Employer (the Stock) presently held by the Plan, for subordinated debentures (the Debentures) of the Employer; and (2) the proposed extension of credit by the Plan to the Employer pursuant to the terms and conditions of the Debentures. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer and any other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 31, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2730. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The applicaton contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined contribution profit sharing plan with approximately 269 participants. As of August 31, 1980, the Plan had net assets of approximately $613,000. The trustees of the Plan are Messrs. Richard H. Hughes, Burton C. Person and G. Douglas Fox, each of whom is an officer and director of the Employer.

2. The Employer is a Delaware corporation primarily engaged in the manufacture of equipment used in the oil and gas, mining, logging and construction industries. As of June 30, 1980, the Employer (including its parent and subsidiary companies) has a net worth of approximately $1.4 million.

3. The Plan currently holds 19,246 shares of the Stock which were contributed to the Plan prior to 1972. The Stock is owned by the Plan for the individual account of thirteen Plan participants. Five of the participants are currently employed by the Employer. The other eight participants have terminated employment and their account balances are being held pending distribution in accordance with the terms of the Plan. The Stock receives a dividend of 6% of par value annually, is non-voting, has preferential liquidation rights, and is redeemable at the option of the board of directors of the Employer. The Stock's par value is $5.00 per share and pursuant to terms and conditions stated in the Employer's Articles of Incorporation contains a $.50 per share redemption premium. The Stock is not traded publicly or privately as restrictions on the Stock prevent any transfers of it in the absence of an effective registration statement under the Securities Act of 1933, as amended, or an opinion of counsel that the transfer is exempt from applicable state and federal securities laws. As of October, 1980, twelve other persons held the remaining outstanding 16,983 shares of Stock. Two of the shareholders received Stock pursuant to a distribution of their accounts from the Plan. The other 10 persons purchased their stock from the Employer in transactions not related to the Plan.

4. The applicant seeks an exemption to allow the exchange of the Stock between the Plan and the Employer whereby the Employer will redeem the Stock held by the Plan in return for the Debentures.[1] The Debentures will be due and payable ten years from date of issue (1981), will bear interest of 8% payable semi-annually and will be subordinated to all other Employer indebtedness. The Debentures will maintain a higher priority position than the Stock as Debenture holders will be creditors of the Employer rather than equity holders. The terms of the exchange provide that each preferred shareholder will receive $5.50 face amount of Debenture for each share of $5.00 par value Stock owned. The Debentures received by the Plan trustees will be credited to the individual account of each participant whose account previously held the Stock.

5. By letter dated December 9, 1980, Mr. James P. Dixon, an investment officer and vice president of the Fourth National Bank of Tulsa (Fourth National) states that the fair market value of the Debentures issued by the Employer in exchange for the Stock is greater than or equal to the fair market value of the Stock. Mr. Dixon in rendering his determination examined all relative documents, facts and circumstances pertaining to the proposed exchange including the $.50 premium to be received by the holders

[1] The applicant represents that the Debentures will not qualify as "qualifying employer securities" under section 407(e) of the Act and therefore seeks administrative exemptive relief for the proposed transactions.

of the Stock and the higher yield and security position of the Debentures. Equidyne Industries, Inc., the parent company of the Employer maintains a commercial relationship with Fourth National. Mr. T. D. Williamson, Jr. serves on the board of directors of the Employer and Fourth National. The applicant represents that Mr. Williamson did not influence the issuance by Fourth National of their valuation letter.

6. Since December 1980, the Employer has proposed the exchange to the outside shareholders. Since that time ten of the twelve outside shareholders, representing approximately 98% of the non-Plan held Stock, elected to exchange their shares of Stock for Debentures on terms identical to those proposed for the Plan.

7. Mr. Patrick G. Walters, C.P.A. (Mr. Walters) located in Tulsa, Oklahoma, has agreed to act as the fiduciary for the Plan with respect to the proposed transactions. Mr. Walters has no other relationship with the Employer or the Plan, does not maintain any financial or economic interest in the proposed transactions, and does a substantial amount of employee benefit plan work. Mr. Walters has considered all relevant facts and circumstances surrounding the proposed exchange, including all of the alternatives available to the Plan regarding the Stock, and has determined that the exchange is in the best interests of the Plan. Mr. Walters will monitor the payment of interest and principal on the Debentures and enforce the terms and conditions of the Debentures with respect to the Plan.

8. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because (a) the trustees of the Plan represent that the proposed transactions are in the best interests of the Plan; (b) Fourth National represents that fair market value of the Debentures to be exchanged for the Stock is greater than or equal to the fair market value of the Stock; (c) outside shareholders of the Stock have exchanged approximately 98% of their shares for Debentures on the identical terms proposed with respect to the Plan; (d) an independent, qualified third party, Mr. Walters, has agreed to serve as the fiduciary for the Plan with respect to the proposed transactions and has determined that the exchange will be in the best interests of the Plan; and (e) Mr. Walters will enforce the terms and conditions of the Debentures with respect to the Plan.

Notice to Interested Persons

Within twenty (20) days after publication of this notice in the **Federal Register** notice will be provided to all participants in the Plan by hand delivery or first class mail. The notice will contain a copy of the notice of pendency as published in the **Federal Register** and a statement informing interested persons of their right to comment on or request a hearing regarding the proposed transactions.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the proposed exchange of the Stock currently held by the Plan for the Debentures to be issued by the Employer provided that the terms and conditions of the exchange are at least as favorable to the Plan as those obtainable from an unrelated third party; and (2) the proposed extension of credit by the Plan to the Employer pursuant to the terms and conditions of the Debentures.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Adminsitration, Department of Labor.

[FR Doc. 82-3093 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2540]

Proposed Exemption for Certain Transactions; John F. Long Properties, Inc. Profit Sharing Plan and Trust, Phoenix, Arizona

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the exchange (the Exchange) of one parcel of agricultural property (the Farmland) owned by the John F. Long Properties, Inc. Profit Sharing Plan and Trust (the Plan) for cash and four commercial rental properties (collectively, the Properties) owned by the John F. Long Properties, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries, and any other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 22, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2540. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine D. Lewis of the Department, telephone (202) 523-7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1974). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer is an Arizona corporation engaged in the development of real estate. The Plan is a profit sharing plan with 32 participants and net assets of approximately $2,115,785 on April 30, 1980. The trustees of the Plan (the Trustees) are John F. Long, Mary Long, James J. Miller, Clarence L. Hood, Jerry Miller, Rodney K. Kayes and Charles J. Potvin, all of whom are employees of the Employer. Investment decisions for the Plan are made by the Trustees.

2. In 1972, the Plan purchased the Farmland, an 80 acre parcel of agricultural land located west of 91st Avenue and north of Indian School Road in Phoenix, Arizona, for $300,000. The Farmland was purchased from Russell W. Christensen, as trustee for Christine Ann Silva, both of whom are unrelated to the Employer or principals of the Employer. The Farmland is currently leased to an unrelated party for $15,400 per annum, providing an annual return of 5.1% to the Plan. The Farmland was appraised on December 12, 1980 by an independent MAI appraiser, Leslie D. Ryan (Ryan) of L. D. Ryan and Associates, Inc., of Phoenix, Arizona, who valued the Farmland at $1,120,000. During 1980 and 1981, Ryan appraised the Properties, all of which are located in Phoenix. The Properties were found by Ryan to have an aggregate fair market value of $980,330. As the Farmland was valued at $1,120,000 and the Properties at $980,330, the Employer proposes, as part of the Exchange, to contribute cash to the Plan in the amount of $139,670, the difference between the values of the Farmland and the Properties. No real estate commissions or other fees will be charged with respect to any of the properties involved.

3. The Properties consist of the following: (a) The Thunderbird Property: a parcel of improved real property which was valued at $335,000 by Ryan on February 12, 1980 and is leased to The Arizona Bank. In addition to the payment of rent, The Arizona Bank is responsible for all real property taxes, utilities and insurance premiums. The Thunderbird Property provides an annual rate of return of 6.5% of its current fair market value, and based on an escalation formula in the lease, Ryan projects an annual rate of return of 11% in 1984; (b) the Chevron Property: A parcel of improved real property which was appraised at $133,000 by Ryan on February 15, 1980 and is leased to Standard Oil Company of California (Standard). Standard is responsible for all property taxes, utilities and insurance premiums. The Chevron Property lease provides for a percentage rent in addition to a base rental amount. The annual rate of return of the fair market value of this Property is approximately 9.2%; (c) the Maryvale Property: a parcel of improved real property of which was valued at $300,000 on December 8, 1980 by Ryan and is leased to The Arizona Bank. In addition to rent The Arizona Bank pays all real estate taxes, utilities and insurance costs. The Maryvale Property currently provides an annual rate of return of 5.4% of its fair market value, however, Ryan projects based on an escalation formula in the lease, that this rate of return will increase to approximately 13.4% in 1984, and (d) the First Federal Property: a parcel of improved real property which was appraised at $212,300 by Ryan on June 9, 1981. The property is leased to First Federal Savings and Loan Association (First Federal). First Federal is responsible for all property taxes, utilities and insurance. The First Federal Property provides an annual rate of return of approximately 18.3% of its fair market value. The annual rent will be adjusted in 1984, pursuant to a clause in the lease, to reflect the change in the consumer price index from May of 1979 to May of 1984.

4. The Trustees have reviewed the appraisals of the Farmland and the Properties, the Marketability and appreciation potential of these properties, the terms and conditions of the leases involved and the needs of the Plan and have determined that the Exchange is in the best interests of the Plan and its participants and beneficiaries. The Trustees represent that the Exchange would provide the Plan with increased liquidity, a higher

rate of return and greater appreciation potential.

5. A party independent of the Employer, Mr. Robert N. Tellier, Jr. (Tellier), an actuarial consultant and partner in Scott, Tellier and Company, Pension, Profit Sharing and Actuarial Consultants, Phoenix, Arizona, has reviewed the proposed Exchange and represents that it is his opinion that the terms and conditions of the Exchange are fair and would be in the best interests of the Plan participants and beneficiaries. Tellier based his opinion on a detailed analysis of the Plan's financial statements and projected needs for liquidity, as well as an examination of the leases, appraisals and other documents relating to the Exchange.

6. In summary, the applicants represent that the Exchange satisfies the statutory criteria of section 408(a) of the Act because: (a) The Trustees of the Plan represent that the Exchange is in the best interests of the Plan's participants and beneficiaries; (b) an independent party, Tellier, has examined the Exchange in detail and the needs of the Plan and has represented that the terms and conditions of the Exchange are fair and would be in the best interests of the Plan's participants and beneficiaries; (c) the fair market values of the Farmland and the Properties were determined by an independent MAI appraiser; (d) no real estate commissions will be charged; and (e) the Trustees represent that the Exchange would provide the Plan with increased liquidity and secure investments which are expected to provide a high rate of return.

Notice to Interested Parties

Notice will be hand delivered to all of the Plan's participants within 10 days of the publication of the proposed exemption in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as proposed in the **Federal Register** and shall inform the Plan's participants of their right to comment and request a hearing within the time period set forth in the notice of the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Exchange as described herein provided that the terms and conditions of the Exchange are at least as favorable to the Plan as those which the Plan could obtain in a similar transaction with an unrelated third party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in this application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3101 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2715]

Proposed Exemption for Certain Transactions; John Wieland Homes, Inc. and Affiliated Companies Profit Sharing Plan; Atlanta, Georgia

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt, for a period of five years, certain proposed loans of money by the John Wieland Homes, Inc., and Affiliated Companies Profit Sharing Plan (the Plan) to John Wieland Homes, Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department on or before March 19, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and

Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2715. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Louis Campagna of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with 20 participants and total assets, as of June 30, 1980, of $122,000. The Employer is in the home construction business. John Wieland, the president and majority shareholder of the Employer, is the trustee of the Plan.

2. The Employer is requesting an exemption that would permit the entering into of a line of credit agreement (the Line of Credit Agreement) between the Plan and the Employer. Under the Line of Credit Agreement the Plan will periodically lend to the Employer amounts of money up to an aggregate of the outstanding balances of such loans of 30% of the assets of the Plan. The loans made under the Line of Credit Agreement would be made over a five year period. Each loan would have a maturity of ninety days. Upon maturity, the entire principal amount of each loan plus accrued interest will be due and payable. All outstanding loans will mature and become due and payable on or before the last day of the five year duration of the Line of Credit Agreement. The interest rate for any loan granted under the Line of Credit Agreement will be 2% above the prime rate charged as of the last day of each month by the Trust Company Bank of Atlanta, Georgia, but in no event less than 12% per annum.

3. Each loan made under the Line of Credit Agreement will be secured by two Caterpiller loaders (the Collateral) owned by the Employer and used in its business valued respectively, as of May 8, 1981, at $37,500 and $45,000 by the Yancy Brothers Company of Atlanta, Georgia, a local dealer in Caterpiller tractors, who, at the time of the appraisal, was independent of the Employer. The applicant represents that no other lender has a secured interest in the Collateral. Each loan made under the Line of Credit Agreement will also be personally guaranteed by John Wieland. As of January 1, 1980, John Wieland had a net worth of $1,829,420.

4. Mr. Jeffrey P. Ganek, an Atlanta attorney, who is independent of the parties to the transactions, will approve for the Plan the Line of Credit Agreement and will determine prior to the grant of any loan under the Line of Credit Agreement whether the loan is in the best interests of the Plan. Mr. Ganek will also monitor the terms of each loan, enforce collection and will monitor the Collateral so that the value of the Collateral, at all times during the duration of the Line of Credit Agreement, will be maintained at 200% of the balance of all outstanding loans made under the Line of Credit Agreement. The applicant represents that in the event the value of the Collateral falls below 200% of the balance of outstanding loans made under the Line of Credit Agreement additional Caterpiller front end loaders owned by the Employer will be pledged as security. Hazard, fire and theft insurance will be maintained on all items of Collateral throughout the duration of the Line of Credit Agreement. The proceeds of all such insurance will be payable to the Plan. The applicant represents that no other lender has a secured interest in any of these items that may be pledged as additional items of Collateral.

5. In summary, the applicant represents that the proposed loans under the Line of Credit Agreement satisfy the statutory criteria of section 408(a) of the Act because: (1) Mr. Ganek, an independent party, will approve and monitor for the Plan the Line of Credit Agreement and all loans made under the line of Credit Agreement; (2) each loan will have a high rate of interest with a floor of 12% per annum; (3) the Collateral will, at all times, have a value of at least 200% of the balance of all outstanding loans made under the Line of Credit Agreement; (4) John Wieland will personally guarantee repayment of the loans made under the Line of Credit Agreement in the event of default; and (5) the Line of Credit Agreement will be for a relatively short period of time of five years.

Notice to Interested Persons

Notice of the proposed exemption will be given to all participants and beneficiaries of the Plan by mail or by hand delivery within 10 days of the publication of the notice of pendency in the **Federal Register**. Such notice will contain a copy of the notice of pendency as it appears in the **Federal Register** as well as a statement informing all such interested persons of their right to comment or request a hearing in regard to the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975 (c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the

exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply for a five year period to the loans of amounts of money under the Line of Credit Agreement by the Plan to the Employer provided that the outstanding balances of such loans do not exceed 30% of the assets of the Plan, and that the terms of the loans made under the Line of Credit Agreement are at least as favorable to the Plan as those obtainable in a transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-3095 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-38; Exemption Application No. D-1777]

Exemption From the Prohibitions for Certain Transactions; Mead Retirement Master Trust, Dayton, Ohio

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit: (1) The contribution by the Mead Corporation (Mead), the sponsoring employer, to the Mead Retirement Master Trust (the Plan), of several parcels of improved real estate (the Land and Improvements) subject to an existing ground lease (the Lease); (2) the guaranteed payment of rent by Mead to cure an act of default for a limited period of time; and (3) the guaranteed repurchase of the Land and Improvements by mead in the event of a default under the Lease or inability of the Plan to rent or sell such real estate upon the expiration of the Lease.

FOR FURTHER INFORMATION CONTACT: Paul R. Antsen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–6915. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 20, 1981, notice was published in the **Federal Register** (46 FR 13425) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the above described transactions. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice and an accompanying statement have been provided to all interested persons in compliance with the notification requirements as set forth in the notice. Public comments were received, one of which included a request that a public hearing be held. Notice of a public hearing was published in the **Federal Register** on June 16, 1981, (46 FR 31543). The hearing was held at the Department in Washington, D.C. on July 10, 1981. At the hearing interested persons presented testimony explaining their views with respect to the proposed exemption.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Summary Restatement of the Factual Representations

Mead and its subsidiaries are the sponsors of numerous qualified employee pension benefit plans. The Plan is a commingled trust fund in which each of the several participating plans maintain separate accounts. On September 30, 1979, the value of Plan assets was approximately $260 million of which approximately $20.5 million represents investments in real estate.

By an agreement dated September 27, 1979 (the Purchase Agreement), Mead sold to Stanley Interiors Corporation (Stanley) three of its operating divisions (the Interiors Divisions) as well as all assets (excluding the real property) of those divisions. The Purchase Agreement provided that Mead lease to Stanley those properties used in the business operations of the affected divisions—the Land and Improvements—pursuant to a written ground lease—the Lease. The Lease was for a period of twenty years with two five year renewal options. Pursuant to the Lease, Stanley has the option to purchase the Land and Improvements, at any time during the Lease or option periods, for the then current fair market value or a fixed price (the value of the Land and Improvements at the time the Lease was executed).

Mead intends to contribute the Land and Improvements, subject to the Lease, in partial satisfaction of its obligation to

fund the Plan for the plan year commencing January 1, 1981. Contributions to the Plan for 1981 will amount to approximately $28 million. The Land and Improvements will be the subject of an independent appraisal to determine the contribution value. Such appraisal will consider the rental terms as negotiated and the present value of the Land and Improvements at the end of the Lease term.

Concurrently with the contribution to the Plan, Mead and Wachovia Bank and Trust Company N.A. (Wachovia) will execute an agreement (the Inducement Agreement) which would require Mead to repurchae the Land and Improvements under certain conditions. Wachovia, the corporate trustee of the Plan, is subject to direction with respect to Plan investments. However, for purposes of this transaction, the trust agreement between Wachovia and the Plan has been amended to provide Wachovia absolute discretion with respect to decisions regarding enforcement of the terms contained in the Lease and rights under the Inducement Agreement.

Discussion of Comments and Testimony Received at The Public Hearing

Following publication of the proposed exemption, the Department received four comments. Three of the comments opposed the granting of the exemption and one, from a participant of the Plan, questioned the impact of the proposed exemption on his individual retirement benefits. The comments in opposition expressed general concerns that were not specifically related to the merits of the proposed exemption. Before the Department agreed to honor the request for a hearing, specific objections to the transactions were requested. Through counsel the commentators responded and spelled out seven specific issues upon which they objected to the proposed exemption. Based on these issues the Department determined that the requested hearing should be held to evaluate whether the transactions satisfied the criteria for the granting of an administrative exemption.

The commentators pointed out that the notice characterized the several plans participating in the master trust as "the Plan" and suggested that the Department had failed to make the necessary findings with respect to each of the participating plans; rather, had made its findings based on the aggregate of the master trust. The commentators further suggested that section 406(b) of the Act and section 4975(c)(1)(E) and (F) of the Code would be violated where it could not be shown that Plan fiduciaries had considered the "individual best interests" of the several plans participating in the master trust when taking actions affecting the assets of the Plan. The commentators cite as support for their argument that the decision to participate in and the operation of the master trust arrangement constitute violations of section 406(b) of the Act, the opinion of *Cutaiar* v. *Marshall* 590 F. 2d 523 (3d Cir. 1979). The applicant argued that the commentators did not understand the nature of a master trust operating as a pooled investment vehicle. In addition, the applicants suggest a narrower interpretation of the *Cutaiar* decision—namely that in the absence of a statutory or administrative exemption from the prohibited transaction rules, ERISA prohibits a transfer between funds where the trustees are identical but the participants are not.

The commentators suggested that because Wachovia is the trustee of the master trust (such trust represents 3.2 percent of the total assets held in trust by Wachovia) and does limited commercial business with Mead, Wachovia should be disqualified from serving as an independent fiduciary to monitor the terms of the Lease and exercise the Plan's rights, under the Inducement Agreement, for repurchase of the Land and Improvements underlying the Lease. Mead countered by presenting facts demonstrating that while the Plan constitutes 3.2 percent of Wachovia's total trust assets, such figure represents only .6 percent of the gross income earned by the Wachovia Trust Department. Mead also submitted evidence as to the de-minimus nature of its commercial banking relationship with Wachovia.

The commentators further suggested that the notice did not indicate that the Lease schedule of rental payments represented fair market value. The commentators also alleged that below market rental existed based on the language in paragraph 4 of the proposed exemption that should the property be purchased by Stanley in certain years that a premium would be paid which "adjusts for lower rental paid in earlier years." The applicant suggested that the issue of fair market value should be focused on whether the transaction, which is the subject of the exemption request, will enable the Plan to generate a return that constitutes fair market rental value during the period of the Lease and obtain fair market value in the event the Land and Improvements should be sold. The applicants noted that the independent appraiser selected a valuation method that established current fair market value based on the value of the income stream plus the present value of the plan's reversionary interest in the Land and Improvements at the end of the Lease term. It was submitted that this approach is normally used to value property subject to an existing lease encumbrance where the rental income is established by a know schedule. Consequently, the applicant submits that such appraisal would determine the fair market value of the land and Improvements for purposes of the contribution and subsequently the fair market rental value to be received under the existing terms of the Lease.

The commentators argued that participants of the Plan should not be obliged to depend on Mead's continued financial health to be assured of retirement income. The applicant responded that any liability to the Plan is contingent, that Stanley, as lessee, has the primary obligation under the Lease. Only in the event of a default or unleasability of the Land and Improvements after the expiration of the Lease could the Plan's economic status be conditioned on Mead's financial viability.

The commentators further suggested that the application and notice disclosed prior instances of violations of the Act and the Code based on actions taken by the Plan fiduciaries incident to the spin-off of the Interiors Divisions and the resultant transfer of assets and liabilities to the Stanley Plan(s). The applicant respondend by pointing out that both the Act and Code recognize that transfers of assets may occur. These relevant statutory provisions provide that such transfers are permitted only where the benefit levels of participants in the respective plans remain equivalent. The application contained a representation that benefits remained comparable and that the assets transferred were equal to the liability for benefits accrued to the extent accrued benefits were then funded. The applicant further represented that the allocation methods used conform with applicable law, regulations and generally accepted actuarial principles.

In addition, the commentators argued that the Department should not grant the requested relief from section 407 of the Act to exceed the 10 percent limitation, with respect to the acquisition and holding of qualifying employer real property, which could occur should Stanley default under the terms of the Purchase Agreement. Without discussing the merits of this objection, the Department notes that the applicant represents this issue is now moot based on a sale of the subject stock, the

holding of which could have resulted in the excessive holding violation of section 407. The Department has modified the exemption language to reflect this change by deleting that language which provided relief for the contingent violations incidental to the holding of the Stanley stock.

The commentators' final argument suggested that the Plan could experience cash flow problems should it accept the contribution of the Land and Improvements. The applicant countered this allegation by representing that during the plan year 1980 cash receipts totalled $37 million and disbursements were $17 million. Based on cash flow projections for the 1981 Plan year, available cash exceeds cash needs by approximately $18 million. Therefore, since the contribution of the Land and Improvements would be valued at approximately $12 million, no cash flow problem would appear to exist.

The Department has reviewed the entire record and has made a determination that the record supports the applicant's request for an exemption and therefore has decided to grant the exemption subject to the modification from the proposal as discussed above.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the following transactions as described in the Purchase Agreement, the Lease and the Inducement Agreement: (a) The contribution by Mead of the Land and Improvements to the Plan subject to the Lease; (b) the payment of rent by Mead to cure an act of default under the Lease by making rental payments for a period not to exceed one year; and (c) the repurchase of the Land and Improvements by Mead in the event of a default on the Lease by Stanley or where the Plan is unable to lease or sell the Land and Improvements after the expiration of the Lease, provided that the consideration received by the Plan shall be at least fair market value at the time of the transaction.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3112 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2918]

Proposed Exemption for Certain Transactions; Mutual Life Insurance Co. of New York; New York, New York

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt for a period of 4½ years: (1) The proposed allocation and offering of certain interests in equity real estate investments (the Investments) between the general account (General Account) of Mutual Life Insurance Company of New York (MONY) and PA–7, an equity real estate separate account established by MONY, in which employee benefit plans (the Plans) invest; and (2) the transfer of all or a fractional interest in such Investments by the General Account to PA–7. The proposed exemption, if granted, would affect MONY and the participants and beneficiaries of the Plans.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 5, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2918. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section

4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by MONY, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. MONY is a life insurance company which currently has assets of over $8 billion. PA–7, which was established on May 14, 1981, is a pooled separate account with assets primarily invested in the Investments. MONY has requested an exemption to permit the purchase of Investments by the General Account and subsequent transfer of all or a portion of such Investments by the General Account to PA–7. This arrangement would benefit the Plans by enabling PA–7 to have access to Investments during its initial four and one-half years of operation when PA–7 may not have the funds to purchase Investments at the time such Investments are offered on the open market.

2. The purchase of Investments by the General Account and transfer of such Investments by the General Account to PA–7 would operate in the following manner. MONY's Real Estate and Mortgage Investment Department (the Real Estate Department) locates, recommends and obtains suitable Investments for both the General Account and PA–7. The Investment Committee of MONY's Board of Trustees approves Investments appropriate for the General account and PA–7. A majority of the members of the Investment Committee are not employed by MONY. After the Investment Committee has approved an Investment for acquisition by both the General Account and PA–7, the Vice-President of the Real Estate Department will offer all or a fractional interest in the Investment to an independent committee (the Committee—discussed infra) which is authorized to act for PA–7. Upon receipt of an offer (Offer), the Committee may make a counter-offer (Counter-offer) to purchase a different percentage (up to 100%) of an Investment. The Real Estate Department may accept or reject the Counter-offer or make another Counter-offer. If no portion of a particular Investment purchased by the General Account is to be offered to PA–7, the Committee will be furnished with a statement disclosing the reason for such non-offer (Non-offer). MONY will maintain, for a period of six years, a record of each Offer, Counter-offer, and Non-offer. It is noted that PA/7 is not obligated to purchase Investments solely from the General Account and that if PA–7 has the funds available, it will purchase Investments directly from the sellers of such Investments.

3. An Offer will be made to PA–7 approximately two months before the Investment is to be acquired by the General Account and will remain open for a period of not more than one year from the date the Investment is acquired by the General Account.

4. If the Committee accepts an Offer, the Investment will be transferred from the General Account to PA–7 within 30 days of such acceptance. The PA–7 Committee may withdraw its acceptance of an Offer if PA–7 lacks the funds necessary to purchase the Investment at the time of the transfer to PA–7. In this case, the Offer will be held open by the Vice-President of the Real Estate Department for subsequent acceptance by the Committee, provided that such subsequent acceptance occurs not more than one year from the date the General Account purchased the Investment.

5. At the time an Offer is made and immediately prior to any acquisition by PA–7 of an Investment from the General Account, full disclosure of any existing or potential interest in the Investment to be acquired, or previously acquired by the General Account shall be made to the Committee. Such information will disclose the interest, if any, between MONY and the borrowers, sellers, lessors or other investors, if any, in the real property underlying the Investment. In addition, any affiliation between MONY and any person whose opinion or recommendation will be relied upon by the Committee, such as appraisers and architects, must be disclosed to the Committee.

6. The purchase price of an Investment is established in the following manner. Prior to the acquisition of an Investment by the General Account, an appraisal of the underlying real property by a Member of the American Institute of Real Estate Appraisers (MAI) is completed. Another MAI apprisal will be completed at the General Account's expense prior to PA–7's acceptance of an Offer. Such appraisal must not have been completed more than six months prior to the date on which the Committee accepts the Offer. The consideration paid by PA–7 for the Investment conveyed to PA–7 from the General Account will be based upon such appraisal, plus expenses incurred by PA–7 in connection with the acquisition of the property interest, which are routine expenses normally incurred in similar acquisitions of real property.

7. MONY will appoint the members of the Committee, which will act as an independent fiduciary on behalf of the Plans investing in PA–7 in deciding whether to accept an Offer by the General Account. The members of the Committee will be "outside trustees" of MONY Mortgage Investors (MONYMI), a real estate investment trust for which MONY serves as the manager and investment adviser and in which MONY holds approximately 2% of the common stock. An "outside trustee" may not be a director, officer, trustee or employee of MONY or an affiliate of MONY. It is represented that the Committee members will have extensive real estate investment experience and will be independent of any influence by MONY. In this regard, Committee members will be appointed for three year terms and may not be removed by MONY during such term.

8. The only charge payable by PA–7 to MONY in connection with the above-described transactions will be an asset charge to defray MONY's investment and administrative expenses in connection with PA–7. At present, this asset charge is 1% per annum of the average net assets held in PA–7. The applicant represents that it reviewed the asset management charges imposed by other insurance companies and banks in connection with the management of pooled real estate separate accounts and real estate commingled funds, and concluded that its 1% fee was comparable to the fee charged by other asset managers involving real estate pooled funds similar to PA–7.

9. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act due to the following:

(a) The independent Committee will make all decisions relating to the Offers of Investments;

(b) The exemption will be temporary, expiring in four and one-half years;

(c) The purchase price of an Investment to be purchased by PA–7 would be based upon an MAI appraisal;

(d) PA–7 may make a Counter-offer to any Offer by the General Account;

(e) PA–7 is not obligated to purchase investments solely from the General Account;

(f) The exemption will permit PA–7 to purchase Investments which it may otherwise be unable to purchase due to lack of funds, which would benefit the Plans investing in PA–7; and

(g) The exemption would not interfere with PA–7's right to purchase investments on the open market.

Notice to Interested Persons

A copy of the proposed exemption as published in the **Federal Register** will be provided to the appropriate Plan fiduciary of each Plan participating in PA–7 on the date the proposed exemption is published in the **Federal Register.** Each of these fiduciaries will also be informed of his right to comment on or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to: (1) the allocation and offering by MONY of the Investments between the General Account and PA–7; and (2) the transfer of all or a fractional interest in an investment by the General Account to PA–7.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of Janaury, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3105 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2869]

Proposed Exemption for Certain Transactions; Pezrow Companies Profit Sharing Plan, Montvale, New Jersey

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the proposed loan of $700,000 by the Pezrow Companies Profit Sharing Plan (the Plan) to Pezrow Enterprises, Inc. (Pezrow), a party in interest with respect to the Plan; and (2) the guarantee of Pezrow's obligations pursuant to the loan by Ken J. Pezrow Corporation (the Employer), the Plan sponsor. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer, Pezrow, and any other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 19, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D–2869. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in

an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with approximately 284 participants. As of December 31, 1980, the Plan had net assets of $2,119,585. Messrs. William Daily, Robert Kurz and Arthur W. Markowitz are the trustees of the Plan (the Trustees) and have complete authority to make investment decisions for the Plan. Each of the Trustees is a shareholder, director and officer of the Employer.

2. Pezrow, a wholly-owned subsidiary of the Employer, is involved in the food brokerage business. As of December 31, 1980, the Employer and its subsidiaries had an aggregate net worth in excess of $1,000,000.

3. The applicant is requesting an exemption to allow the Plan to loan Pezrow $700,000 (the Loan) representing approximately 34 percent of the Plan's net assets. The proceeds of the Loan will be used by Pezrow to purchase two parcels of improved real property (the Properties) located in Woburn, Massachusetts. The Loan will be amortized over a twenty (20) year term and will bear interest at a floating rate of 80 percent of the prime rate as quoted by the Peapack-Gladstone Bank of Gladstone, New Jersey (the Bank), adjusted quarterly. In no event during the term of the Loan will the interest rate be less than 12 percent.

4. The Loan will be secured by a duly recorded first mortgage on the Properties. The Properties are located at 71–73 Pine Street, Woburn, Massachusetts and consist of 5.7 acres of land improved by two large commercial buildings. Mr. Robert L. Lyon of W. H. Lyon Realtors, Inc., located in Lexington, Massachusetts, determined that, as of August 20, 1981, the Properties had a fair market value of $1,300,000. Throughout the term of the Loan the Employer will insure at its own expense the Properties against fire and other hazards for an amount not less than the initial Loan amount and will execute a loss payee clause providing for payment of the proceeds of such insurance to the Plan. The Employer will guarantee the obligations of Pezrow under the Loan.

5. The applicant has retained the Bank to serve as the fiduciary for the Plan with respect to the Loan. The Bank is completely independent of the Employer and its subsidiaries and does not maintain any commercial or banking relationship with the Employer, its subsidiaries or its principals. The Bank has examined the terms of the proposed Loan and has determined that the Loan is appropriate, suitable, and in the best interests of the Plan. The Bank specifically represents that the Loan's proposed interest rate of 80 percent of prime is appropriate for such mortgage loans. The Bank will monitor the Loan on behalf of the Plan and maintain full authority and power to pursue collection on behalf of the Plan. The Bank will insure that throughout the term of the Loan the Properties will have a value at least 150 percent of the outstanding Loan balance.

6. In summary, the applicant represents that the Loan will satisfy the criteria of section 408(a) of the Act because (a) the Trustees represent that the Loan will be in the best interests of the Plan; (b) the interest rate on the Loan will be determined by the Bank; (c) the Plan will have a duly recorded first mortgage on two insured parcels of improved real property having a value throughout the term of the Loan not less than 150 percent of the outstanding Loan balance; (d) the Bank, a party completely independent of the Employer and its subsidiaries, represents that the Loan is appropriate, suitable, and in the best interests of the Plan; (e) the Bank will monitor the terms and conditions of the Loan; and (f) the Employer will guarantee the obligations of Pezrow under the Loan.

Notice to Interested Persons

Within ten days after its publication in the **Federal Register** a copy of this notice of pendency will be mailed to each participant in the Plan. Such notice will inform all interested persons of their right to comment on or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan soley in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested

exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to (1) the Loan by the Plan to Pezrow as described above provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated party; and (2) the guarantee of Pezrow's obligations under the Loan by the Employer.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3106 Filed 2-4-82; 8:45 am]
BILLING CODE 4510-29-M

[Application No. D-2926]

Proposed Exemption for Certain Transactions; RREEF MidAmerica Fund–II, Chicago, Illinois

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the purchase of a shopping center by RREEF MidAmerica Fund–II (the Fund) from an unrelated party, and the assumption by the Fund of existing leases to Household Finance Corporation (HFC) and its subsidiary, T.G.&Y. Stores Company (TGY), parties in interest with respect to one of the employee benefit plans participating in the Fund. The proposed exemption, if granted, would affect HFC, TGY, the Household Finance Corporation Pooled Investment Trust (the Plan) and other plans that have invested in the Fund.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 19, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 30, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2926. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2), and 407(a) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of RREEF MidAmerica (RMA), the Fund's investment manager, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. HFC is an employer whose employees are covered by the Plan. TGY is a wholly owned subsidary of HFC. The Plan is a qualified pension plan with approximately 24,519 participants. The Plan is one of several plans that invests in the Fund. As of July 1, 1981, the Plan had total assets with an estimated market value of approximately $198,000,000.

2. The Fund is a group trust created on April 1, 1980, that meets the requirements of Rev. Rul. 56–267, 1956–1 C.B. 206. It is designed to afford plans, qualified under section 401(a) of the Code and thereby exempt from Federal taxation under section 501(a) of the Code, the opportunity to diversify their portfolios by investing, through the Fund, in real properties. The Fund is engaged primarily in the business of acquiring, improving, operating and holding for investment income-producing real property (as well as personal or mixed property connected therewith), including commercial, office and industrial property dispersed geographically throughout the United States.

3. The Fund is designed for investment by pension or profit-sharing plans, and the minimum investment in the Fund is $1,050,000. At the present time, fourteen pension and profit-sharing trusts have subscribed to invest in the Fund. The total value of assets of the Fund is currently $84,900,000 of which $1,050,000 was invested by the Plan.

4. The trustees of the Fund are Messrs. Claude N. Rosenberg, Jr., Alander F. Hogland, Paul Sack, Johnson S. Bogart, Richard J. Bertero, Orra C. Hyde, III, Donald A. King, Jr., Wayne R. Harkins and Dean M. Greenwood. Discretion over the investments of the Fund, within the limits of the investment objectives and criteria of the Fund, has been assigned to RMA, a general partnership organized in May, 1979 under the laws of the State of California, primarily for the purpose of managing and operating real estate investment programs such as the Fund. RMA is a registered investment adviser under the Investment Advisers Act of 1940. Its address is 200 East Randolph Drive, Suite 7211, Chicago, Illinois 60601.

5. The general partners of RMA are Messr. Rosenberg, Hogland, Sack, Bogart, Bertero, Hyde, King, Harkins, Greenwood and RREEF partners, a limited partnership, the general partners of which are Messrs. Rosenberg, John D. Leland, Jr. and Joseph A. Mark. Investment decisions with respect to real properties for the Fund are made by an investment committee of RMA which consists of all the general partners of RMA.

6. RMA also acts as investment manager for RREEF MidAmerica Fund–I,

a group trust established in 1979. RMA is affiliated with the RREEF Corporation, RREEF America Partners and RREEF USA Partners, which are registered investment advisers for other real estate funds having investment objectives similar to those of the Fund. The RREEF Corporation acts as the investment manager for four RREEF Funds, RREEF USA Partners act as the investment manager for RREEF USA Fund–I and RREEF America Partners acts as investment manager for RREEF USA Fund–II. In addition to the $1,050,000 that the Plan has invested in the Fund, the Plan has also invested $1,050,000 in each of the following funds: RREEF Fund–II, RREEF Fund–III, RREEF Fund West–IV and RREEF MidAmerica Fund–I. This aggregate Plan invesment of $5,250,000 constitutes only 0.8 percent of the total assets of all RREEF funds valued at $640,800,000. Messrs. Rosenberg, Leland and Mark also are principals and employees of Rosenberg Capital Management, a registered investment adviser which provides investment management services with respect to equity and fixed income securities.

7. None of the individuals mentioned above is an officer, director or employee of HFC or TGY, nor do such individuals hold an equity interest in HFC or TGY. Neither HFC nor TGY, nor any officer, director or employee of those companies has any ownership interest in, or employment capacity with RMA or any entity affiliated with RMA.

8. On June 11, 1981, the Fund entered into an agreement to purchase the Brentwood Commons Shopping Center (the Shopping Center), located in Bensenville, Illinois, from LaSalle National Bank as trustee for Wayne Johnson, the beneficial owner (the Seller). Of the 107,000 square feet in the Shopping Center, approximately 104,500 square feet are currently leased. HFC leases 1,169 square feet, and TGY leases 17,000 square feet. The current lease agreement between the Seller and HFC was entered into on March 3, 1980. The lease was arrived at by the Seller and HFC through arm's-length negotiation. The TGY lease agreement was entered into on September 1, 1960 by Elmhurst National Bank, as Trustee (Seller's predecessor) and City Products Corp. TGY's predecessor). The lease was arrived at through arm's-length negotiation. The TGY lease commenced on April 1, 1962. RMA first became aware of the property through information from PCA Financial, an independent broker. Negotiations for purchase commenced well after the dates on which HFC and City Products Corp. entered into their lease agreements.

9. The subject sales transaction was closed on July 30, 1981. It was necessary for the purchase agreement to be entered into, and for the closing to occur, prior to obtaining the prohibited transaction exemption proposed herein, because of business exigencies and Seller's insistence on an early closing date. The Seller needed liquidity and therfore demanded that the purchase transaction proceed quickly. Because of the desirability of the Shopping Center as an investment, and because of the Fund's own business needs, closing occurred shortly after the purchase agreement was entered into. The purchase price for the Shopping Center was $5,564,000, and at closing the Fund paid the full purchase price in cash. At closing, the Seller assigned all existing leases to the Fund, including the leases to HFC and TGY.

10. The Seller is not affiliated with, in control of, or controlled by HFC, TGY, or RMA, or in any way related to HFC, TGY, or RMA, except as lessor to HFC and TGY and seller of property to the Fund.

11. The investment in the Fund by the Plan constitutes less than 1.3% of the Fund's total assets and less than 0.6% of the total assets of the Plan. The purchase price of the Shopping Center itself represents 6.1% of the Fund's total assets, and within the entire Shopping Center, the two subject leases represent about 17% of the rentable space.

12. The purchase price of the Shopping Center was arrived at by the parties through arm's-length negotiation. Because of its expertise in transactions involving commercial real estate, RMA, consistent with its normal practice, has not sought an appraisal of the property by a third party. Neither the Fund, RMA, nor any of the affiliates of RMA is participating in any commission in connection with this transaction, nor do RMA and its affiliates have any fiduciary obligation to the Seller.

13. The applicant represents that the transactions meet the statutory criteria of section 408(a) of the Act because: (1) RMA believes that the Shopping Center is an excellent investment opportunity for the Fund, particularly at a time when such opportunities are difficult to locate; (2) the terms of the sale were arrived at by RMA and the Seller through arm's-length negotiation; and (3) the terms of the leases with HFC and TGY had been negotiated, long before the purchase of the Shopping Center, by the lessees and parties totally unrelated to, and independent of, HFC, TGY and RMA.

Notice to Interested Persons

Within 10 days of the publication of this notice of proposed exemption in the **Federal Register**, RMA will send by mail a copy of this notice to the appropriate fiduciary of each plan or trust that has subscribed to invest in the Fund. The notification will also include a statement advising interested persons of their right to comment and request a hearing.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for

a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, effective July 30, 1981, the restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale of the Shopping Center by the Seller to the Fund, the lease of a portion of the Shopping Center to HFC, which began on March 3, 1980, and the lease of another portion of the Shopping Center to TGY, which began on April 1, 1962, provided the sale and lease terms are no less favorable to the Fund than those available in arm's-length transactions with unrelated parties.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3103 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-2536]

Proposed Exemption for Certain Transactions; Retail Clerks Local 212 Western New York Pension Plan, Buffalo, New York

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed temporary exemption would exempt, effective May 23, 1980, the decision by those trustees of the Retail Clerks Local 212 Western New York Pension Plan (the Plan) who represent Local 212, United Food and Commercial Workers Union (the Union) to retain the Union for a period of five years to provide certain administrative services to the Plan. The proposed exemption, if granted, would affect the Plan trustees (Trustees), participants and beneficiaries and the Union.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 22, 1982.

EFFECTIVE DATE: The effective date of the exemption, if granted, would be May 23, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. L–2536. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523–8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in an application filed by the Trustees on behalf of the Plan, pursuant to section 408(a) of the Act and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan, which has 678 participants, is a collectively bargained multi-employer pension plan established under section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. The Plan is administered by a joint board of Trustees having equal representation by Union and contributing employer representatives.

2. Since the adoption of the Plan on May 23, 1980, the Union has provided administrative services in the role of Plan Administrator, at no cost to the Plan, with the express understanding between the Trustees and the Union that upon the granting of an exemption, the Plan would reimburse the Union for its direct expenses for past services. It is represented that on the advice of the Plan's legal counsel, no written agreement was entered into between the Plan and the Union to pay the Union's direct expenses because of the prohibited transaction involved. It is further represented that all of the Trustees recognized that the Union, while willing to contribute to the organization and success of the Plan, did not intend to subsidize the operation of the Plan. Therefore, the applicants request an exemption to reimburse the Union for its direct expenses for past services and for future services as such direct expenses are incurred.[1] The provision of services and reimbursement of direct expenses would be controlled by a written agreement (the Agreement) which is terminable at will at the Plan's discretion.

3. The Union's duties as Plan Administrator under the Agreement include the maintenance of necessary books and records concerning contributions, eligibility, pension credits and benefit claims. The Trustees supervise the performance of the Union's duties. The Trustees represent that the Union's duties as Plan Administrator are administrative and involve no exercise of discretion.

4. The expenses for which the Union would be reimbursed would include the sums actually expended for the salaries of Union personnel, state and local taxes in connection with the salaries, and equipment and supplies necessary to the provision of administrative services to the Plan. the Union's estimated annual cost of providing the above-described goods and services to the Plan is $2,000. The Union would not be reimbursed for any indirect expenses. Furthermore, the Trustees would not be

[1] No relief is being proposed from section 406(a) of the Act and Section 4975(c)(1) (A) through (D) of the Code because the Department is not proposing an exemption in this notice beyond the relief which is provided by section 408(b)(2) of the Act.

bound to reimburse the Union for any costs that are not reasonable and necessary, as determined by the Trustees in their sole and exclusive discretion.

5. The Trustees state that if the Union is not permitted to perform the above-described services to the Plan on a direct expense only basis, the Trustees would have to retain a third party whose fee would include indirect expenses and a profit and would therefore be substantially more costly to the Plan.

6. In summary, the Trustees represent that the transaction satisfies the statutory criteria of section 408(a) of the Act due to the following:

a. The board of Trustees, composed of equal numbers of employer and Union representatives, has determined that the retention of the Union to provide administrative services is in the best interests of the Plan and its participants and beneficiaries;

b. The Union would be reimbursed solely for direct expenses and would receive no profit for its provision of services;

c. The Trustees have monitored and would continue to monitor the Agreement and the Plan's reimbursement of the Union's direct expenses;

d. The Trustees state that the Plan has saved and would continue to save a substantial amount of money by retaining the Union as opposed to a third party;

e. The Trustees represent that the services performed by the Union are administrative and not discretionary; and

f. The exemption would be temporary, expiring after a five year period, at which time the applicants may apply to the Department for an extension of the exemption.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties including the participants and beneficiaries of the Plan within 15 days of the date of its publication in the **Federal Register**. Notice will be given to all participants by posting it at all Union meeting places. Notice will be given to all beneficiaries by first class mail. The notice will contain a copy of the proposed exemption and will inform each person of his right to comment on or request a hearing regarding the proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(a), 406 (b)(1) and (b)(3) of the Act.

(3) Before an exemption may be granted under section 408(a) of the Act the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(b)(2) of the Act shall not apply, effective May 23, 1980, for a five year period, to the decision by the Union Trustees to retain the Union to provide administrative services to the Plan for a five year period as above-described.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction that is the subject of the exemption.

Signed at Washington, D.C., this 30th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3099 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–36; Exemption Application No. D–2885]

Exemption From the Prohibitions for Certain Transactions; Rex Companies Employees' Profit Sharing Plan and Trust, Lansdale, Pennsylvania

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts a loan by the Rex Companies Employees' Profit Sharing Plan and Trust (the Plan) of $150,000 to Rexmet Corporation (the Employer), a party in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 11, 1981, notice was published in the **Federal Register** (46 FR 60689) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed on behalf of the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for

a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the loan of $150,000 by the Plan to the Employer, provided the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time of consummation of the transaction.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3114 Filed 24-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2845]

Proposed Exemption for a Certain Transaction; Riverside Manufacturing Co. Profit-Sharing Plan, Atlanta, Georgia

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of stock by the Riverside Manufacturing Company Profit-Sharing Plan (the Plan) to the Citizens & Southern Holding Company (C&S Holding), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect C&S Holding, the Citizens and Southern National Bank (C&S National), and particpants and beneficiaries of the Plan.

DATE: Written comments and request for a public hearing must be received by the Department of Labor on or before April 2, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective November 10, 1980.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2845. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of C&S National and Citizens and Southern Georgia Corporation (C&S Georgia), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan with approximately 1,150 participants. C&S National is the Plan's trustee. As of October 31, 1980, the total value of the Plan's assets was $3,592,729.97.

2. C&S National is a national banking association organized and existing under the laws of the United States. C&S Georgia is a bank holding company organized and existing under the laws of the State of Georgia. Prior to December 31, 1980, and at the time of the subject transaction, the predecessor in interest of C&S Georgia was C&S holding, a wholly-owned subsidiary of C&S National. As a result of a plan of reorganization (the Reorganization) approved at the annual meeting of C&S National on December 18, 1980, C&S Georgia was created, C&S National became a wholly-owned subsidiary of C&S Georgia, and C&S Holding merged with C&S Georgia.

3. The Citizens and Southern Bank of Albany (C&S Albany) is a state bank chartered under the laws of the State of Georgia, which before the Reorganization was a subsidiary of C&S Holding and after the Reorganization was and continues to be a subsidiary of C&S Georgia. In October 1980, C&S Holding transmitted to all shareholders of C&S Albany common stock an offer (the Offer) to purchase all outstanding common stock of C&S Albany at a price of $108.09 per share. At the time of the Offer, the Plan owned 400 shares of common stock of C&S Albany.

At the time of the Offer, C&S Holding owned 83.9 percent of the outstanding common stock of C&S Albany, and C&S Holding was seeking to purchase 32,264 shares of C&S Albany common stock. There was no active trading market for the shares of C&S Albany, and the most recent sale of C&S Albany common stock prior to the Offer was on December 13, 1979, at which time C&S Holding purchased 400 shares for $103 per share.

5. Cash dividends declared per share of C&S Albany common stock were $.56 per share per quarter during 1978, $.65 per share per quarter during 1979, and $.65 per share for each of the first three quarters of 1980. The Offer indicated that shareholders who did not sell their shares of C&S Albany pursuant to the Offer would be entitled to participate in a proposed special cash dividend of $24 per share, but only if such a dividend were approved by the C&S Albany Board of Directors in November, 1980. The Offer indicated that if the special cash dividend were paid, it was expected that the cash dividend would have a significant negative effect on the price paid by C&S Holding for any shares of C&S Albany in the foreseeable future, if C&S Holding should elect to buy any additional shares of C&S Albany in privately negotiated transactions or otherwise.

6. In October, 1980, C&S National, as trustee for the Plan, received the Offer. Following an analysis of the Offer, the Investment Research Division of the C&S National Trust Department advised that all accounts holding C&S Albany common stock should tender pursuant to the Offer. On November 7, 1980, the C&S National officer responsible for the administration of the Plan and the Administrator of the Plan (the Secretary of the Riverside Manufacturing Company) agreed to accept the Offer. On November 10, 1980, the Plan's trustee tendered 400 shares of C&S Albany common stock pursuant to the Offer, and on November 26, 1980, the Plan received $43,236 in cash for the shares so tendered. This amount represented approximately 1.2 percent of the Plan's assets at that time.

7. Out of 115 shareholders who received the Offer, C&S National was one of 87 shareholders who accepted the Offer. The shares tendered by C&S National as trustee for the Plan represented approximately 1.2% of the shares sought by C&S Holding and 1.5% of the shares actually tendered. Out of 87 shareholders who tendered their stock, 12 were related to the C&S group in some capacity and 75 were not. Shareholders not related to C&S tendered 23,163 shares. They received $108.09 per share tendered, for a total of $2,503,688.67. Shareholders related to C&S in some capacity tendered 4,000 shares. They received $108.09 per share tendered, for a total of $432,360.

8. The applicants represent that before the sale, the Plan had an asset that yielded no more than 2% or 3% in dividend income and that could be sold only with difficulty, if at all. After the sale, the Plan had $43,236 in cash that could be used to pay benefits under the Plan or re-invested in a higher-yield, more marketable asset.

9. In summary, the applicants represent that the subject transaction meets the statutory criteria of section 408(a) of the Act because: (1) The sale was a one-time transaction for cash; (2) all holders of C&S Albany stock who accepted the Offer were treated equally regardless of their relationship to the C&S group; (3) the Plan was able to receive cash in exchange for a low-yield asset with limited marketability; (4) shareholders unrelated to the C&S group tendered 23,163 shares while the Plan tendered 400 shares, and all shareholders received the same consideration for each of their shares; and (5) the Plan's trustee determined that the transaction was appropriate for the Plan and in the best interests of its participants and beneficiaries.

Notice to Interested Persons

Within 21 days from the publication of this proposed exemption in the **Federal Register**, the applicants represent that they will notify all persons who were Plan participants on November 10, 1980, all persons who are currently participants in the Plan, and all persons who are retired participants or beneficiaries receiving periodic distributions from the Plan. Notification will be given to active Plan participants by posting notice of the proposed exemption on the personnel bulletin boards at all locations of the Riverside Manufacturing Company for at least 30 days, and by mailing the notice to all retired participants and beneficiaries. The notice will include a copy of this notice as published in the **Federal Register** and a statement informing interested persons of their right to comment and request a hearing.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the November 10, 1980 sale by the Plan of 400 shares of C&S Albany stock to C&S Holding, for $43,236 in cash, provided such amount was not less than the fair market value of such stock at the time of the sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction which is the subject of this proposed exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3107 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–34; Exemption Application No. D–2632]

Exemption From the Prohibitions for Certain Transactions Involving Spreitzer, Inc. Profit Sharing Trust Located in Cedar Rapids, Iowa

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits for a period of five years the proposed loans of funds (the Loans) by the Spreitzer, Inc. Profit Sharing Trust (the Plan) to Spreitzer, Inc. (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, (202) 523–7352. (This in not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 11, 1981, notice was published in the **Federal Register** (46 FR 60681) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the proposed Loans by the Plan to the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was provided to interested persons in accordance with the requirements set for the in the notice of proposed exemption. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the

entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the Loans of money by the Plan to the Employer as described in the notice of proposed exemption, provided that the terms of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor

[FR Doc. 82-3116 Filed 2-3-82: 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-29; Exemption Application No. D-2657]

Exemption From the Prohibitions for a Certain Transaction Involving the Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada and the Los Angeles Sheet Metal Workers Joint Apprenticeship Committee, Local 108 Located in Los Angeles, California

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the loan of $2,200,000 by the Sheet Metal Workers Pension Plan of Southern California, Arizona and Nevada (the Pension Plan) to the Los Angeles Sheet Metal Workers Joint Apprenticeship Committee, Local 108 (the Apprenticeship Committee).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216. (202) 523-7462. (this is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 20, 1981, notice was published in the **Federal Register** (46 FR 57170) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) for an application filed on behalf of the Pension Plan and the Apprenticeship Committee. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was provided to interested persons in accordance with the requirements set forth in the notice of pendency.

Two comments and two requests for a hearing were received by the Department.

The two comments were general in nature and indicated that the writers did not believe that the loan transaction was in the interests of the Pension Plan. The applicant responded to these two comments by noting that the interest rate being charged by the Pension Plan to the Apprenticeship Committee of 16.75 percent, or the rate in effect at the time the loan is made, provides a good return which is a prime way to guarantee the stability of the Pension Plan.

One request for a hearing failed to specify the reasons for the request and did not state any particular objections to the notice of pendency.

The second hearing request was very specific and stated the writer's concern about the security of the loan. A hearing was not scheduled because when the writer was contacted, he informed the Department that he would be unable to attend a hearing in Washington, D.C.

In response to this writer's comments about the security of the loan, the applicant noted the following:

(1) The independent appraisal established that the property to be used as collateral for the loan has a fair market value of $3,400,000 which provides a loan to value ratio of less than 65 percent of the amount of the loan;

(2) The independent appraisal stated that property values in the area where the property is situated have increased dramatically over the past two years due to the scarcity of available land and the demand for office space in the area, thus indicating that the property will appreciate in value;

(3) The Apprenticeship Committee currently has reserves of over $800,000 and its income has been an average of approximately $30,000 more than its expenses over the 12 month period ending June 1981;

(4) The Apprenticeship Committee's rental income will begin at the rate of $10,000 per month, which will supplement its current income of $42,000 to $45,000 per month;

(5) The Apprenticeship Committee's income should be more than aequate to meet all of its obligations, but should a downturn occur, the collective bargaining parties would increase the current 10¢ per hour contribution rate; and

(6) The property which is to be used as collateral for the loan is a commercial building and not limited to use as an apprentice training facility.

After reviewing the comments received and the applicant's response, the Department has concluded that the transaction should be granted as proposed in the notice of pendency.

The notice of pendency was issued and the exemption is being granted soley by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in

accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Internal Revenue Code of 1954 that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(a) and 406(b)(1) and (b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinatfons:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Pension Plan and of the Apprenticeship Committee and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Pension Plan and the Apprenticeship Committee.

Accordingly the restrictions of section 406(b)(2) of the Act shall not apply to the loan of $2,200,000 by the Pension Plan to the Apprenticeship Committee, provided that the terms of the loan are those obtainable in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3121 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2462]

Proposed Exemption for Certain Transactions; Tech Plastics, Inc. Employees' Profit Sharing Plan, Arizona

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt: (1) The proposed exchange (the Exchange) by the Tech Plastics, Inc. Employees' Profit Sharing Plan (the Plan) of 24,160 shares of the common stock (the Stock) of Tech Plastics, Inc. (the Employer), the sponsor of the Plan for certain real property (the Property) owned by Steve Uhlmann (Uhlmann), a party in interest with respect to the Plan; (2) The subsequent proposed leasing of the Property by the Plan to the Employer; and (3) the guarantee by the Employer against any loss by the Plan in the event the Property is sold by the Plan. The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 15, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2462. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Richard Small of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan which as of June 30, 1980 had 122 participants and assets of $441,152. Such assets included 29,445 shares of the common stock of the Employer which represented approximately 94% of the assets of the Plan as of June 30, 1980. The dates, number of shares purchased and the prices paid by the Plan for the common stock of the Employer are as follows: 6/30/75—10,771 shares at $3.85 per share; 6/30/76—9,545 shares at $6.59 per share; 6/30/77—5,939 shares at $8.41 per share; 6/30/79—3,190 shares at $12.53 per share. Uhlmann is the trustee of the Plan. Uhlmann is the principal shareholder and president of the Employer. The Employer manufactures various plastic assembleges used in the construction of medical, cosmetic and electronic products.

2. The Employer is requesting an exemption for transactions that will: (1) Permit the Exchange in which the Plan will exchange the Stock which it owns for the Property which will be owned by the Employer; and (2) allow the Plan subsequent to the Exchange to lease the Property to the Employer. The Stock was appraised on August 11, 1981 by Robert C. Smith (Smith), an independent appraiser of securities located in Phoenix, Arizona. Smith represents that as of August 11, 1981 the Stock had a value of $19.04 per share. The Property consists of land and a building located at 1415 S. McClintock Dr., Tempe, Arizona. The Property was appraised on July 9, 1981 by an independent appraiser, David N. Peterson (Peterson), SREA of the Real Estate Science

Corporation located in Phoenix, Arizona. Peterson represents that as on July 9, 1981 the Property has a fair market value of $600,000. The Property is currently owned by Uhlmann and leased to the Employer.

3. The applicant proposes that the Exchange will take place as follows. Uhlmann will transfer ownership of the Property to the Employer, subject to its outstanding mortgage (the Mortgage), in exchange for the Stock. The Stock, which the Employer will give to Uhlmann in such Exchange, will be obtained by the Employer from the Plan by having the Employer transfer ownership of the Property to the Plan in exchange for the Stock owned by the Plan. The transfer of the Property by the Employer to the Plan will be subject to the Mortgage which is with the First Federal Savings and Loan Association of Phoenix and is currently approximately $140,000. The Plan after receipt of the Property will then lease (the lease) the Property to the Employer. The Lease will be for 10 year period which will cover the term of the Mortgage. The Lease will be triple net Lease with the Employer assuming all responsibilities for maintenance, taxes, insurance, repairs and all other miscellaneous operating expenses. The initial rent will be set by the appraisal performed by Peterson and will be adjusted periodically, so that the rent will be at all times at least equal to the fair market rent. At a minimum, the Lease will be adjusted after the 60th month by a rate which will equal the higher of the average increase in the Consumer Price Index or the local Real Estate Index for commercial rental property. In addition, the Employer will guarantee that the rental payments on the Property will always exceed the obligations of the Mortagage.

4. An independent fiduciary, the First Interstate Bank of Arizona (the Bank) will examine the proposed transactions. Prior to the Plan entering into the transactions, the Bank must certify that the transactions will be in the best interests and protective of the participants and beneficiaries of the Plan and that the terms and conditions are at least as favorable to the Plan as those which they could receive in similar transactions with an unrelated party. The Bank will also have the responsibility for monitoring the Lease, assuring that the rent is always at least equal to the fair market rent and enforcing the terms and conditions of the Lease on behalf of the Plan. In addition, in the event the Bank determines that the continued ownership of the Property by the Plan is not in the best interests of the participants and beneficiaries, the Bank may sell the Property. Should the Property be sold at a price below the price at which the Plan purchased the Property the Employer guarantees that it will reimburse the Plan for such difference.

5. The applicant states that the Stock represents a minority interest in closely-held corporation and that the only available resale market for the Stock is limited to the Employer and family members of Uhlmann. The Plan has never received a dividend distribution on the Stock and the applicant represents that becaue of the Employer's need for industrial equipment, the payment of dividends on the Stock is not a likely event. The applicant further represents that currently there is insufficient liquidity in the Plan to provide benefits to terminating participants. The applicant states that the Exchange and Lease will give the Plan a marketable asset with a cash flow sufficient to meet the liquidity requirements of the Plan.

6. In summary, the applicant represents that the proposed transactions meet the statutory criteria of section 408(a) of the Act as follows: (1) The trustee of the Plan represents that the transactions will be in the best interests of the participants and beneficiaries of the Plan; (2) the transactions will be approved and monitored by an independent fiduciary; (3) the Plan will be able to eliminate the Stock which does not pay a dividend and for which there is no active trading market; and (4) the Plan will receive an asset with a cash flow sufficient to meet the Plan's liquidity requirement.

Notice To Interested Persons

Within ten days of its publication in the **Federal Register**, a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be hand delivered or mailed to all participants and beneficiaries in the Plan.

General Information

The attention of interest persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the

Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) the proposed Exchange of the Stock by the Plan with Uhlmann for the Property provided that the terms and conditions of the Exchange are at least as favorable to the Plan as those which they could receive in a similar transaction with an unrelated party; (2) the proposed leasing of the Property by the Plan to the Employer provided that the terms and conditions of the Lease are at least as favorable to the Plan as those which the Plan could receive in a similar transaction; and (3) the guarantee by the Employer against any loss to the Plan in the event of a sale of the Property by the Plan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3106 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2770]

Proposed Exemption for Certain Transactions; Tip Top, Inc. Profit-Sharing Plan, Marietta, Ga.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the cash sale by the Tip Top, Inc. Profit Sharing Plan (the Plan) to Tip Top, Inc. (the Employer) of an undivided one-half interest held by the Plan in certain unimproved real property. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the trustee, the Employer and other persons participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 19, 1982.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-2770. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer, a closely-held corporation located in Marietta, Georgia, is engaged in the poultry processing business. The Employer corporation was formed in 1958 from a partnership (the Partnership) organized by Messrs. A. L. Burruss and Chester A. Austin (Messrs. Burruss and Austin). The Partnership has remained in existence to hold real estate and certain other assets. Messrs. Burruss and Austin are the principal shareholders of the Employer firm.

2. The Plan is a profit sharing plan with 141 participants. The Plan had net assets of $842,341 for the year ending June 30, 1980. Mr. Austin is the trustee of the Plan. Investment decisions for the Plan are made by the First National Bank of Cobb, located in Cobb County, Georgia and Mr. Austin.

3. Among Plan assets is an undivided one-half interest (the Plan's Interest) in certain undeveloped real property (the Real Property) consisting of 25.2 acres. The Real Property is located in Cobb County, Georgia and is specifically identified as the "White Circle Property." In addition, the Real Property is legally described in part as follows: "Land Lot 247 of the 20th District and 2nd Section; and Land Lot 865 of the 16th District and 2nd Section" of Cobb County, Georgia.

In August 1970, the Partnership acquired by warranty deed an undivided one-half interest (the Partnership's Interest) in the Real Property from Ms. Idabel Vance Hunt. The co-tenant holding the remaining interest, which was subsequently to become the Plan's Interest, was Mr. J. H. Henderson, Jr. (Mr. Henderson). At the time the Partnership acquired its Interest, the Real Property consisted of land totaling 30.3 acres in two specific tracts—25.5 acres in Land Lot 247 and 4.8 acres in Land Lot 865. (A later recalculation of the land in the smaller tract shows it is presently recorded on the plat at 4.7 acres.)

In June 1971, 5 acres of the tract containing the 25.5 acres were sold by the co-tenants to Mr. Stancil O. Wise (Mr. Wise), thereby leaving a balance in Land Lot 247 of 20.5 acres. Included within the 5 acre tract sold to Mr. Wise was a roadway easement for access to the Real Property. The easement is for a perpetual duration and is for the use of the parties holding the Real Property.

In April 1974, the Plan acquired its Interest in the Real Property under the terms of a warranty deed conveyance made by Mr. Henderson. The consideration paid by the Plan was $111,904.[1]

4. The Real Property was appraised initially on September 1, 1977 by Messrs. Robert F. Farrar and James H. Bradford (Messrs. Farrar and Bradford), independent appraisers with the appraisal and realty firm of Farrar Properties, Inc. of Decatur, Georgia. As a result of their study, Messrs. Farrar and Bradford placed the fair market value of

[1] With the exception of the Partnership and Employer, it is represented that none of the parties conveying or holding interests in the Real Property are parties in interest with respect to the Plan.

the Real Property at $260,800 or $10,350 per acre. In an updated appraisal of October 6, 1981, Mr. Farrar indicated he had reinspected the Real Property and then estimated it to be worth $312,500 or $12,400 per acre. Thus, the Plan's undivided one-half Interest in the Real Property is $156,250.

5. The Employer proposes to purchase the undivided one-half Interest at the fair market value price of $156,250. The consideration will be paid in cash at closing. Any fees or expenses incidental to the purchase will be borne entirely by the Employer.

6. In summary, it is represented that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (a) It is a one-time transaction for cash; (b) the sales price of the Plan's Interest in the Real Prperty is based upon an independent appraisal; (c) no expenses or fees incurred in connection with the sale will be paid by the Plan; (d) the sale will allow the Plan to divest itself of a non-income producing asset; and (e) the Plan trustee has determined that the transaction is appropriate for the Plan.

Notice to Interested Persons

Notice of the pending exemption will be given to active and retired participants of the Plan, within ten (10) days of the publication of the notice of pendency in the **Federal Register**. The notice will include a copy of the proposed exemption as published in the **Federal Register** and will inform interested persons of their right to comment on and/or request a hearing with respect to the proposed exemption. Notice will be provided to active participants by posting copies of the notice on bulletin boards located on the Employer's business premises and by distributing copies in active participants' paycheck envelopes. Notice to retired participants will be given by mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the cash sale by the Plan to the Employer of the Plan's Interest in the Real Property located in Cobb County, Georgia, for $156,250 provided this amount is not less than the fair market value at the time of sale.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3109 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2706]

Proposed Exemption for Certain Transactions; W. A. Tayloe Co., Inc. Profit-Sharing Plan, Dallas, Tex.

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt the proposed loans (the Loans) of money for a period of seven years by the W.A. Tayloe Co., Inc. Profit Sharing Plan (the Plan) to The W.A. Tayloe Co., Inc. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer, and other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 22, 1982

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2706. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and

Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine Lewis of the Department, telephone (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the Plan (the Trustees), pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with thirty-four participants and net assets of approximately $496,000 on October 27, 1981. The Employer and sponsor of the Plan is a Texas corporation engaged in the distribution of materials handling equipment. Mr. Philip Eyre and Mr. W. A. Tayloe, both of whom are officers of the Employer, are the Trustees of the Plan. Investment decisions for the Plan are made by the Trustees.

2. The Trustees seek an exemption to allow the Plan to enter into a loan agreement (the Loan Agreement) with the Employer whereby the Plan will periodically lend to the Employer amounts of money (the Loans) up to an aggregate at any point in time of the lesser of $175,000 or 35 percent of Plan assets. The proceeds of the Loans will be used to purchase new cars and trucks (the Vehicles) for use in the Employer's business. No more than 80 percent of the purchase price of the Vehicles will be financed through the Plan. The Loans will be made over a seven-year period, the first day of which will be the date the grant of an exemption is published in the **Federal Register**. All of the Loans will mature and become due and payable on or before the last day of such seven-year period. Each individual Loan will have a maturity of thirty-six months or less, with principal and interest amortized equally in monthly payments. The interest rate for each Loan granted under the Loan Agreement will be set in accordance with the rate that is normally charged in the Dallas, Texas area by lenders making similar loans, but will never be less than the higher of 13 percent per annum or two points avove the existing yield of six-month money market certificates of deposit of $100,000 sold by Texas American Bank of Dallas, Texas. The interest rate on any Loan will be adjusted every six months and will be approved in advance by Arthur Young and Company, the independent fiduciary for the Plan (the Independent Fiduciary). The Trustees represent that the Loans are in the best interests of the Plan and its participants and beneficiaries and that no Loan will be made under the Loan Agreement unless the terms and conditions of the Loan are at least as favorable as those which the Plan could obtain from an unrelated third party.

3. Each Loan made during the seven-year period will be secured by a perfected first lien on the Vehicles, which will be used in the Employer's business. The fair market value of the Vehicles will at all times during the term of the Loan Agreement be not less than 150 percent of the outstanding Loan balances. If at any time the value of the Vehicles falls below this amount, additional collateral will be provided by the Employer. The Employer will warrant to own, throughout the term of the Loan Agreement, all collateral free from any security interests (other than security interests granted to the Plan) or encumbrances. The Vehicles will be fully insured against fire, theft and other hazards, with the Plan named as the beneficiary of the insurance policy. The Employer will pay all costs associated with the maintenance of the Vehicles, including but not limited to paying all taxes, insurance premiums, repairs and storage costs.

4. The Independent Fiduciary will approve, monitor and take any steps necessary to enforce the terms of the Loan Agreement and the terms and conditions of the Loans made pursuant thereto. The Independent Fiduciary has reviewed the needs of the Plan and the transactions as proposed and has concluded that the proposed Loans are in the best interests of the Plan and its participants and beneficiaries. In addition to the duties described above, the Independent Fiduciary will review the collateral quarterly to ensure that the fair market value of the collateral is at all times equal to 150 percent of the outstanding balances of the Loans.

5. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) The Independent Fiduciary will approve the terms and conditions of each Loan made pursuant to the Loan Agreement, monitor the Loans and the value of the collateral and take any steps necessary to enforce the terms and conditions of the Loan Agreement and the Loans made pursuant thereto; (2) the Loans will be secured by a perfected first security interest in insured collateral which will at all times be maintained in an amount equal to 150 percent of the outstanding balances of the Loans; (3) the interest rates on the Loans will not, in any event, be less than the higher of 13 percent per annum or two points above the existing yield of six-month money market certificates of deposit of $100,000 sold by Texas American Bank; (4) each Loan will be for a relatively short duration, not to exceed thirty-six months; and (5) the Trustees and the Independent Fiduciary represent that the Loans are in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Within ten days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising participants and beneficiaries of the Plan of their right to comment or request a hearing will be hand delivered or mailed to all participants and beneficiaries of the Plan.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of

the Act; nor does it affect the requirement of section 401(a) Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based, on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and 406 (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed loans of money under the Loan Agreement by the Plan to the Employer for a period of seven years from the date the grant of an exemption is published in the **Federal Register** provided that the terms and conditions of each Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 30th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3096 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2736]

Proposed Exemption for Certain Transactions; Retirement Plans of the Westinghouse Electric Corp. and Its Affiliates, Pittsburgh, Pennsylvania

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would provide (a) general relief for various transactions involving the assets of a real estate advisory account (the W Account) managed by The Equitable Life Assurance Society of the United States (Equitable) for the retirement plans (the Plans) of the Westinghouse Electric Corporation (Westinghouse) and its affiliates, and (b) specific relief regarding (i) the furnishing by Westinghouse or its affiliates of goods and services with respect to real property investments of the W Account, and (ii) transactions involving places of public accommodation which are acquired for the W Account. The proposed exemption, if granted, would affect Equitable, Westinghouse and its affiliates, the participants, beneficiaries, and trustees of the Plans, and other persons involved in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 26, 1982.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective on August 26, 1981.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–2736. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523–8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption: (a) From the restrictions of section 406(a)(1)(A) through (D) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, for the general section of the exemption mentioned above; and (b) from the restrictions of sections 406(a)(1)(A) through (D) and 406(b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, for the two specific sections of the exemption. The proposed exemption was requested in an application filed on behalf of Equitable, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. *Westinghouse.* Westinghouse is a large, broadly based industrial company with subsidiaries and affiliates located throughout the world. Westinghouse and its subsidaries also participate in many joint venture and partnership operations with otherwise unaffiliated third parties. Employees of Westinghouse and its affiliates are members of more than 30 national, international and independent unions, and more than 150 local unions located in the United States. Westinghouse is a major supplier of electrical systems, including lighting, heating, air conditioning, elevators, etc., which are used in the construction and operation of commercial buildings. Westinghouse is also involved in numerous other diverse lines of business, such as the manufacture of office furniture and soft drink bottling and distribution.

2. *The Plans.* The names of the Plans, whose assets will be held in the W Account, are:

Westinghouse Consolidated Pension Plan (WCPP)
Thermo King Union Pension Plan
Westinghouse Pension Plan for Operations in Puerto Rico
Westinghouse Hanford Company Retirement Plan
Westinghouse Hanford Company Pension Plan
Retirement Plan for Salaried Employees of Offshore Power Systems

The Plans covered approximately 165,000 participants as of December 31, 1980. In general, all employees of Westinghouse and certain designated affiliates of Westinghouse are eligible to participate in the WCPP or the Westinghouse Pension Plan for Operations in Puerto Rico. Only employees who are members of a union which has bargained to participate in a Taft-Hartley plan are excluded. Some employees participating in the WCPP and employees participating in the Thermo King Union Pension Plan and the Westinghouse Hanford Company Retirement Plan are covered by collective bargaining agreements with unions. However, the unions that are parties to these collective bargaining agreements have no authority, responsibility, or control over the investment of Plan assets and are not involved in the management or operation of the Plans.

3. *The Master Trust.* Most of the assets of the Plans are currently held on a commingled basis in a master trust maintained by Mellon Bank, N.A. At December 31, 1980, the master trust had total assets exceeding $2 billion. More than 95 percent of the assets of the master trust are attributable to WCPP. As of July 17, 1981, 60 percent of the total assets of the master trust were managed by 10 different investment managers who are unrelated to Westinghouse: Andercom Advisors Corp.; Citibank, N.A.; First National Bank of Chicago; Manufacturers Hanover Trust Co.; Mellon Bank, N.A.; Merrill Lynch, Hubbard, Inc.; Provident Capital Management; Putnam Advisory Co., Inc.; Stralem & Co., Inc.; and Wells Fargo Investment Advisors. The remaining 40 percent of the assets of the master trust are managed by an investment management subsidiary of Westinghouse (Westinghouse Pension Investments Corporation). The Westinghouse Pension Plan Administration Committee (PPAC) is responsible for the retention, oversight, and removal of all Plan asset managers, including Equitable with respect to the W Account. The PPAC is composed of seven members, each of whom is either an officer or employee of Westinghouse, appointed by the Westinghouse Board of Directors. Part of the assets of the master trust is currently invested in real estate-related investments. As of March 31, 1981, the master trust had an investment in the First National Bank of Chicago's Commingled Fund F, a real estate equity fund, of more than $40 million and direct investments in mortgages and equity interests in real property of more than $75 million.

4. *Other Plan Assets.* Apart from the master trust, as of May 31, 1981, WCPP had an additional $160.5 million held under two group annuity contracts issued by Equitable to Mellon Bank as trustee for WCPP. Under one of these contracts (AC 500), $4.6 million is invested in Equitable's general account. Under the other contract (AC 3438), $6.2 million is invested in Equitable's short-term pooled separate account (Separate Account No. 2), $37.8 million is invested in Equitable's direct placement pooled separate account (Separate Account No. 6), and $111.9 million is invested in Equitable's real estate pooled separate account (Separate Account No. 8).

5. *Equitable.* Equitable is a mutual life insurance company organized under the laws of the State of New York and subject to supervision and examination by the Superintendent of Insurance of that State. It is the third largest insurance company in the United States. Among the range of insurance products and services it offers, Equitable provides funding, asset management, and other services for several thousand employee benefit plans. Equitable maintains several pooled separate accounts in which pension plans participate. Equitable also has several single customer separate accounts and direct investment advisory arrangements pursuant to which it manages all or a portion of the assets of a number of large plans. Equitable has had substantial experience in real estate investments. Of the more than $34.6 billion in total assets held by Equitable at December 31, 1980, the general account held $10.6 billion in mortgage loans on real property and $1.7 billion in equity investments in real property. Additionally, more than $1.2 billion in real property investments are held in Equitable Separate Account No. 8. Equitable has established financial standards and procedures designed to ensure that it is making sound real estate investments at an appropriate rate of return. These standards and procedures involve, among other things, inspections and appraisals of the property proposed for investment, an analysis of the creditworthiness of the major tenants or borrowers, and an evaluation of a broad range of other considerations involving the size, location, and use of the property, financing terms and conditions, taxes, insurance, title requirements, and general compliance with environmental and zoning laws. Uniform investment standards and procedures are applied for all real property investments made by Equitable, including those allocated to Equitable's general account, Separate Account No. 8, and the W Account. These standards and procedures may be modified from time to time to take into consideration new developments in the real estate market.

6. *Relationship of Equitable to Westinghouse.* No officers, directors, or employees of Equitable are directors of Westinghouse or any of its subsidiaries and affiliates. No members of the Westinghouse PPAC are officers, directors, or employees of Equitable. Equitable holds no stock or debt obligations (including publicly-traded bonds, private-placement debt obligations, and commercial paper) of Westinghouse or its subsidiaries and affiliates, except as follows:

(a) Equitable holds title to 54.000 shares of Westinghouse common stock in Separate Account No. 100 (B Portfolio). The total value of the stock equals approximately 1.56 percent of the total asset value of the B Portfolio. Separate Account No. 100 is the equity account for the retirement program of the American Bar Retirement Association. It is divided into two Parts—the A Portfolio and the B Portfolio. The A Portfolio is managed by Equitable. The B Portfolio is managed by Capital Guardian Trust Company (Capital). Equitable holds title to the stock in the B Portfolio, but has no

investment management authority over any of the assets of the B Portfolio, except to assure that such assets are invested in eligible investments for separate accounts under the insurance laws of the State of New York. Equitable and Capital are not commonly owned or managed.

(b) Equitable's general account held a $1,725,000 private-placement debt obligation issued by Westinghouse. The interest rate was 3.5 percent and the obligation matured in December, 1981. This obligation equaled less than .01 percent of the value of the assets of the general account as of September 30, 1981.

(c) Equitable's general account holds $9,375,000 senior notes and $3,125,000 subordinated notes under a private-placement arrangement with Westinghouse Credit Corporation, a subsidiary of Westinghouse. The interest rate is 9.5 percent for the senior notes and 9.9 percent for the subordinated notes. Both obligations are due in December, 1998. The total amount of the obligations equals approximately .05 percent of the value of the assets of the general account as of September 30, 1981.

In summary, the total value of the Westinghouse stock and private-placement debt obligations held by Equitable is less than .05 percent of Equitable's total assets.

7. *The W Account.* Effective May 1, 1981, Equitable and Westinghouse agreed to establish the W Account to invest a portion of the assets of the Plans in a diversified portfolio of equity and debt interests in income-producing real property. The W Account will be a part of the master trust mentioned in paragraph 3, above. Investments will be made by Equitable for the W Account in equity interests in real properties, in interests in joint ventures and partnerships that own properties, and in mortgage and construction loans on real properties. The W Account is designed to invest in, or make permanent mortgage or construction loans secured by various types of commercial real estate, including office buildings, warehouses, industrial properties, research and development facilities, shopping centers, hotels and motels, etc. It is not expected that the W Account will be investing in, or making loans with respect to, any residential-type properties. Equitable will have full and exclusive discretionary authority with respect to the investment of all assets held in the W Account. Investment decisions for the W Account are made by Equitable's home office real estate investment department with assistance from Equitable's real estate field office personnel. All real estate investments are approved by the Investment Committee of Equitable's Board of Directors or are made upon delegated authority from such committee. Day-to-day property management decisions, however, including the leasing of space in properties owned or managed by Equitable, are made by local Equitable real estate field office personnel or by local independent property management firms retained by Equitable and acting under the supervision of Equitable's local field office staff. Neither Westinghouse nor any of its officers, directors, employees, or affiliates have any authority or responsibility with respect to making investment decisions on day-to-day property management decisions for W Account assest.

8. *Plan Assests Acquired for the W Account.* As of October 5, 1981, only one property had actually been acquired for the W Account. Closing for this acquisition took place on August 26, 1981. It is anticipated that another property will be acquired for the W Account before the end of 1981. It is contemplated that the account will ultimately have approximately $225 million in real estate investments. Funds placed in the W Account are expected to come from existing Plan assets and from new contributions made by Westinghouse and its affiliates maintaining the Plans. All contributions to the W Account will be made in cash. Equitable's fee in connection with the W Account will be paid directly by Westinghouse.

9. *The General Transactions.* By the very nature of the investment policies and objectives of the W Account, it is expected that Equitable, on behalf of the W Account, will customarily enter into the following types of transactions: purchases and sales of property; lending and borrowing of money or other extensions of credit in the form of mortage or construction loans; leases of space inproperties owned on behalf of the W Account; the management, development, and operation of property;[1] and the purchase of goods and services. The applicant represents that the other parties to these transactions could be almost anybody, including some of the many parties in interest mentioned in paragraph 10, below. In addition, because many real estate investments currently are customarily structured as joint ventures or partnerships, it is probable that from time to time the W Account may acquire interests in real estate joint ventures and partnerships. In such cases, the other party in the joint venture or partnership may be a real estate developer, property manager, or other professional asset manager who may also be a party in interest with respect to one of the Plans. Thus, certain transactions involving the ownership and management of such joint ventures or partnerships might be deemed to result in prohibited transactions, including, among others, the provision of additional capital to a joint venture or partnership by the W Account or the other partner, the lending of money or other extension of credit to a joint venture or partnership or to a partner, and the buy-out of an interest in a joint venture or partnership. It is conceivable that other types of customary real estate-related transactions may exist currently or may be developed in the future. The applicant therefore seeks broad, general relief, rather than relief relating to a specific list of transactions, so that the W Account may engage in other types of real estate-related transactions as necessary or appropriate.

10. *The Specific Transactions.* Inasmuch as Westinghouse and its affiliates are major suppliers of various types of electrical equipment, office furniture, and soft drink beverages and because Westinghouse ordinarily provides services in connection with the provision or maintenance of the products that it sells, it is possible that Westinghouse and its affiliates will be among the parties in interest who provide goods and services with respect to W Account properties. The applicant represents that the amount involved in the furnishing by Westinghouse and its affiliates of such goods and services in any calendar year will not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the W Account.[2] Finally, in the regular operation of hotels and motels that may be purchased for the W Account, many people, including parties in interest with respect to the Plans, may receive the use of rooms, services, food, etc. Such hotels and motels will typically be managed by hotel management companies who probably would not be aware of the relationships of the hotel and motel

[1] The applicant represents that in most cases the provision of services and incidental goods in connection with the management and operation of properties held in the W Account will be covered by the exemption provided by section 408(b)(2) of the Act. The applicant does not request, and the Department is not proposing, relief beyond that which is provided by section 408(b)(2) of the Act.

[2] This limitation is similar to the limitation contained in section I(b)(2) of Prohibited Transaction Exemption 80-51, which provides an exemption for certain sales of goods to bank collective investment funds and certain leases of property by such funds.

guests to Westinghouse, Equitable, or the Plans. However, the applicant represents that such hotel and motel facilities will be made available to parties in interest on a basis comparable to that on which they are provided to the general public.[3]

11. *Parties in Interest Covered by the General Relief Requested.* The general relief requested covers transactions that customarily occur in connection with investments in commercial real property when the transaction involves persons in certain party in interest categories who would be extremely difficult for Equitable to identify as parties in interest (such as service providers who are not affiliated with Equitable, and employee organizations covering participants in the Plans. The applicant represents that such transactions would be required to be on arm's-length terms and could not involve Equitable, Westinghouse, or generally any person who has discretionary authority, responsibility, or control over the Plan assets involved in the transaction. It is further represented that due to the size of both the Plans and Westinghouse, as well as Westinghouse's widely diversified business operations, there are thousands of parties in interest with respect to the Plans, most of whom have absolutely no ability to influence the investment of Plan assets. For example, the Plans have many service providers (which, in turn, have many persons and entities related to them who are also parties in interest) who are not related to Equitable or Westinghouse; Plan participants and beneficiaries are covered by more than 100 unions, none of which are involved in the operation of the Plans; and there are numerous persons or entities who hold more than 10 percent ownership interests in entities in which Westinghouse has a 50 percent or more ownership interest. A list of all these parties in interest would be changing constantly. The applicant represents that keeping track of all of these parties in interest would be an enormously difficult, if not impossible, task that would significantly increase the costs of managing the W Account and that performing a prohibited transaction compliance check for each transaction would be exceedingly burdensome. For example, every time a new property is purchased for the W Account, a party-in-interest check would have to be done not only for the seller, but also for all mortgagees of the property, for any other partners who may have an interest in the property, and for all lessees of space in the building. For hotel and motel properties, evey overnight guest and every dinner guest would have to be checked for party-in-interest status.

12. *Parties in Interest Excluded From the General Relief Requested.* Parties in interest who would not be covered by the general relief requested are those in positions enabling them to influence the investment or disposition of assets held in the W Account, such as Equitable and various persons related thereto. Further, even though Westinghouse has no authority or responsibility with respect to W Account investments or other W Account transactions, Westinghouse and any of its affiliates would not be covered by the general relief requested because of the potential influence Westinghouse has as an employer with respect to the Plans. Moreover, as a catch-all, the general relief also would not apply to any Plan fiduciary involved in the management or disposition of the Plan assets held in the W Account, including, for example, the members of the PPAC and the Westinghouse Board of Directors (mentioned in paragraph 3, above).

13. *Records.* In the ordinary course of its management of the W Account, Equitable will be maintaining records of each transaction entered into on behalf of the W Account. Equitable will maintain these records for a period of six years and will make them available for examination by the Department, the Internal Revenue Service (the Service), participating employees and employers, Plan beneficiaries, Plan fiduciaries who have the authority to acquire or dispose of Plan assets in the W Account, and the authorized representatives of all such persons. The applicant represents, however, that it will not be possible for Equitable to identify which of these transactions may have been prohibited transactions covered by the requested exemption.

14. *Summary of Safeguards.* In summary, the applicant represents that the proposed transactions meet the criteria for an exemption provided by section 408(a) of the Act because: (a) Exclusive discretionary authority to manage the assets acquired for the W Account has been granted to Equitable, which is not related to Westinghouse other than as described herein, is subject to supervision by the Superintendent of Insurance of New York State, has extensive experience in real estate-related investments, and will apply to W Account investments the same financial and investment standards it applies to investments for its own general account and its real estate pooled separate account; (b) the proposed transactions must all be conducted on an arm's-length basis; (c) Equitable will maintain for a period of six years records of each transaction entered into on behalf of the W Account and will make these records available for examination by the Department, the Service, participating employees and employers, Plan beneficiaries, Plan fiduciaries who have the authority to acquire or dispose of Plan assets in the W Account, and the authorized representatives of all such persons; (d) the general relief requested would apply to only those parties in interest who are unable to influence the investment or disposition of W Account assets; (e) the amount of goods and services furnished by Westinghouse and/or any of its affiliates will not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the W Account; (f) the services, facilities, and goods furnished to parties in interest by places of public accommodation acquired for the W Account will be provided on a basis comparable to that on which they are provided to the general public; and (g) as Plan fiduciaries, the members of the PPAC, who decided to retain Equitable to establish and manage the W Account, are required to perform all of their responsibilities, including the hiring of Equitable and other asset managers, prudently and solely in the interests of Plan participants and beneficiaries.

Notice to Interested Persons

Within 15 days after publication of the notice of proposed exemption in the **Federal Register**, notice of the pending exemption will be posted at all Westinghouse locations (in the United States and Puerto Rico). Such notice will also be mailed to the labor unions of which Plan participants are members. Such notice will include a copy of the notice of proposed exemption as it appears in the **Federal Register** and a statement informing interested persons of their right to comment and to request a hearing before the Department within the time period indicated in the notice of proposed exemption. The notice will be posted on bulletin boards where notices to employees are usually posted.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary

[3]This condition is similar to that provided in section II(d) of Prohibited Transaction Exemption 78-19, the class exemption for insurance company pooled separate accounts, and section I(b)(4) of Prohibited Transaction 80-51, the class exemption for bank collective investment funds.

or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted:

(a) *General Exemption*—the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to any transaction arising in connection with the acquisition, ownership, management, development, leasing, or sale of real property (including the acquisition, ownership, or sale of any joint venture or partnership interest in such property) and the borrowing or lending of money in connection therewith, between a party in interest with respect to the Plans and the W Account provided that the following conditions are met:

(1) Such party in interest in not—

(i) Equitable, any person directly or indirectly controlling, controlled by, or under common control with Equitable, any officer, director, or employee of Equitable, or any partnership in which Equitable (on behalf of its general account) is a partner;

(ii) Westinghouse or any affiliate of Westinghouse (within the meaning of section 407(d)(7) of the Act); or

(iii) A person who exercises discretionary authority, responsibility, or control, or who provides investment advice, with respect to the investment of Plan assets in the W Account or with respect to the management or disposition of the Plan assets held in the W Account;

(2) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Equitable, the terms of the transaction are not less favorable to the W Account than the terms gernerally available in arm's-length transactions between unrelated parties;

(3) Equitable maintains for a period of six years from the date of each transaction mentioned above the records necessary to enable the persons described in paragraph (4) of this section to determine whether the conditions of this exemption have been met, except that (i) a prohibited transaction will not be deemed to have occurred if, due to circumstances beyond the control of Equitable, the records are lost or destroyed prior to the end of the six-year period, and (ii) no party in interest shall be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (4) below; and

(4) (i) Except as provided in subparagraph (ii) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (3) of this section are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan who has the authority to acquire or dispose of the interests of the Plan in the W Account or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Plan or any duly authorized employee or representative of that employer,

(D) Any participant or beneficiary of any Plan or any duly authorized employee or representative of such participant or beneficiary;

(ii) None of the persons described in subparagraphs (i)(B) through (i)(D) of this paragraph shall be authorized to examine Equitable's trade secrets or commercial or financial information which is privileged or confidential; and

(b) *Specific Exemptions*—the restrictions of section 406(1)(b) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to:

(1) *Furnishing of Goods and Services.* The furnishing of goods and services with respect to the real property investments of the W Account described in section (a) above by Westinghouse or any affiliate thereof (within the meaning of section 407(d)(7) of the Act), provided that—

(i) The transaction satisfies the requirements of subparagraphs (a) (2), (3), and (4) of this proposed exemption, and

(ii) The total amount involved in the furnishing of such goods and services in any calendar year does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets acquired for the W Account on the most recent valuation date of the W Account prior to the transaction.

(2) *Transactions Involving Places of Public Accommodation.* The furnishing of services, facilities, and any goods incidental to such services and facilities by a place of public accomodation acquired for the W Account, to a party in interest with respect to the Plans if the services, facilities, or incidental

goods are furnished on a comparable basis to the general public and if the requirements of subparagraphs (a) (3) and (4) of this proposed exemption are met.

(c) *Effective Date.* This proposed exemption, if granted will be effective as of August 26, 1981.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions which are the subject of this proposed exemption.

Signed at Washington, D.C., this 30th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3111 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-31; Exemption Application No. D-2652]

Exemption From the Prohibitions for Certain Transactions Involving the C & R Electric, Inc. Employees Retirement Plan Located in Pewaukee, Wisconsin

AGENCY: Office of Pension and Welfare Benefit Program, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption retroactively exempts the purchase on August 17, 1979 by the C & R Electric, Inc. Employees Retirement Plan (the Plan) of a parcel of real property (the Property) from Raymond G. Wachsmuth and his wife, Cheryl F. Wachsmuth (the Wachsmuths), disqualified persons with respect to the Plan. Because the Wachsmuths are the sole shareholders of C & R Electric, Inc., (the Employer) and Raymond G. Wachsmuth is the only participant in the Plan, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

FOR FURTHER INFORMATION CONTACT: Mr. Horace C. Green of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216. (202) 523-8196. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 4, 1981, notice was published in the **Federal Register** (46 FR 59326) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for a transaction described in an application filed by Raymond G. Wachsmuth. The notice set forth a summary of facts and representations contained in the application for exemption and referred interest persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. Because the Wachsmuths are the sole shareholders of the Employer and Raymond G. Wachsmuth is the only participant in the Plan, it was determined that there was no need to distribute the notice of pendency to interested persons. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a disqualified person from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply; not does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 4975(c)(2) of the Code and the procedures set forth in Rev. Proc. 75-26, 1975-1, C.B. 722 and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase by the Plan of the Property from the Wachsmuths, provided that the purchase price paid by the Plan for the Property was not greater than the fair market value of the property at the time of sale.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms that is the subject of the exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3119 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-30; Exemption Application Nos. D-2690 and D-2691]

Exemption From the Prohibitions for Certain Transactions Involving the Fowler, White, Gillen, Boggs, Villareal, and Banker, P.A. Pension and Profit Sharing Plans and Related Trusts Located in Tampa, Florida

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption exempts a loan (the Loan) by the Fowler, White, Gillen, Boggs, Villareal, and Banker, P.A. Pension and Profit Sharing Plans and Related Trusts (the Plans) of the lesser of $850,000 or 25 percent of the Plans' aggregate assets to Fowler, White, Gillen, Boggs, Villareal, and Banker, P.A. (the Employer), a party in interest with respect to the Plans.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, (202) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 11, 1981, notice was published in the **Federal Register** (46 FR 60678) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to all interested persons in compliance with the requirements set forth in the notice of pendency. No public comments and no requests for a hearing were received by the Department.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The intention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Accordingly, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Loan by the Plans to the Employer of the lesser of $850,000 or 25 percent of the aggregate assets of the Plans, provided that the terms and condition of the Loan are at least as favorable to those which the Plans could receive in a similar transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3120 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-32 Exemption Application No. D-2343]

Exemption From the Prohibitions for Certain Transactions Involving the Hub Surgical Co., Inc. Profit Sharing Plan Located in Williamsport, Pennsylvania

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the proposed sale of the improvements on the real property located at 900 Arch Street, Williamsport, Pennsylvania (the Property) by the Hub Surgical Co., Inc. Profit Sharing Plan (the Plan) and the proposed transfer of the Plan's interest as ground tenant of the Property to Messrs. Kenneth E. McNulty, Orvis A. Koser, and Dale Young (the Owners), who are all parties in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, (202) 523-8671. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On November 20, 1981, notice was published in the **Federal Register** (46 FR 57164) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for the above-mentioned transaction. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at

the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice has been furnished to interested persons in compliance with the provisions of the notice of proposed exemption. No requests for a hearing were received by the Department.

The Department received only one comment on the proposed exemption. This comment was submitted by the applicant in order to correct certain representation submitted in the application and related correspondence which were mentioned in the notice of proposed exemption in the Summary of Facts and Representations. The applicant represents, in the comment letter, that: (1) The only improvements to be sold by the Plan to the Owners are those located at 900 Arch Street in Williamsport, Pennsylvania; (2) the land underlying these improvements is the only land leased to the Plan by the Owners; (3) only these improvements are subject to the mortgage described in the notice of proposed exemption (the Mortgage); (4) the proposed sales price of such improvements and the Plan's interest as tenant in the lease of the land underlying such improvements will be $120,000, their fair market value as of February 25, 1981, according to the independent appraisal mentioned in the notice of proposed exemption; (5) as stated in the notice of proposed exemption, the Owners will assume the Plan's obligations under the Mortgage and will apply the outstanding balance thereunder against the sales price; thus, if the sale is consummated on February 28, 1982, the Owners will assume the outstanding principal balance on the Mortgage as of that date, which is expected to be $75,255.80, and will pay the remainder of the sales price, which is expected to be $44,744.20, in cash to the Plan on that date; (6) the property identified in the application and the notice of proposed exemption as 906 Arch Street is a duplex apartment which is actually located at 908 Arch Street; and (7) the Plan owns both the land and the improvements located at 908 Arch Street, leases them to persons who are not parties in interest with respect to the Plan, and will retain its ownership of such property.

The Department has determined that these corrections, which were known to the Plan trustees when they determined that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries, do not materially affect the safeguards provided in the transactions as proposed (see item 8 of the Summary of Facts and Representations in the notice of proposed exemption). Therefore, the Department has decided to grant the exemption as proposed and herein corrected.

The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale by the Plan to the Owners of the improvements on real property located at 900 Arch Street, Williamsport, Pennsylvania, and the transfer to the Owners of the Plan's interest as tenant in the ground lease of such real property for a total consideration of $120,000, provided this amount is not less than the fair market value of such improvements and such leasehold interest at the time of their conveyance.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3118 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–33; Exemption Application No. D–2645]

Exemption From the Prohibitions for Certain Transactions Involving the Littler, Mendelson, Fastiff & Tichy Profit Sharing Plan Located in San Francisco, California

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the proposed loans of funds (the Loans) for a period of three years by the Littler, Mendelson, Fastiff & Ticky Profit Sharing Plan (the Plan) to Littler,

Mendelson, Fastiff & Tichy (the Employer), the sponsor of the Plan.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–7352. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 11, 1981, notice was published in the **Federal Register** (46 FR 60684) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for the proposed Loans by the Plan to the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. The applicant has represented that a copy of the notice was provided to interested persons in accordance with the requirements set forth in the notice of proposed exemption. No public comments and no requests for a hearing were received by the Department. The notice of pendency was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The Attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

Accordingly the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Loans of money by the Plan to the Employer as described in the notice of proposed exemption, provided that the terms of the Loans are at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated party.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3117 Filed 2-3-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3078]

Proposed Exemption for Certain Transactions Involving the McGuire Lumber Co., Inc. Pension Plan Located in Yakima, Washington

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department), of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan (the Loan) by the McGuire Lumber Company, Inc. Pension Plan (the Plan) of $125,000 to McGuire Lumber Company, Inc. (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan, the participants and beneficiaries of the Plan, the Employer and other persons participating in the transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 19, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, Attention: Application No. D–3078. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW, Wahington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Department of Labor, telephone (202) 523–7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Plan trustees, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a defined benefit plan with fourteen participants and net assets totaling $577,877 as of August 31, 1980. The Plan is administered by seven trustees, who are also directors, officers and shareholders of the Employer.

2. The Employer is a corporation chartered under the laws of Washington State. The Employer sells lumber, building materials and related hardware items, primarily on a wholesale basis, to contractors. The Employer also bids on jobs to supply lumber and materials to large commercial projects and developments.

3. The Employer wishes to borrow $125,000 from the Plan. The proposed Loan will enable the Employer to obtain partial financing for the construction of a 3,500 foot addition to a building situated on premises it owns. The addition has a projected construction cost of $150,000. When completed, it will be utilized in the Employer's construction business.

4. Terms of the proposed Loan provide for an interest rate of 15 percent per annum. The Employer is to repay the Loan over a ten year period in equal monthly installments of principal and interest. Other Loan terms provide that on the date of closing, the Employer is to execute, in favor of the Plan, a promissory note evidencing the obligation.

5. To secure the Loan and guarantee performance of the promissory note, the Employer is to give a first mortgage on certain real property (the Property) located at 1822 First Street, Yakima, Washington. The Property consists of four structures—a frame office retail building, a ridge steel storage building, a concrete warehouse and a small tool storage building. The subject Property is currently used by the Employer in its business. The mortgage will be recorded in public records.

6. In an appraisal report of March 21, 1981, Messrs. Lonny L. Smart, a real estate appraiser, and Chester R. Sonnabend, an S.R.A. review appraiser in the Yakima, Washington area, determined the fair market value of the Property was $700,000. Thus, the Property securing the Loan would represent more than five times the Loan's value. The Loan would constitute approximately 22 percent of the Plan's net assets.

7. By letter dated March 5, 1981, First Interstate Bank (First Interstate), located in Seattle, Washington and formerly known as the Pacific National Bank of Washington, represented it would consider a loan to the Employer of $125,000. The loan terms extended by First Interstate would provide for maturation of the loan within 10 to 15 years with a 20 year amortization. Payments would be made monthly. The interest rate for such loan would range between 14¾ percent to 15¼ percent. Because of the Employer's compensating balances and the equity the Employer has in its real property, First Interstate indicated it would consider a loan at the lower side of the interest range.

8. First Interstate has formally expressed its willingness to act as the independent fiduciary of the proposed Loan. In a letter dated December 10, 1981, First Interstate has represented that its Trust Department has had no prior business dealings with the Employer or the Plan but that the commercial side of the bank has had a long-standing business relationship with the Employer, Rahier Trucking Company (Rahier) (the Employer's sister corporation) and the individuals who own and operate both companies. However, no principal in either company has ever been involved in the management or directorship of the bank.

First Interstate also has indicated that its Growth Finance Department has made a loan commitment to the Employer for $1 million but that very little of this line of credit has been used and as of December 10, 1981 no balance is owing. In addition, there are no outstanding loans to Rahier. As of mid-November 1981, First Interstate represents it holds demand deposit account balances of $208,500 for the Employer and $139,900 for Rahier. In addition, Rahier and the Employer held time certificates of deposit of $200,000 and $350,000, respectively. Both certificates matured on December 31, 1981. Rahier also holds a Banker's Acceptance in the amount of $102,000. According to First Interstate, these funds represent a very small proportion of the bank's deposit assets which totaled over $1.3 billion as of December 10, 1981.

As independent fiduciary of the proposed Loan, First Interstate has reviewed the terms of the transaction (including the interest rate and duration of the Loan), the collateral offered, the financial positions of the Employer and sister corporation and the ages and status of the Plan participants. Based on these considerations, First Interstate believes the proposed transaction is an appropriate and suitable investment for the Plan. The bank will monitor the Loan until its termination and will take steps necessary and proper to protect the interests of the Plan.

9. In summary, the application states that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The Loan will be evidenced by a promisory note and secured by a first mortgage on Property valued at more than five times the amount of the Loan; (b) First Interstate will administer the Loan to ensure the Plan is repaid; and (c) First Interstate has reviewed the terms of the transaction and considers it to be appropriate for the Plan and in the best interests of the Plan participants and beneficiaries.

Notice to Interested Persons

Within the days after the notice of pendency is published in the **Federal Register**, notice will be given to all Plan participants and beneficiaries by mail, personal delivery or by posting such notice in Employer locations where participants work and which are customarily used for providing information to employees. The notice will include a copy of the notice of pendency as proposed in the **Federal Register** and shall inform interested persons of their right to comment on and/or request a hearing with respect to the exemption within the time period set forth in the notice of pendency.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) through (E) of the Code shall not apply to the Loan of $125,000 by the Plan to the Employer, provided the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party at the time the transaction is consummated.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 29th day of January, 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3122 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2976]

Proposed Exemption for Certain Transactions Involving the Middlesex Ophthalmologists, Inc. Profit Sharing Trust Located in Cambridge, Massachusetts

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt (1) the proposed loan of $60,000 (the Loan) from Dr. Charles E. Beyer's (Dr. Beyer) directed investment account (the Account) in the Middlesex Ophthalmologists, Inc. Profit Sharing Plan (the Plan) to the 180 Cambridge Street Trust (Cambridge), a party in interest with respect to the Plan; and (2) the guarantee of the obligations of Cambridge pursuant to the Loan by Middlesex Ophthalmologists, Inc. (the Employer), the Plan sponsor. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Account, Cambridge, the Employer and any other persons participating in the proposed transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before March 8, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, Attention: Application No. D–2976. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW, Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan providing for participant directed individual accounts. As of June 30, 1981, the Plan had total assets of $123,654 and

two participants. Dr. Beyer's Account, as of June 30, 1981, had a fair market value of $112,696. Plan participants may direct the trustees of the Plan, Dr. Beyer and Mr. Leslie S. Marcus, counsel to the Employer, to invest the assets of their accounts.

2. The Employer is a professional service corporation engaged in the practice of medical and ophthalmological services. Dr. Beyer is the sole shareholder of the Employer.

3. The applicant is requesting an exemption to allow Dr. Beyer to direct the trustees to engage in the Loan with Cambridge. Cambridge is a party in interest with respect to the Plan under section 3(14)(G) of the Act by virtue of being a trust of which 50% or more of its beneficial interest is owned by Dr. Beyer, a fiduciary of the Plan. The Loan amount of $60,000 will represent approximately fifty-three percent (53%) of the Account's assets. The proceeds of the Loan will be used by Cambridge to purchase for $75,000 an improved parcel of real property known as condominium unit number two located at 180 Cambridge Street, Boston, Massachusetts (the Property). The Property will then be leased by Cambridge to the Employer. The Loan will be repaid in 360 equal monthly payments and will bear an interest rate the greater of 17½% per annum plus one and one-half (1½) points or the rate charged by the Charlestown Savings Bank or another major Boston area bank at the time the Loan is made. The rentals received by Cambridge pursuant to the lease of the Property will exceed the monthly payments due under the Loan.

4. The Loan will be secured by granting the Plan a duly recorded first trust deed on the Property. Mr. Peter Mathiasen, a realtor with Olde Forege Realty in Boston, Massachusetts, stated that in his opinion the Property, as of July 29, 1981, had a fair market value of $60,000 to $70,000. The Loan will also be secured by a duly recorded second mortgage on Dr. Beyer's residence which is located at 9 Lowell Road in wellesley, Massachusetts. Ms. Laura R. Kelley, a realtor-associate located in Wellesley stated that in her opinion this property, as of October 5, 1981, had a fair market value of approximately $300,000. As of October 11, 1981, the outstanding first mortgage on the residence had a principal balance of $57,049.

5. The Employer will guarantee the obligations of Cambridge under the Loan. As of June 30, 1981, the Employer had a net worth of $64,072.

6. Mr. Roy Henshaw (Mr. Henshaw), a certified public accountant, will be appointed to maintain sole and complete authority to monitor, enforce and collect the Loan. Mr. Henshaw does not maintain any financial or business relationships with the Employer or Cambridge. Mr. Henshaw will also represent whether, in his opinion, the Loan's interest rate is reasonable and the security for the Loan is adequate.

7. In summary, the applicant represents that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because (a) the only assets of the Plan which will be affected by the proposed transactions will be from Dr. Beyer's Account and he has directed that the proposed Loan be made; (b) the Employer will guarantee the obligations of Cambridge under the Loan; and (c) an independent party, Mr. Henshaw, will maintain complete and sole authority to monitor and enforce the terms and conditions of the Loan.

Notice to Interested Persons

Because Dr. Beyers Account will be the only Plan assets involved in the proposed transactions it has been determined that there is no need to distribute the notice of pendency to interested persons.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaires;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to (1) the Loan from Dr. Beyer's Account in the Plan to Cambridge provided that the terms and conditions of the Loan are not less favorable to the Plan than those obtainable in a similar transaction with an unrelated third party; and (2) the guarantee by the Employer of Cambridge's obligations under the Loan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82-3123 Filed 2-4-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-2957]

Proposed Exemption for Certain Transactions Involving W. G. Yates & Sons Construction Co., Employee Trust Located in Philadelphia, Mississippi

AGENCY: Office of Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and the Internal Revenue Code of 1954 (the Code). The proposed temporary exemption would exempt for a period of five years, the proposed loans (the Loans) of money by the W. G. Yates & Sons Construction Company Employee Trust (the Plan) to W. G. Yates & Sons Construction Company (the Employer), the Plan sponsor. The proposed exemption, if granted, would affect the Employer, the Plan and its participants and beneficiaries.

DATES: Written comments and requests for a public hearing must be received by the Department on or before March 22, 1982.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-2957. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a), 406(b) (1) and (2) of the Act and from the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the trustee (Trustee) of the Plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Plan is a profit sharing plan with 125 participants and total assets of $359,289.10 as of November 30, 1980. The Trustee is William G. Yates, Jr., who is also the secretary of the Employer.

2. An exemption is requested to permit the Plan to make Loans to the Employer on a recurring basis for a period of five years. The five year period would begin on the date the exemption grant is published in the **Federal Register.** The proceeds from the Loan would be used by the Employer to finance the purchase of earth-moving or millwright machinery (the Equipment). The Employer's net worth is in excess of $2,000,000.

3. Each Loan would be subject to the following conditions:

(a) The term of each Loan will range from three to five years, depending upon the useful life of the Equipment financed;

(b) The purchase price of each piece of Equipment will range from $100,000 to $300,000 and no Loan will exceed 75 percent of the purchase price of the Equipment;

(c) The Equipment purchased will be either new or used. If the Equipment is used Equipment, it will be appraised by an independent appraiser to establish its value;

(d) Each Loan will be secured by a first lien on the Equipment and a perfected security interest filed under the Uniform Commercial Code;

(e) Each Loan will at all times be collateralized by the Equipment, or if necessary, other assets of the Employer, in an amount equal to at least 200 percent of the outstanding Loan balance;

(f) The interest rate on the Loans will be 1.5 percent over the prime rate set by the Citizens Bank of Philadelphia, Mississippi (the Bank) and will be adjusted on the first day of each calendar quarter to reflect any change in the Bank's prime rate;

(g) The Employer will make regular payments of principal and interest on each Loan on the first day of each calendar quarter;

(h) The Employer will maintain insurance on the Equipment, at its own expense, against fire, theft or other casualty and the Plan will be named insured; and

(i) At the time of its making, no Loan together with other Loans will exceed 35 percent of the total assets of the Plan.

4. The Bank has stated it would loan to the Employer, at the prime rate, 75 percent of the appraised value of the Equipment for a term of three to five years, in an amount up to $1,000,000, provided that the Bank would be given a perfected security interest on each piece of Equipment to collateralize the loan. The Employer represents that interest paid to the Plan by the Employer in excess of fair market interest rates will not cause the annual additions to participants' accounts to exceed the limitations of section 415 of the Code.

5. Prior to entering into any Loan, an independent fiduciary, the Bank, will determine that the Loan is an appropriate and suitable investment for the Plan. The Bank will be responsible for monitoring the fair market value of the collateral and will also be responsible for enforcing the terms and conditions of the Loans. The Bank is independent of the Employer and the Plan.

6. The Trustee represents that the proposed transaction satisfies the statutory criteria of section 408(a) due to the following:

(a) The Loans will be approved and monitored by the Bank, an independent fiduciary;

(b) The interest rate on the Loans will be higher than the Bank's quoted rate.

(c) The Loans will be secured by a perfected security interest and by collateral which will at all times have a value of 200 percent of the outstanding Loan balance; and

(d) The exemption will be for a five year period of time.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and

its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Notice of the propsed exemption will be given to all participants and beneficiaries within 15 days of its publication in the **Federal Register** by posting it at the office of the Employer and at all job sites where participants may be employed. Beneficiaries and participants who are not currently employed by the Employer will be notified by mail. The notice will include a copy of the proposed exemption and will inform each recipient of his right to comment on or request a hearing with regard to the proposed exemption.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act of the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of setion 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the Loans, as above described, provided that the terms and conditions of the Loans remain at least as favorable to the Plan as those it could obtain from an unrelated party.

The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 30th day of January 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 82–3124 Filed 2–4–82; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Expansion Arts Special Policy Committee; Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the Expansion Arts Special Policy Committee will be held on Friday, February 12, 1982 from 9:00 a.m.–4:00 p.m. in room 1426, Columbia Plaza Office Building, 2401 E Street, N.W., Washington, D.C.

This meeting will be open to the public on a space available basis. The topic for discussion will be Future Program Directions.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634–6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

January 29, 1982.

[FR Doc. 82–3009 Filed 2–4–82; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence; Misalignment of High Head Safety Injection Isolation Valve

Section 208 of the Energy Reorganization Act of 1974, as amended, requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incident was determined to be an abnormal occurrence using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). One of the general criteria of the Policy Statement notes that major degradation of essential safety-related equipment can be considered an abnormal occurrence. The following description of the event also contains the remedial actions taken to date.

Date and Place—On June 6, 1981, the NRC was notified by Duquesne Light Company (the licensee) that a manually-operated high head safety injection isolation valve, which should normally be open during routine reactor power operation, had been found closed at Beaver Valley Power Station Unit 1. The Beaver Valley Unit 1 plant utilizes a

pressurized water reactor and is located in Beaver County, Pennsylvania.

Nature and Probable Consequences—On June 6, 1981, with the reactor at 99 percent power, an operator making a routine early morning inspection (to verify the correct position of specific Engineered Safety Features equipment) found that a manually-operated suction isolation valve (SI–26) in the emergency core cooling system was closed and the chain and padlock that were supposed to secure the valve in the open position were missing. The valve, which is to be checked by operators once each shift, was immediately re-opened, chained, and locked into position. The licensee was also aware of a different but similar event that occurred on June 5, 1981. The latter event concerned three auxiliary feedwater pumps' manual suction isolation valves being found unlocked. The chains and locks, which are one element of the administrative controls to ensure the valves are correctly positioned, were missing and could not be found. The difference between the two events is that the auxiliary feedwater valves were found to be in their proper position (open).

The safety implication due to the closure of valve SI–26 is associated with the loss of automatic high head safety injection (HHSI) capability. With the valve shut, emergency core cooling water from the refueling water storage tank would not have been available automatically to the three HHSI pumps for high pressure injection of water into the core under emergency conditions. Manual action by an operator would have been required for the system to complete its intended function through this or an alternative flow path. It should be noted that with the suction valve shut, the HHSI pumps could possibly have been damaged had they been operated. Although the event did not result in any adverse effects on health of the public or licensee personnel, it did represent a major degradation of essential safety-related equipment designed to mitigate the consequences of a major occurrence such as a loss of coolant accident. This event in combination with the June 5th event also raised concern for the possibility of criminal acts or sabotage.

Cause or Causes—Careful consideration of available information has led the NRC to conclude that the mispositioned valve and missing chains and padlocks were possible acts of sabotage, rather than operator errors.

Actions Taken To Prevent Recurrence

Licensee—When the SI–26 valve was found closed, it was immediately opened, chained, and locked. The licensee initiated an investigation of the events including requesting FBI assistance. Access controls to vital areas were strengthened by implementing interim emergency procedures, including restrictions on personnel access and movement control within the plant. The normal Engineered Safety Features (ESF) equipment position checks were supplemented by special tours during each shift to make special verification of ESF equipment. The frequency of security tours of specific vital areas was increased. Stronger chains were installed on all ESF equipment and better accountability and control procedures were instituted for all vital equipment padlocks. The licensee maintained these enhanced safety and security measures in force for an extended period of time, after which the licensee returned to a program upgraded to strengthen the control of plant activities.

NRC—Investigations by both the NRC and the FBI were initiated. The purposes of the NRC investigations were (1) to assure that there were no additional undetected incidents of tampering with safety-related equipment that could impact on continued safe operation of the reactor or endanger the health and safety of plant employees or the public and (2) to determine the details and sequence of events surrounding the incidents of June 5 and 6, 1981. The FBI investigation was to determine if an act of sabotage had been committed and, if so, who had committed the act.

Immediate Action Letter No. 81–25 was issued on June 9, 1981 confirming the actions taken by the licensee, as stated above, with the stipulation that these measures will remain in effect until notification to remove these controls is issued from the NRC. An on-site assessment of the safety and security program was performed on August 17–21, 1981. The purpose of this assessment was to confirm (1) that the vital plant areas and equipment were being protected, and (2) that an acceptable combination of security and safety programs and procedures was in effect to ensure that public safety was not compromised.

Based on this assessment, the NRC staff has approved relaxing, somewhat, the more stringent interim emergency procedures that were implemented shortly after the event occurred.

The NRC investigation was completed and documented in an investigative report (Investigation 50–334/81–16) dated December 10, 1981. Based on this investigation, the NRC issued a notice of violation identifying four violations of the licensee's safety related commitments. Additionally, the investigation identified two generic procedural concerns which may have contributed to the June 5 and 6 events: (1) Procedures did not assure timely withdrawal of access authorizations of individuals being terminated under adverse circumstances, and (2) the criteria for authorizing unescorted access to vital areas was not sufficiently selective.

Future reports on the findings of the investigations will be made, as appropriate, in the Quarterly Report to Congress on Abnormal Occurrences (NUREG–0090 series).

Dated at Washington, D.C. this 2d day of February 1982.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 82–3085 Filed 2–4–82; 8:45 am]

BILLING CODE 7590–01–M

Proposed Availability of FY 1982 Funds for Financial Assistance To Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of FY 1982 funds to support professional meetings, symposia, conferences, national and international commissions and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess the safety of nuclear power. Projects will be funded through grants.

EFFECTIVE DATE: Proposals will be accepted for the period 2–1–82 through 7–31–82.

ADDRESS: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Washington, D.C. 20555.

FOR FURTHER INFORMATION CONTACT: The cognizant NRC grant official is Mr. Kellogg Morton, telephone (301) 492–4297.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of This Announcement

Pursuant to section 31.a and 141.b of the Atomic Energy Act of 1954, as amended, the NRC, Office of Nuclear Regulatory Research proposes to support educational institutions,

nonprofit institutions, state and local governments, and professional societies through providing funds for expansion exchange and transfer of knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to, support of professional meetings, symposia, conferences, national and international commissions, and publications (hereinafter called project). The primary purpose of this will be to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program will be to increase public understanding relating to nuclear safety, to enlarge the fund of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

B. Eligible Applicants

Educational institutions, nonprofit entities, state and local governments and professional societies are eligible to apply for a grant under this announcement.

C. Research Proposals

A research proposal should describe (i) the objectives and scientific significance of the proposed meeting, symposium, conference, or commission, (ii) the methodology to be proposed or discussed, and its suitability, (iii) the qualifications of the participants and the proposing organization, and (iv) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102, Attachment M. Nonprofit organizations, universities and professional societies shall submit proposals utilizing the standard forms stipulated in OMB circular A–110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exceptions.

1. Cover Page. The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To include the term "conference," "symposium," "workshop," or other similar designation to assist in the identification of the project;
Location and Dates of Conference, Symposium, Workshop, etc.;
Name of Principal Participants;
Total Cost of Proposal;
Period of Proposal;
Organization or Institution and Department;
Required Signatures;
Principal Participants:

Name _____
Date _____
Address _____
Telephone Number _____

Required Organization Approval:

Name _____
Date _____
Address _____
Telephone Number _____

Organization Financial Officer:

Name _____
Date _____
Address _____
Telephone Number _____

2. Project Description. Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) Project Goals and Objectives:
The project's objectives must be clearly and unambiguously stated.
The proposal should justify the project including the problems it intends to clarify and the developments it may stimulate.

(b) Project Outline:
The proposal should show the project format and agenda, including a list of principal areas or topics to be addressed.

(c) Project Benefits:
The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) Project Management:
The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) Project Costs:
Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122; Educational Institutions shall adhere to the costs principles set forth in OMB Circular A–21; and state and local Governments shall adhere to the cost principles set forth in OMB Circular A–87.
The proposal must provide a detailed schedule of project costs, indentifying in particular:
(1) Salaries—in proportion to the time or effort directly related to the project;
(2) Equipment (rental only);
(3) Travel and Per Diem/subsistance in relation to the project;
(4) Publication Costs;
(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note.—Dues to organizations, federations or societies, exclusive of registration fees are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and
(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

D. Proposal Submission and Deadline

This program announcement is valid for the period of 2–1–82 to 7–31–82. Proposal submissions shall be in 1 signed original and 6 copies.

E. Funds

For Fiscal Year 1982, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making $75,000 to $100,000 available for funding the project(s) mentioned herein.

The NRC anticipates that approximately 5 to 10 projects will be funded. Further, the NRC anticipates that its average support will be $5,000–$15,000 per project.

F. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

G. Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Evaluation of proposals will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge;
2. Clarity of statement of objectives, methods, and anticipated results;

3. Range of issues covered by the meeting agenda;
4. Qualifications and experience of project speakers; and
5. Reasonableness of estimated cost in relation to anticipated results.

H. Disposition of Proposals

Notification of award will be made by the Grants Officer. Organizations whose proposals are unsuccessful will be so advised by the Grants Officer.

I. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to:

U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Washington, D.C. 20555

The address for hand-carried applications is:

U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, D.C. this 26th day of January, 1982.

For the U.S. Nuclear Regulatory Commission.

Kellogg V. Morton, *Chief, Research Contracts Branch, Divisions of Contracts, Office of Administration.*

[FR Doc. 82-3089 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Commonwealth Edison Co.; Issuance of Amendments to Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 66 to Provisional Operating License No. DPR-19 and Amendment No. 58 to Facility Operating License No. DPR-25 issued to Commonwealth Edison Company, which revised the Technical Specifications for operation of the Dresden Nuclear Power Station, Unit Nos. 2 and 3 located in Grundy County, Illinois. The amendments are effective as of the date of issuance.

The amendments authorize changes to the Technical Specifications to specify actions to be taken in the event the Suppression Pool Water Volume Limiting Conditions for Operation are exceeded.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated October 30, 1981, (2) Amendment No. 66 to License No. DPR-19 and Amendment No. 58 to License No. DPR-25, and (3) the Commission's letter to the Commonwealth Edison Company dated January 29, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of January 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-3082 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commisson (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the license for operation of the Haddam Neck Plant (facility) located in Middlesex County, Connecticut. This amendment is effective as of its date of issuance and is to be implemented within 60 days of Commission approval in accordance with provisions of 10 CFR 73.55(b)(4).

The amendment adds a license condition to include the Commission approved Guard Training and Qualification Plan as part of the license.

The filing, which has been handled by the Commission as an application for amendment, complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 515.(fd)(4) and environmental impact statement or negative declaration an environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated March 31, and November 17, 1981, are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR 9.12.

For further details with respect to this action, see (1) Amendment No. 46 to License No. DPR-61, and (2) the Commission's related letter to the licensee dated January 29, 1982. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C., and at the Russell Library, 119 Broad Street, Middletown, Connecticut 06103. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of January, 1982.

For the nuclear regulatory commission.

Dennis M. Crutchfield,

Chief, Operating Reactors Branch No. 5, Division of Licensing.

[FR Doc. 82-3083 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-369]

Duke Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 12 to Facility Operating Licensing No. NPF-9, issued to Duke Power Company (licensee) for the McGuire Nuclear Station, Unit 1 (the facility) located in Mecklenburg County, North Carolina.

The amendment was authorized by telephone on January 11, 1982, and was confirmed by letter on January 12, 1982. The amendment changes the Technical Specifications to reduce the Boron Injection Tank concentrations for a period of seven days. This amendment was issued on an expedited basis to permit McGuire to return to power during a peak demand period.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) Duke Power Company letter dated January 11, 1982, (2) Amendment No. 12 to Facility Operating License No. NPF-9 with Appendix A Technical Specification page change, and (3) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of Amendment No. 12 and the Commission's related Safety Evaluation may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of January 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing, NRC.

[FR Doc. 82-3084 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389A]

Florida Power & Light Co. (St. Lucie Plant, Unit No. 2); Cancellation of Hearing

February 1, 1982.

On motion of all parties, made orally in an informal conference of the parties on January 29, 1982, the hearing scheduled to be held in Fort Lauderdale on February 9, 1982, is cancelled and all further filings in this case are suspended. These actions are an accommodation to ongoing settlement negotiations.

Bethesda, Maryland.

For the Atomic Safety and Licensing Board.

Peter B. Bloch,

Chairman, Administrative Judge.

[FR Doc. 82-3090 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-333]

Power Authority of the State of New York; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 63 to Operating License No. DPR-59 issued to the Power Authority of the State of New York which revises the Technical Specifications for operation of the James A. FitzPatrick Nuclear Plant (the facility) located in Oswego County, New York. The amendment is effective as of the date of its issuance.

The amendment revises the units used in the Technical Specifications to define the maximum allowable enrichment of fuel kept in the spent fuel racks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated September 28, 1982, (2) Amendment No. 63 to License No. DPR-59, and (4) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Penfield Library, State University College at Oswego, Oswego, New York 13126. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of January 1982.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 82-3086 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. STN 50-522 and STN 50-523]

Puget Sound Power & Light Co., et al. (Skagit/Hanford Nuclear Project, Unites 1 and 2); Receipt of Amended Application for Construction Permits and Facility Licenses and Notice of Hearing on Amended Application for Construction Permits

In the matter of Puget Sound Power & Light Company, Pacific Power and Light Company, The Washington Water Power Company, and Portland General Electric Company (Skagit/Hanford Nuclear Project, Units 1 and 2), formerly (Skagit Nuclear Power Project, Units 1 and 2).

By an application dated September 18, 1974, Puget Sound Power & Light Company, acting for itself and as agent for Pacific Power and Light Company, The Washington Water Power Company, Idaho Power Company, and Washington Public Power Supply System applied for construction permits for two boiling water nuclear reactors designated as the Skagit Nuclear Power Project, Units 1 and 2, each of which was designed for operation at 3800 thermal megawatts with a net electrical output of approximately 1300 megawatts per unit. The proposed facilities were to be located at the applicants' site 5 miles northeast of Sedro Woolley in Skagit County, Washington. By an agreement

dated January 23, 1977, ownership shares in the Skagit facility were reallocated. Idaho Power Company and Washington Public Supply System are no longer co-applicants, and Portland General Electric Company was added as a 30% owner and co-applicant. Hearings on the Skagit application have been convened pursuant to a Notice of Hearing published in the **Federal Register** on December 20, 1974 (39 FR 44065) and also pursuant to an Amended Notice of Hearing published in the **Federal Register** on March 1, 1977 (41 FR 8835).

On September 26, 1981, Puget Sound Power & Light Company submitted Amendment 5 to the application which relocates the proposed nuclear facilities to the Department of Energy's Hanford Reservation in Benton County, Washington, and changes the name of the project from Skagit Nuclear Power Project to Skagit/Hanford Nuclear Project. The proposed facilities, designated Skagit/Hanford Nuclear Project, Units 1 and 2, will retain the same design boiling water reactors as the original application and will be located approximately 8 miles west of the Columbia River, 7 miles north of the Yakima River at Horn Rapids Dam, and 12 miles northwest of the city of North Richland in Benton County, Washington.

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities", Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection", and Part 2, "Rules of Practice for Domestic Licensing Proceedings", notice is hereby given that a hearing will be held at a time and place to be set by the Atomic Safety and Licensing Board (Board) previously designated to preside over the proceeding, to consider the application, as amended. Portions of this hearing may be held jointly between the U.S. Nuclear Regulatory Commission (NRC) and the Washington State Energy Facility Site Evaluation Council (EFSEC) on matters within their jurisdiction, particularly the National Environmental Policy Act of 1969 (NEPA) and the State Environmental Policy Act of 1971 (SEPA). The joint hearing will be governed by the Protocol for the Conduct of Joint Hearings which is set forth in an agreement between the NRC and EFSEC, dated July 31, 1981.

The NRC staff has completed part of its safety evaluation with respect to the Skagit/Hanford Project. These completed reviews are set forth in the staff Safety Evaluation Reports (SERs) for the Skagit/Hanford Nuclear Project, Units 1 and 2 (formerly, Skagit Nuclear Power Project, Units 1 and 2): NUREG-0309 (September 1977); NUREG-0309, Supplement No. 1 (October 1978); and NUREG-0309, Supplement No. 2 (October 1981). Supplement No. 2 to the Skagit/Hanford SER addresses all the action items relative to the accident at Three Mile Island, Unit 2 that currently must be reviewed. Upon completion by the Commission's staff of the final supplement to the SER and an environmental review, and upon receipt of a report by the Advisory Committee on Reactor Safeguards, the Director of Nuclear Reactor Regulation will consider making affirmative findings on Items 1–3, a negative finding on Item 4, and an affirmative finding on Item 5 specified below as a basis for the issuance of construction permits to the applicants. In the event that a separate hearing is held with respect to a Limited Work Authorization, Item 6 below describes the matters for consideration.

Issues Pursuant to the Atomic Energy Act of 1954, as Amended

1. Whether in accordance with the provisions of 10 CFR 50.35(a):

(a) The applicant has described the proposed design of the facilities including, but not limited to, the principal architectural and engineering criteria for the design, and has identified the major features or components incorporated therein for the protection of the health and safety of the public;

(b) Such further technical or design information as may be required to complete the safety analysis and which can reasonably be left for later consideration, will be supplied in the final safety analysis report;

(c) Safety features or components, if any, which require research and development have been described by the applicant and the applicant has identified, and there will be conducted a research and development program reasonably designed to resolve any safety questions associated with such features or components; and

(d) On the basis of the foregoing, there is reasonable assurance that (i) such safety questions will be satisfactorily resolved at or before the latest date stated in the application for completion of construction of the proposed facilities, and (ii) taking into consideration the site criteria contained in 10 CFR Part 100, the proposed facilities can be constructed and operated at the proposed location without undue risk to the health and safety of the public.

2. Whether the applicant is qualified to design and construct the proposed facilities;

3. Whether the applicant is financially qualified to design and construct the proposed facilities; and

4. Whether the issuance of permits for construction of the facilities will be inimical to the common defense and security or to the health and safety of the public.

Issue Pursuant to National Environemtnal Policy Act of 1969 (NEPA)

5. Whether, in accordance with the requirements of 10 CFR Part 51, the construction permits should be issued as proposed.

Issues Pursuant to 10 CFR 2.761a (Limited Work Authorization)

6. Pursuant to 10 CFR 2.761a, a separate hearing and partial decision by the Board on issues pursuant to NEPA and general site suitability and certain other possible issues may be held and issued prior to and separate from the hearing and decision on other issues. In the event the Board, after the separate hearing, makes favorable findings on such issues, the Director of Nuclear Reactor Regulation may, pursuant to 10 CFR 50.10(e) authorize the applicants to conduct certain onsite work entirely at their own risk prior to completion of the remainder of the proceeding.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine without conducting a *de novo* evaluation of the application: (1) Whether the application and the record of the proceeding contain sufficient information, the review of the application by the Commission's staff has been adequate to support the proposed findings to be made by the Director of Nuclear Reactor Regulation on Items 1–4 above, and to support, insofar as the Commission's licensing requirements under the Act are concerned, the issuance of the construction permits proposed by the Director of Nuclear Reactor Regulation; and (2) whether the NEPA review conducted by the Commission's staff has been adequate.

In the event that this proceeding becomes a contested proceeding, the Board will consider and initially decide, as issues in this proceeding, Items 1–5 above as a basis for determining whether construction permits should be issued to the applicant.

With respect to the Commission's responsibilities under NEPA, and regardless of whether the proceeding is

contested or uncontested, the Board will, in accordance with 10 CFR 51.52(c): (1) Determine whether the requirements of Section 102(2) (A), (C), and (E) of NEPA and 10 CFR Part 51 have been complied with in this proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding for the permits with a view to determining the appropriate action to be taken; and (3) determine after weighing the environmental, economic, technical and other benefits against environmental and other costs, and considering available alternatives whether construction permits should be issued, denied, or appropriately conditioned to protect environmental values.

The Board will convene a prehearing conference of the parties, of their counsel, to be held subsequent to any required special prehearing conference, and within sixty (60) days after discovery has been completed or at such other time as the Board may specify, for the purpose of dealing with the matters specified in 10 CFR 2.752.

The Board will set the time and place for any special prehearing conference, prehearing conference and evidentiary hearing, and the respective notices will be published in the **Federal Register.**

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement of position on the issues. A limited appearance may be made at any session of the hearing or at any prehearing conference subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Board by April 6, 1982.

Any person whose interest may be affected by the proceeding, who wishes to participate as a party in the proceeding must file a written petition under oath or affirmation for leave to intervene in accordance with the provisions of 10 CFR 2.714. A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding, and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene of who has been admitted as a party may amend a petition, but such an amended petition must satisfy the specificity requirements described above. A petition that sets forth contentions relating only to matters outside the jursidiction of the Commission will be denied.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to present evidence and cross-examine witnesses.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Atomic Safety and Licensing Board that the petitioner has made a substanital showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v)) and 2.714d.

With respect to the application, as amended, for construction permits for the Skagit/Hanford Nuclear Project, Units 1 and 2, all persons previously admitted as intervenors in this proceeding who wish to further participate with respect to the amended application, shall submit an amended petition for leave to intervene that conforms to the requirements described above. Such amended petitions shall be filed within the time period for the filing of a petition to intervene.

An answer to this notice, pursuant to the provisions of 10 CFR 2.705 must be filed by the applicant by March 1, 1982.

A request for a hearing or a petition or amended petition for leave to intervene shall be filed by March 8, 1982 with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. F. Theodore Thomsen, Perkins, Coie, Stone, Olsen & Williams 1900 Washington Building, Seattle, Washington 98101, attorney for the applicant. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and two (2) conformed copies of each such paper with the Commission. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

For further details, see the application for construction permits dated September 18, 1974, including site suitability information and the applicant's environmental report, along with any amendments or supplements thereto, which are or will be available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m. on weekdays. Copies of these documents will be available at the Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352 between the hours of 10:30 a.m. and 9:00 p.m. on Monday thru Thursday, 5:00 p.m. and 9:00 p.m. on Friday, 10:30 a.m. and 5:30 p.m. on Saturday, and between 1:00 p.m. and 5:00 p.m. on Sundays during the school year only. As they become available, a copy of the safety evaluation report by the Commission's staff, the draft and final environmental statements, the report of the Advisory Committee on Reactor Safeguards (ACRS), the proposed construction permits, the transcripts of the prehearing conferences and of the hearing, and other relevant documents, will also be available at the above locations. Copies of the proposed construction permits and the ACRS report may be obtained, when available, by request to the Director, Division of Licensing, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation reports and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service,

Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

For the U.S. Nuclear Regulatory Commission.

Dated at Bethesda, Maryland, this 1st day of February, 1982.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 82-3087 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-237]

Tennessee Valley Authority; Issuance of Amendment Facility Operating License No. DPR-77

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. DPR-77, issued to Tennessee Valley Authority (licensee) for the Sequoyah Nuclear Plant, Unit 1 (the facility) located in Hamilton County, Tennessee. This amendment extends the date by which the Commission must confirm that an adequate hydrogen control system for the plant is installed and will perform its intended function, from January 31, 1982, to no later than startup following the first refueling outage.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) Tennessee Valley Authority letter dated November 23, 1981, (2) Amendment No. 11 to Facility Operating License No. DPR-77, and (3) the Commission's related Safety Evaluation.

All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and the Chattanooga Hamilton County Bicentennial Library, 1001 Board Street, Chattanooga, Tennessee 37402. A copy of Amendment No. 11 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Dated at Bethesda, Maryland, this 29th day of January 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-3086 Filed 2-4-82; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 418; Docket No. MC82-1]

Mail Classification Schedule, 1981, Express Mail Flexible Acceptance Times; Order Fixing Date for a Prehearing Conference, Establishing Procedures, Granting Postal Service's Motion for Waiver of Certain Provisions of the Rules of Practice and Conditionally Grant Its Motion for Waiver of Rule 54(j)

Issued: February 1, 1982.

On November 10, 1981, the United States Postal Service filed a request with the Postal Rate Commission for a recommended decision on proposed changes in the acceptance time for Regular Express Mail.[1] At the time of filing its Request, the Postal Service filed a motion seeking a waiver of certain of the filing requirements contained in the Commission's rules of practice.[2] The Postal Service seeks "waiver of Rule 64(h),[3] Rule 64(d) and Rule 64(e)."[4] In the Notice of Filing, dated November 16, 1981, the Commission noted the filing of the motion and requested that parties who wished to address the Postal Service's motion file their answers by December 1, 1981. Purolator Courier Corporation (Purolator) and the Officer of the Commission (OOC) have filed responses.[5]

On December 8, 1981, the Postal Service filed a motion for a settlement and/or technical conference.[6] In Commission Order No. 412, dated December 10, 1981, this Commission granted that motion fixing the date for the settlement and technical conference as December 15, 1981. Since that time, the Commission has not learned of any resolutions pertinent to this case arising from the conference. In the interest of expedition, we will proceed with this docket, by scheduling a prehearing conference, establishing procedures, and addressing the Postal Service's motion for waiver in this order.

I. Hearings and Date of Initial Prehearing Conference

In furtherance of the Commission's desire for expeditious consideration and pursuant to section 30(b) of the Commission's rules of practice [39 CFR 3001.30(b)], the Commission will conduct all prehearing conferences and hearings en banc. In an order issued by the Acting Chair on December 3, 1981, Commissioner Simeon M. Bright was designated to serve as the Presiding Officer in this proceeding.[7] 39 U.S.C. 3604(a)(2). An initial prehearing conference will be held on February 9, 1982, and, thereafter, on such further dates as may be designated by the Presiding Officer. Conferences and hearings will commence each day at 9:30 a.m. at the Postal Rate Commission's hearing room, Suite 500, 2000 L Street, N.W., Washington, D.C. 20268, and shall be on the record and a transcript made except where the Presiding Officer determines otherwise.

II. Procedures for Expedition

To the degree consistency with procedural fairness permits, it is our intention to expedite the proceedings in Docket No. MC82-1.[8] Accordingly, we are issuing a proposed schedule of procedural stages which all participants should review and be prepared to comment upon at the initial prehearing

[1] Request of the United States Postal Service for a Recommended Decision on a Change in Express Mail Acceptance Times, November 10, 1981.

[2] Rule 64(h)(3) provides that a waiver may be granted if the Commission believes that the Postal Service has shown that the Proposal will not significantly change the rates and fees on cost-revenue relationships. 39 CFR 3001.64(h)(3).

[3] Except for Rule 64(h)(2)(i) insofar as it incorporates Rules 54(q) and (r).

[4] Motion of United States Postal Service for Waiver of Certain Provisions of the Rules of Practice and Procedure, p. 1 (filed November 10, 1981).

[5] Opposition of Purolator Courier Corporation to Postal Service's Motion for Waiver of Rules, December 1, 1981; Officer of the Commission Answer In Partial Opposition to Motion of the United States Postal Service for Waiver of Certain Provisions of the Rules of Practice and Procedure, December 2, 1981.

[6] Motion of the United States Postal Service for a Settlement Conference and/or Technical Conference, December 8, 1981.

[7] *See* 39 CFR 3001.5(e) and 300.23 for the scope of authority delegated to the Presiding Officer.

[8] The Postal Reorganization Act requires us to consider requests for changes in the classification schedule "promptly" and to conduct proceedings "with utmost expedition consistent with procedural fairness" (39 U.S.C. 3624). While the statute does not specify a particular timeframe for classification cases, we are inclined to adopt the 10-month schedule to which we must adhere in rate cases [*see* 39 U.S.C. 3624(c)] as a general guideline. Of course, some cases can, and will, be completed in considerably less time, and we recognize that others which involve particularly complex or novel issues may require somewhat lengthier proceedings.

conference. This tentative schedule is presented in Attachment B. We also alert the parties that our intention to expedite this proceeding applies with equal force to the briefing stage following the close of the record. Parties should therefore be prepared to adhere to a briefing schedule consonant with this policy.

III. Prehearing Conference Statements

Participants should serve prehearing conference statements by February 5, 1982. Such statements should contain the following:

1. A suggested list which states with particularity the issues the party believes should be addressed in this case. (Asterisks, denoting those issues on which the party intends to present evidence, should precede the stated issue.)

2. A statement of the participant's tentative position on each of the proposed issues.

3. A brief statement describing for each issue the evidence, if any, the participant proposes to introduce.

4. A legal memorandum, where appropriate, in support of the issues proposed, the positions taken, the evidence to be presented and other legal matters which should be considered.

5. Any other matter the participant believes should be pursued at the prehearing conference.

Prior to the initial prehearing conference, all participants are encouraged to request informally and promptly from the Postal Service any desired preliminary clarification in the Service's presentation which the participant believes necessary in order to expedite this proceeding.

IV. Postal Service Motion for Waiver of Rules 64(d), 64(e) and 64(h)

In its motion, the Postal Service requests waiver of Rule 64(e), requiring a discussion of interclass changes on the ground that the proposal entails no interclass changes.[9] The Postal Service states that Rule 64(h), except for the portion which incorporates Rules 54(q) and 54(r), should be waived because the proposed change does not significantly change the rates and fees on the cost-revenue relationships.[10] The Postal Service also states that the proposed change could result in an increase in volume but such increases would not significantly affect the cost revenue-relationship of Express Mail.[11]

The Postal Service requests the waiver of that portion of rule 64(d) which incorporates Rules 54(h), 54(f) and 54(j). In support of its request, the Postal Service states that compliance with the rules requiring total functionalized accrued costs of the Postal Service and the separation of attributable and assignable costs and the methodology employed, is unnecessary because the proposal involves no change in rates and fees, has no effect on Express Mail unit costs and has an insignificant effect on the Postal Service's total costs.[12]

The Postal Service also states that it should not be required to file estimated revenue, volume, and demand information as section 54(j) directs because the proposal will have no effect on the "trend of increasing volumes" of Express Mail shipments, the size of any increase which may result cannot be "quantified" because no "data exists."[13] It further states that compliance with Rule 54(j) is unnecessary to resolve any issue involved in this proceeding.

In its opposition, Purolator argues that the proposed change could result in increased personnel and other costs. It believes that the proposal would result in a change in the cost-coverage ratio. In addition, Purolator states that the Postal Service's statement that the proposal would not affect the increasing volumes of express mail appears to be inconsistent with its claim that no data on estimated volumes exist.[14]

The OOC opposes only the waiver of section 54(j) which requires the Postal Service to provide estimated revenue and volume information. The OOC points out that the Postal Service's claim that the effect of the proposal on Express Mail volume is contradicted by the Service's statements that Express Mail volumes follow an upward trend.[15] OOC argues that these statements appear to suggest that the Postal Service has estimates of Express Mail volumes and revenues and is able to comply with section 54(j). The OOC also directs this Commission's attention to reports in the *Postal Leader* dated November 17, 1981, which give the impression that the Postal Service is able to estimate Express Mail volumes and revenues to some degree of certainty. The Commission notes, that in that issue, Gordon Morrison, Assistant Postmaster General, Customer Services, made the statement that the proposal "could add to the geographic coverage" of Express Mail.[16]

The Postal Service filed comments in response to the OOC and Purolator replies on December 9, 1981.[17] It states that MC82–1 is a "pure classification case" to which the issues of cost, volume and revenue data requested in section 54(j) has no relevance and is inappropriate. It identifies the issue in this docket as the "level of detail necessary in thge DMCS with respect to acceptance cut-off dates."[18]

The Commission concludes that the requirements for a waiver of 64(h), except for the portion calling for information required by Rules 54(q) and 54(r), have been met. From the Postal Service's filings it appears that rates and fees, and cost-revenue relationships will not be significantly changed by the proposal.

As for Rule 64(e), it does not appear that the proposal will cause any interclass change; therefore, the motion for waiver of 64(e) is granted.

It appears that the requirements of 64(d) insofar as it incorporates 54(h) and 54(f) should also be waived, since it appears from the Postal Service's filings that the proposal does not involve a change in rates or fees; will have no effect on the unit costs attributed and assigned to Express Mail shipments and will have an insignificant effect on the Postal Service's total costs.

Section 54(j), as incorporated by 64(h), requires the filing of revenue and volume information. In its motion for waiver of section 54(j), the Postal Service made the statement that no data exists which quantifies the effect that this proposal will have on volumes. However, there appears to be a strong likelihood that this proposal could present a problem regarding volume and demand analysis as suggested by both Purolator and the OOC. From the papers filed it is impossible to assess what our data needs will be in order to resolve this case. In order to go forward, we are granting a tentative waiver of section 54(j). We anticipate that the parties will bring out the need for and availability of the information called for by section 54(j) in the proceedings. This Commission reserves the right to rescind the grant of this waiver and to condition any provision of the information called for by section 54(j).

The Commission reserves the right to request information covered by the

[9] United States Postal Service Motion for Waiver of Certain Provisions of the Rules of Practice and Procedure, November 10, 1981, at pp. 3–4.

[10] Postal Service Motion, p. 2.

[11] Postal Service Motion, p. 2.

[12] United States Postal Service Motion for Waiver of Certain Provisions of the Rules of Practice and Procedure, November 10, 1981, at p. 3.

[13] Postal Service Motion, p. 3.

[14] Purolator Opposition, pp. 2–3.

[15] OOC Answer, p. 5.

[16] OOC Answer, Attachment A, p. 2.

[17] Comments of the United States Postal Service to Replies to its Motion For Waiver of Certain Provisions of the Rules of Practice and Procedure, December 9, 1981.

[18] Postal Service Comments, p. 2.

waiver as this case develops or to honor a party's request, if adequately supported, for such information.

The Commission Orders

(A) A prehearing conference will be held on February 9, 1982, commencing at 9:30 a.m. in the Postal Rate Commission hearing room, suite 500, 2000 L Street, NW., Washington, D.C. 20268. The Conference will be held for the purposes specified in § 3001.24 of the Commission's rules of practice (39 CFR 3001.24) and in this Order, and to afford all participants in the proceeding an opportunity to be heard with respect to the procedures to be followed in expeditiously determining the issues to be resolved in Docket No. MC82–1. The Conference proceedings shall be recorded by an official reporter except where otherwise directed by a Presiding Officer.

(B) Parties are to serve prehearing conference statements by February 5, 1982.

(C) The Postal Service's motion for waiver is granted in part, as specified above.

(D) The Postal Service's motion for waiver of section 54(j) as incorporated by Rule 64(h) is tentatively granted, subject to the terms specified above.

(E) The Commission reserves the right to request information covered by the waiver if necessary as this case develops or honor a party's request if adequately supported, for such evidence.

By the Commission.

David F. Harris,

Secretary.

Attachment A—Agenda for Prehearing Conference in Docket No. MC82–1, February 9, 1982

I. Opening statement by the Presiding Officer.
II. Discussion of the appropriate issues to be considered in the proceeding.
III. Discussion of possible stipulations of fact
  A. Discussion of results of any informal settlement attempts conducted between the parties prior to the date of the prehearing conference.
  B. Submission of any stipulations of fact agreed to at the time of the prehearing conference.
  C. Discussion of other areas for which stipulations of fact are possible.
  D. Discussion of who should be assigned responsibility for preparing any draft, stipulations of fact to be submitted.
IV. Discussion of procedural dates. (Preliminary procedural schedule outlining procedural steps, with dates not inserted, appears as Attachment B to this notice.)
V. Discussion of date for second prehearing conference, if one is required.
VI. Discussion of any other matters appropriate for examination at a prehearing conference under § 3001.24 of the Commission's rules of practice.

Attachment B

TENTATIVE SCHEDULE OF PROCEDURAL STEPS

[Docket No. MC82–1]

Procedural step	Date
Filing of direct testimony by proponent(s) of classification change	
Completion of discovery against proponent(s)	
Hearings on direct case of proponent(s)	
Rebuttal cases filed	
Completion of discovery against rebuttal cases	
Hearings on rebuttal cases	
Surrebuttal cases filed (if any)	
Hearings on surrebuttal cases	
Record closes	
Initial briefs of all parties	
Reply briefs of all parties	
Oral argument (if any)	

[FR Doc. 82–3027 Filed 2–4–82; 8:45 am]

BILLING CODE 7715–01–M

REGULATORY INFORMATION SERVICE CENTER

Calendar of Federal Regulations; Correction

AGENCY: Regulatory Information Service Center.

ACTION: Calendar of Federal Regulations; correction.

SUMMARY: The Calendar of Federal Regulations was published in the **Federal Register** on Wednesday, January 13, 1982 (47 FR 1661). This document corrects information that was published concerning the Federal Election Commission's proposed regulation on Communications by Corporations or Labor Organizations.

FOR FURTHER INFORMATION CONTACT: For information about the regulation on Communications by Corporations or Labor Organizations: Susan E. Propper, Assistant General Counsel, Office of General Counsel, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463, (202) 523–4143.

For information about the Calendar of Federal Regulations and the work of the Regulatory Information Service Center: Mark G. Schoenberg, Executive Director, Regulatory Information Service Center, Suite 700, 2100 M Street, NW., Washington, D.C. 20037, (202) 653–7246.

SUPPLEMENTARY INFORMATION: The Calendar of Federal Regulations was published in the **Federal Register** on January 13, 1982 (47 FR 1661). In Chapter 6, Trade Practices, of that publication (47 FR 1921), information was provided on the following regulation: Communications by Corporations or Labor Organizations. This regulation is being considered by the Federal Election Commission as a revision to an existing regulation that has been codified in 11 CFR 114.3 and 114.4.

Certain incorrect information was included in the discussion of this regulation; accordingly, the following correction is made in the entry appearing on page 1921 in the issue of January 13, 1982, as follows:

CHAPTER 6—TRADE PRACTICES

On page 1921, column one, under "Timetable," the information is corrected to read as follows:

Transmittal to Congress—1st or 2nd Quarter 1982. (Pursuant to 2 U.S.C. 438 (d), the FEC must transmit all rules interpreting the Federal Election Campaign Act to Congress. Each House has 30 legislative days to disapprove a regulation submitted under this provision.)

Final Rule—30 legislative days after transmittal to Congress.

Dated: February 2, 1982.

Mark G. Schoenberg,

Executive Director.

[FR Doc. 82–3183 Filed 2–4–82; 8:45 am]

BILLING CODE 3194–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 22374; 70–6696]

Appalachian Power Co.; Proposed Issuance and Sale of First Mortgage Bonds and Preferred Stock

January 29, 1982.

Appalachian Power Company ("Appalachian"), 40 Franklin Road, S.W., Roanoke, Virginia 24011, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed an application-declaration with this Commission pursuant to Sections 6(b) and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 promulgated thereunder.

Appalachian proposes to issue and sell up to $60,000,000 aggregate principal amount of its first mortgage bonds, in one or more new series, with a maturity of not less than 5 years and no more than 30 years. The terms will be determined by competitive bidding. The bonds will be issued under Appalachian's Mortgage and Deed of Trust dated as of December 1, 1940, as supplemented and amended and as to be further supplemented and amended.

Appalachian also proposes to issue and sell up to 1,200,000 shares of a new series of its no par cumulative preferred stock with an involuntary liquidation price of $25 per share. The terms will be determined by competitive bidding. A cumulative sinking fund may be provided for.

Appalachian states that if market conditions should not be propitious for the sale of the bonds and/or the cumulative preferred stock on a competitive bidding basis, the company intends to amend the application-declaration so as to provide for their sale on another basis.

It is stated that the proceeds of the bonds and cumulative preferred stock, together with cash capital contributions which may be made by AEP and any other funds which may become available to Appalachian, will be used to repay unsecured short-term indebtedness of the company, consisting of short-term notes and commercial paper, to repay maturing long-term debt, to reimburse the company's treasury for expenditures incurred in connection with its construction program, and for other corporate purposes. It is anticipated that, at the time of issuance and delivery of the bonds and cumulative preferred stock, not less than $90,000,000 aggregate principal amount of short-term debt will be outstanding, portions of which will have been incurred in connections with the company's construction program. Appalachian estimates that approximately $173,000,000 will be expended in 1982 in connection with its consolidated construction program.

The application-declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 3, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the applicant-declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3143 Filed 2-3-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18458 SR-CBOE-81-5]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

January 29, 1982.

On April 2, 1981, the Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which expands the definition of a "combination order" to include any order involving the same number of puts and calls in the same underlying security. Pursuant to CBOE rule 6.45(d) such orders are not required to yield priority to bids or offers on the limit order book that are no better than the bids or offers comprising the combination order.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17713, April 13, 1981) and by publication in the **Federal Register** (46 FR 22842, April 21, 1981). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

On August 12, 1981 the American Stock Exchange, Inc. ("Amex") submitted a comment letter opposing the CBOE proposed rule change.[1] It contended that the proposed expansion of the definition of combination orders to include orders involving puts and calls on the same side of the market (*e.g.*, long calls and short puts) would allow totally bullish or bearish positions to be established, increased, or decreased by bettering the price of one "leg" while permitting priority over competing public orders on the other leg. While the Amex recognized that a same side of the market combination order, when hedged with the underlying security, could be used to facilitate conversion and reverse conversion strategies, the Amex asserted that such strategies are employed almost exclusively by trading professionals. As a result, the Amex concluded that the CBOE proposal goes far beyond the scope of the other exceptions to the priority rules in a manner contrary to the interests of public investors.

According to the CBOE, the primary purpose of the rule change is to further facilitate market participants engaging in conversion and reverse conversion transactions.[2] A conversion position is comprised of three positions—long common stock, short a call option and long a put option. A reverse conversion is the opposite of a conversion and also consists of three positions—short common stock, long a call option and short a put option.

Conversions and reverse conversions can be utilized by investors for a number of important purposes. First, conversions and reverse conversions can be used by investors to hedge an existing common stock position. For example, an investor who owns common stock and is concerned about the risk of a price decline, but does not desire to liquidate the stock position could sell a call and buy a put to hedge the risk of adverse price movements. Conversely, an investor who maintains a short stock position and is concerned about the risk of a price increase but does not desire to liquidate the stock position could buy a call and sell a put to hedge the risk of adverse stock price movements.

Further, conversions and reverse conversions can be utilized by investors for cash management reasons. For example, a conversion transaction may be entered into as a means of investing excess cash in order to generate a specific rate of return over the life of the option components. To be attractive for this purpose a coversion must yield a greater return than the yield available from other interest bearing investments such as Treasury bills. Conversely, a reverse conversion may be entered into as a means of generating cash for a specific cost over the life of the option components. To be attractive for this

[1] Letter dated August 12, 1981 from Howard A. Baker, Vice President, Options Division, Amex to George A. Fitzsimmons, Secretary, Securities and Exchange Commission.

[2] *See* letters from William J. Young, Senior Vice President, CBOE, to Richard T. Chase, Branch Chief, Division of Market Regulation, SEC, and Gene Carasick, Assistant Director, Division of Market Regulation, dated January 10, 1982 and September 3, 1981, respectively.

purpose the cost of generating cash through a reverse conversion must be less than the cost of alternative sources of borrowing such as bank loans. If these two types of investors are brought together in the marketplace the investor entering into the conversion would be generating a greater return on excess cash than otherwise available and the investor entering into the reverse conversion would be obtaining cash for a lower cost than otherwise available.

The use of conversions and reverse conversions also may enhance the efficiency and liquidity of the options and stock markets. First, conversions and reverse conversions may be used in order to arbitrage between the stock and option markets or between different series of options. For example, market participants who believe that call option prices are too high and put option prices too low in relation to the price of the underlying stock may initiate transactions to buy stock, sell calls and buy puts (a conversion transaction). The effect of these types of transactions is to bring the relationship between the stock and option markets in line. Further a market maker may as a result of performing his market making function build an inventory of conversion and reverse conversion positions through independent put and call transactions. This inventory may then be offered to broker-dealers or customers as a package. The ability of market makers to dispose of this inventory through conversions and reverse conversions may facilitate their ability to provide tighter and deeper markets in individual options by reducing the risk of carrying this inventory.

Finally, the Commission does not believe that investors with public orders on the limit order book will be disadvantaged by the proposed rule change. CBOE rule 6.45(d) provides that combination orders can only be executed ahead of orders on the limit order book at the same price if both parts of the combination order are executed with one other person at a net debit or credit. Thus, a person who was entering a combination order to establish a conversion position (*i.e.*, selling a call and purchasing a put) would be required to execute the transaction with a second person who was willing simultaneously to both purchase the call and sell the put. Since it is anticipated that the second person likely would be an investor seeking to establish a reverse conversion or a market maker that inventories conversions and reverse conversions, it does not appear that book orders will forego an opportunity for execution by reason of the proposed rule change.

Based on the above, the Commission believes that, on balance, the benefits to the market and to individual investors which can be derived from facilitating conversions and reverse conversions outweigh any detriment which an individual investor with an order on the public limit order book could conceivably suffer as a result of expanding the CBOE's exceptions to its book priority rules to include combination orders on the same side of the market.[3]

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3142 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12204; 812-4956]

Kemper Investors Life Insurance Co., et al.; Filing of Application For an Order Granting Exemptions From Certain Provisions

January 29, 1982.

In the Matter of Kemper Investors Life Insurance Company; Kilico Money Market Separate Account; Kilico Total Return Separate Account; Kilico Income Separate Account, and Kemper Financial Services, Inc., 120 South LaSalle Street, Chicago, Il 60603.

Notice is hereby given, That Kemper investors Life Insurance Company, a stock life insurance company organized under the laws of Illinois ("KILICO"), KILICO Money Market Separate Account, KILICO Total Return Separate Account and KILICO Income Separate Account, separate investment accounts of KILICO (individually referred to as "Account" and collectively referred to as the "Accounts"), and Kemper Financial Services, Inc., the distributor of the Accounts, ("KFS") filed an application on August 17, 1981 and amendments thereto on December 1, 1981, January 25, 1982, and January 28, 1982 for an order of the Commission exempting KILICO, the Accounts, and KFS ("Applicants") from the provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 26(a)(2)(D), 27(a)(3), 27(c)(1), 27(c)(2), and 27(d) of the Investment Company Act of 1940 ("Act") and Rule 22c-1 thereunder. All interested persons are referrred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Applicants state that (i) the Accounts are used for the purpose of funding individual Flexible Payment and Periodic Payment Contracts; (ii) each Account is registered under the Act as an open-end, diversified management investment company; (iii) the assets of each Account will be held pursuant to a custodial agreement with Continental Illinois Bank and Trust Company of Chicago, Chicago, Illinois; and (iv) purchase payments will not be subject to a front-end sales load, but withdrawals may be subject to a contingent deferred sales load ("Withdrawal Charge") as described below.

According to Applicants, under the contracts, a contractowner may withdraw up to ten percent (10%) of the contract value in any contract year without the assessment of any charge. If the contractowner withdraws an amount in excess of ten percent (10%) of the contract value in any contract year, the amount withdrawn in excess of ten percent of contract value is subject to a Withdrawal Charge. The Withdrawal Charge is six percent (6%) in the first Contribution Year (defined as each contract year in which a contribution is made and each succeeding year measured from the end of the contract year when such contribution is made) and declines by one percent (1%) each Contribution Year so that there is no charge in the seventh and later Contribution Years. In the event that a total withdrawal is made within one calendar year of a partial withdrawal with respect to which all or a portion of the amount withdrawn was not subject to the Withdrawal Charge, such amount or amounts previously withdrawn will be added to the contract value at the time of total withdrawal for the purpose of calculating the Withdrawal Charge at that time. The Withdrawal Charge also applies as a charge against contract value with respect to amounts which are

[3] In order to dissuade individuals from utilizing the rule change as a means for evading CBOE's book priority rules, the CBOE has indicated that it will issue an educational circular explaining that persons who execute combination orders on the same side of the market for the purpose of evading book priority will be considered in violation of CBOE Rule 4.1, pertaining to just and equitable principals of trading.

annuitized and are in the first six Contribution Years. Applicants state, however, that in no event will the aggregate Withdrawal Charges assessed against a contract exceed seven and one-quarter percent (7.25%) of the aggregate purchase payments made under the contract.

Exemptions for Withdrawal Charge

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less any portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants assert that the proposed Withdrawal Charge is consistent with the intent of the definition of "sales load" contained in the Act and would come within the definition but for the times of imposition of the charge. Applicants have requested an exemption from Section 2(a)(35) to the extent such exemption may be necessary to permit assessment of the Withdrawal Charge in the manner described.

In general, section 2(a)(32) of the Act defines a "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive "approximately his porportionate share" of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in effect, requires that a holder of a periodic payment plan certificate who redeems the certificate within eighteen months of issuance receive (a) the value of his or her account and (b) an amount equal to the excess paid for sales expenses which is over 15% of the purchase payments made by the certificate holder. Applicants submit that the imposition of the Withdrawal Charge does not violate sections 2(a)(32) and 27(d). Nevertheless, Applicants have requested an exemption from the provisions of sections 2(a)(32) and 27(d) of the Act to the extent that it may be deemed necessary to permit the imposition of the contingent deferred sales charge and to offer the contracts.

Section 27(c)(1) provides, in substance, that no issuer of a periodic payment plan certificate shall sell such certificates unless the certificate is a "redeemable security." Applicants assert that deferring the imposition of the sales charge in no way restricts the contract owner from receiving his proportionate share or current value on withdrawal and has the effect, through deferral of the sales charge until contract value is withdrawn, of increasing the contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of section 27(c)(1) to the extent necessary to permit sales charges to be imposed only upon withdrawal of contract values.

In effect, section 27(a)(3) of the Act prohibits the imposition of any sales load in connection with a periodic payment plan certificate if the amount of such sales load deducted from any one of the first twelve monthly payments exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment. Under the contracts, the contingent deferred sales charge, in the event that a total withdrawal of a contract is requested within one calendar year of a partial withdrawal with respect to which all or a portion of the amount withdrawn was not subject to the contingent deferred sales charge because of the ten percent (10%) free withdrawal provision, such amount or amounts previously withdrawn will be added to the contract value at the time total withdrawal is requested for the purpose of calculating the contingent deferred sales charge at the time of total withdrawal. Applicants have requested an exemption from the provisions of section 27(a)(3) to the extent that it may be deemed necessary to offer the contracts.

Rule 22c–1 promulgated under section 22(c) of the Act, as pertinent, prohibits a registered investment company which issues a redeemable security from redeeming such security except at a price based on the current net asset value of such security which is next computed after receipt of the tender of such security. While Applicants do not believe that the imposition of the contingent deferred sales charge is violative of section 22(c) of rule 22c–1, Applicants have requested an exemption from the provisions of section 22(c) and rule 22c–1 thereunder to the extent necessary to offer the contracts.

Section 27(c)(2) of the Act provides, in substance, that a periodic payment plan certificate company or depositor or underwriter for such a company is prohibited from selling any such certificates unless, among other things, the proceeds of all payments, other than the sales load, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) and are held by such trustee or custodian under an agreement containing, in substance, the trust indenture provisions required by sections 26(a)(2) and 26(a)(3) of the Act. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust (or to any affiliated person or agent of such depositor or principal underwriter) shall be allowed the trustee or custodian as an expense except for payment of a fee, not exceeding such reasonable amount as the Commission may prescribe as compensation for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian. Applicants assert that deferring the sales charge and making it contingent upon an event which may never occur does not change the basic nature of the charge as a sales charge for which section 27(c)(2) contains an exception. Thus, Applicants request an exemption from the operation of the provisions of sections 26(a)(2)(C) and 27 (c)(2) of the Act to the extent necessary to permit assessment of the Withdrawal Charge in the manner described.

Exemptions for Payment of Contract Fees and Charges and for Custodianship

Section 27(c)(2) of the Act prohibits a registered investment company or any depositor or underwriter for such company from selling periodic payment plan certificates, unless the proceeds of all payments other than the sales load are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) and held under an agreement containing, in substance, the provisions required by sections 26(a) (2) and (3) of the Act. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the payment to KILICO of: (1) an asset charge for mortality and expense risks at the annual rate of one percent (1%) per annum (approximately .70 for mortality risks and .30 for expense risks) to be assessed against amounts attributable to Flexible Payment Contracts; (2) an asset charge for mortality and expense risks and administrative costs at the annual rate of one and three-tenths percent (1.30%) per annum (approximately .70 for mortality risks, 30 for expense risks, and, .30 for administrative costs) to be assessed against amounts attributable to Periodic Payment Contracts; (3) a $25 record maintenance charge to be deducted on December 31st of any calendar year; (4) maximum investment management fees on an annual basis of

one-half of one percent (.50%) of the average daily net assets of KILICO Money Market Separate Account, fifty-five hundredths of one percent (.55%) of the average daily net assets of KILICO Total Return Separate Account, and sixty hundredth of one percent (.60%) of the average daily net assets of KILICO Income Separate Account; and (5) any applicable premium taxes. KILICO has undertaken to reimburse each Account whose operating expenses, excluding taxes, extraordinary expenses and brokerage or transaction costs, exceed eighty hundredths of one percent (.80%) of average daily net assets on an annual basis.

Applicants consent to the order granting the requested exemption being made subject to the following conditions: (1) that charges to contract owners for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, jurisdiction being reserved for such purpose; and (2) that the payments of sums and charges out of the assets of the Accounts shall not be deemed to be exempted from regulation by the Commission by reason of the order provided that consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right, in any proceeding before the Commission or in any suit or action in any court, to assert that the Commission has no authority to regulate the payments of such other sums and charges.

Section 26(a)(2)(D) provides, among other things, that all assets of the trust shall be segregated and held in trust. Applicants request an exemption from the operation of the provisions of sections 26(a)(2)(D) and 27(c)(2) of the Act to the extent necessary to permit the proposed custodial arrangement which may not be deemed to be "in trust" within the language of section 26(a)(2)(D).

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 23, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for the request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3137 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12205; 812-5006]

Money Manager Fund; Filing of Application for Order Exempting Applicant From the Provisions

Notice is hereby given that Money Manager Fund ("Applicant"), 82 Devonshire Street, Boston, Massachusetts 02109, an investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on October 30, 1981, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio securities using the amortized cost method of valuation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that its investment objective is to seek as high a level of current income as is consistent with the preservation of capital and liquidity. Applicant will seek to achieve this objective by investing exclusively in high grade, money market instruments maturing in less than one year, including:

(1) Obligations issued or guaranteed as to interest and principal by the government of the United States or any agency or instrumentality thereof ("Government Securities");

(2) U.S. dollar-denominated obligations, including time deposits, certificates of deposit and bankers' acceptances, of U.S. banks and their branches located outside of the U.S., provided that the bank has capital, surplus and undivided profits of $100,000,000 or more at the date of investment ("Major Bank Instruments");

(3) Commercial paper of domestic issuers, including bank holding companies, which at the date of investment is rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investors Service, Inc.;

(4) Certificates of deposit issued by commercial banks of less than the size set forth above, savings banks and savings and loan associations, provided that the principal amount of the instrument is insured in full by the FDIC or FSLIC ("Insured Bank Instruments"); and

(5) Repurchase agreements with member banks of the Federal Reserve System and recognized dealers with respect to Government Securities, even though the security matures in more than one year.

Applicant represents that, as set forth more fully in its Prospectus, its shares will be purchased automatically and on a daily basis with "excess" cash balances in demand deposit accounts maintained by shareholders of Applicant with banks participating in the Money Manager Account Program ("Participating Banks"). Applicant represents that excess cash balances will be the amount by which the bank account balance of the shareholder exceeds an amount established between the shareholder and the Participating Bank. Applicant asserts that where Major Bank Instruments and Insured Bank Instruments (collectively, "Bank Instruments"), are, in the judgment of the Board of Trustees of the Fund, comparable to other obligations in terms of quality, yield and maturity, it is anticipated that Applicant would purchase Bank Instruments being offered by Participating Banks and their holding companies.

As here pertinent, section 2(a)(41) of the Act defines value to mean: (1) with

respect to securities for which market quotations are readily available, the market value of such securities, and (2) with respect to other securities and assets, fair value as determined in good faith by the board of directors. Rule 22c–1 adopted under the Act provides, in part, that no registered investment company or principal underwriter therefor issuing any redeemable security shall sell, redeem or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a–4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution, redemption and repurchase shall be an amount which reflects calculations made substantially in accordance with the provisions of that rule, with estimates used where necessary or appropriate. Rule 2a–4 states further that portfolio securities with respect to which market quotations are readily available shall be valued at current market value, and other securities and assets shall be valued at fair value as determined in good faith by an investment company's board of directors. Prior to the filing of this application, the Commission expressed its view that, among other things: (1) Rule 2a–4 under the Act requires portfolio instruments of "money market" funds which have more than 60 days remaining to maturity be valued with reference to market factors and (2) it would be inconsistent with the provisions of Rule 2a–4 for a "money market" fund to value its portfolio instruments with over 60-day maturities on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977).

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

In support of the relief requested, Applicant believes that its shareholders would be unfairly treated if Applicant were forced to price its portfolio instruments in a manner which would produce artificial price or yield volatility for instruments which Applicant expects to hold until maturity. Applicant states that potential investors in its shares are not concerned with the theoretical differences which might occur between the yield achieves through market pricing and the yield computed on the basis of amortized cost as described in the application. Applicant believes, on the other hand, that such potential investors are vitally concerned that (1) the net asset value of their shares remain stable; and (2) that the daily net income declared on their investment be steady and not exhibit the volatility which can occur when changes in market prices cause changes in yield on a daily or weekly basis. Applicant believes that by maintaining a portfolio of high quality money market instruments of short maturities, it will be possible to provide the required stability to individual and institutional investors. Applicant, with the advice of its adviser and based on the adviser's experience, has determined that maintaining an average portfolio maturity of 120 days or less will accomplish the aims of its investors by reducing the risk of significant volatility in the value of portfolio instruments and at the same time producing a yield commensurate with those available in the short-term money market. Applicant's request for exemption is based on its proposed policies described in its application and it agrees that the following conditions may be imposed in any order of the Commission granting such relief:

1. In supervising Applicant's operations and in delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within the overall duty of care owed to shareholders—to establish procedures reasonably designed, taking into account current market conditions and Applicant's investment objectives, to stabilize Applicant's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by Applicant's Board of Trustees shall be the following:

(a) Review by the Board of Trustees, as it deems appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net asset value per share as determined by using available market quotations from Applicant's $1.00 amortized cost price per share, and the maintenance of records of such review. To fulfill this obligation, Applicant intends to use actual quotations or estimates of market value reflecting current market conditions chosen by its Board of Trustees in the exercise of its discretion to be appropriate indicators of value, which may include among others, (i) quotations or estimates of market value for individual portfolio instruments, or (ii) values obtained from yield data relating to classes of money market instruments published by reputable sources;

(b) In the event such deviation from the Applicant's $1.00 amortized cost price per share exceeds ½ of 1%, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated; and

(c) Where the Board of Trustees believes that the extent of any deviation from Applicant's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, it shall take such action as it deems appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; reducing or withholding dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share; *provided,* however, that Applicant will neither (a) purchase any instrument with a remaining maturity of greater than one year, nor (b) maintain a dollar-weighted average portfolio maturity that exceeds 120 days. In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant will invest its available cash in such a manner as to reduce the dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. Applicant will record, maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition (1) above, and Applicant will include in the minutes of Board of Trustees' meetings and will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of its Board's considerations and actions

taken in connection with the discharge of its responsibilities, as set forth above. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act, as if such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. Applicant will limit its portfolio investments, including repurchase agreements, to those United States dollar-denominated instruments which the Board of Trustees determines present minimal credit risks, and which are of high quality as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Board.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statment indicating whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any such action was taken, Applicant will describe the nature and circumstances of such action.

Notice is further given that any interested person may, not later than February 23, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter ordered a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–3138 Filed 2–4–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22375; 70–6699]

New England Electric System; Proposed Amendment of Agreement and Declaration of Trust and Solicitation of Proxies

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, has filed a declaration with this Commission pursuant to Sections 6(a), 7, and 12(e) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 62 promulgated thereunder.

NEES proposes to amend Article 31 of its Agreement and Declaration of Trust to modify the preemptive rights of shareholders so that, unless the board of directors otherwise prescribes, such rights shall not exist in cases where any common shares are to be issued pursuant to certain programs open to all electric utility customers of the subsidiaries of the company and ohers who reside in the electric service territory of the subsidiaries. The company intends to submit the proposal to its shareholders at the Annual Meeting to be held on April 27, 1982, and proposes to solicit proxies in connection therewith.

It is stated that the proposed amendment will permit NEES to develop programs broadening its shareholder base, to promote a better relationship between the company and the customers served by the holding-company system, and to obtain an additional source of equity funds.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 1, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authrity.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–3144 Filed 2–4–82; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 22377; 70–6547]

Seneca Resources Corp. and National Fuel Gas Co.; Proposed Issuance and Sale of up to $25,000,000 of Short-Term Notes to Banks

Seneca Resources Corporation ("Seneca"), 10 Lafayette Square, Buffalo, New York 14203 a wholly-owned subsidiary of National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and National have filed with this Commission a post-effective amendment to the declaration in this proceeding pursuant to sections 6(a), 7, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 thereunder.

By order in this proceeding dated February 27, 1981 (HCAR No. 21940), Seneca was authorized to borrow up to $15,000,000 pursuant to a line of credit with Houston National Bank (Now, RepublicBank Houston, N.A.) ("Bank"). As of January 28, 1982, Seneca had $10,850,000 outstanding pursuant to the line of credit. Payment of the note is due on March 2, 1982.

Seneca now proposes to renew the loan agreement for a period of one year; to increase the authorized line of credit to $25,000,000; to provide that National guarantee repayment of the note issued under the loan agreement; to provide an alternate means of calculating the interest due on borrowings under the line of credit, resulting in lower interest costs; and to effect borrowings from other banks on equal or better terms (not to exceed the proposed aggregate of $25,000,000). The note to the Bank will bear interest at the prime rate. There will be no compensating balance requirements with the Bank nor any commitment fee.

The post-effective amendment to the declaration and any further amendments are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by February 25, 1982, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549,

and serve a copy on the declarants at the addresses specified above. Proof of sevice (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as amended or as it may be further amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3134 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 12203; 812-5020]

Strategic Investments Fund, Inc., Strategic Treasury Positions, Inc., and Preferential Brokerage, Inc.; Filing of Application for an Order Pursuant to Section 11(a) of the Act Approving the Terms of Certain Exchange Offers

Notice is hereby given that Strategic Investments Fund, Inc. ("SIF"), Strategic Treasury Positions, Inc. ("STP"), registered under the Investment Company Act of 1940 ("Act") as open-end, diversified management investment companies, and Preferential Brokerage, Inc. ("Preferential Brokerage"), c/o Howard V. Tygrett, Jr., 715 Preston State Bank Building, 8111 Preston Road, Dallas, Texas 75225, a broker-dealer registered under the Securities Exchange Act of 1934 which acts as principal underwriter for SIF and STP, filed an application on November 20, 1981, and an amendment thereto on December , 1981, for an order of the Commission, pursuant to Section 11(a) of the Act, permitting certain transfers and exchanges between and among SIF and STP, and any other funds which may be organized by Preferential Brokerage in the future (such other funds are referred to hereinafter together with SIF and STF as "Funds"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that Preferential Brokerage currently maintains a continuous public offering of the shares of SIF at net asset value plus a maximum sales charge of 8.5% of the public offering price per share on purchases of less than $10,000, such sales charge being reduced on larger purchases. It is further stated that Preferential Brokerage, in acting as principal underwriter for STP, will maintain a continous public offering of the shares of STP at net asset value without a sales charge.

Applicants assert that it would be in the best interests of shareholders of SIF, and of prospective shareholders of STP and other Funds, to provide for an exchange privilege between the Funds to permit an investor to exchange all or part of his shares in one Fund for the shares of another, should the shareholder's financial objectives change.

Section 11(a) of the Act provides, in pertinent part, that it is unlawful for any registered open-end investment company or principal underwriter thereof to make an offer to the holders of its securities or of the securities of any other open-end company to exchange their shares for shares of the same or another such company on any basis other than the relative net asset values of the respective securities unless the terms of the offer have first been submitted to and approved by the Commission.

Applicants propose to permit a shareholder of SIF (or any other Fund imposing a sales charge) to exchange all or part of his shares for shares of STP (or any other Fund not imposing a sales charge) at the net asset value of STP (or any other Fund not imposing a sales charge) at the time of the exchange, without payment of a sales charge, and to re-exchange shares of STP (or any other Fund not imposing a sales charge) acquired pursuant to the exchange from SIF (or any other Fund imposing a sales charge), together with additional STP shares (or the shares of any other Fund not imposing a sales charge) accumulated through reinvestment of dividends and distribution of such shares, for shares of SIF (or any other Fund imposing a sales charge) at the net asset value of SIF (or any other Fund imposing a sales charge) at the time of such re-exchange without payment of a sales charge. It is further stated that under the exchange privilege that Applicants propose, shares of STP (or any other Fund not imposing a sales charge) would be eligible to be exchanged for shares of SIF (or any other Fund imposing a sales charge) only at the public offering price of SIF (or any other Fund imposing a sales charge) at the time of the exchange, which offering price would include the sales charge described in the prospectus for SIF (or any other Fund imposing a sales charge). With regard to such offers of exchange as would be made on a basis other than the relative net asset values of the respective securities, Applicants request that the Commission issue an order pursuant to Section 11(a) of the Act approving the terms of such proposed exchange offers.

In support of the exemption requested, Applicants assert that the imposition of sales charges described in the prospectus for SIF (or any other Fund charging a sales load) upon an exchange for SIF shares (or the shares of any other Fund charging a sales load) of shares of STP (or any other Fund not imposing a sales charge) would be appropriate as a measure which would discourage attempts to circumvent the sales charges generally imposed upon sales of shares of SIF, or which may be imposed by any other Fund. Applicants represent, in addition, that any exchanges made in accordance with the aforesaid terms would be required to meet the minimum investment and eligibility requirements of each Fund, and the restriction that shares not be redeemed for exchange until such shares had been outstanding for thirty or more calendar days, as well as the requirements that (i) an administrative fee be charged for each exchange of securities, and (ii) any exchange be effectuated as of the close of business on the day that the request for exchange is received in proper form, together with all suporting documents, by the Funds' custodian and shareholder services agent.

Notice is further given That any interested person may, not later than February 22, 1982, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices or orders issued in the matter.

including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Divison of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3140 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 18463, File No. SR-NASD-82-1]

Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc.

February 1, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 15, 1982, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposed rule change would amend the buy-in provisions of section 59 of the NASD's Uniform Practice Code ("UPC") by (i) removing the requirement that the selling member's trade comparison (or other document describing the trade) be attached to notices of intent to buy-in; (ii) eliminating the requirement that buy-ins be executed for "cash" or "guaranteed" delivery of certificates and (iii) requiring a member that executes a buy-in to be prepared to defend the price at which the buy-in is executed relative to the current market price at the time of the buy-in. The proposed amendments are intended to streamline the buy-in procedure by reducing the amount of paperwork associated with initiating the procedure and by providing a simpler mechanism for the actual execution of buy-ins.

By eliminating the requirement that the member intending to buy-in ("buying-in member") attach the selling member's trade comparison (or other document describing the trade) to the notice of intent to buy-in, the NASD believes that duplication of effort will be avoided. This is because, in order to prepare a buy-in notice, a buying-in member already must obtain the trade detail needed to identify the trade to be bought in. The elimination of this requirement also will allow members to use advanced communication technologies (*e.g.*, telecopier, telegram, mailgram) in transmitting buy-in notices instead of traditional mail service.

By eliminating the requirement that buy-ins be executed for "cash" or "guaranteed" delivery, the NASD believes that buying-in members will be able to execute buy-ins at reduced execution and administrative costs. Moreover, the NASD believes that buying-in members will be assured of obtaining execution when, in some circumstances, execution would not be obtained. Under the existing procedure, a member attempting to execute a buy-in is occasionally unable to do so because of the inability of selling market makers to insure "cash" or "guaranteed" delivery of securities. If the buy-in cannot be executed with the requisite delivery stipulation on the day the buy-in is due to be executed, the notice of intent to buy-in expires and the procedure must be re-initiated. Similarly, prospective selling market makers, in responding to a request for "cash" or "guaranteed" delivery, must make a time consuming check of their records to ascertain the availability of certificates for "cash" or "guaranteed" delivery. The additional expense caused by this check is generally charged by the market makers to the buying-in member in the form of a premium above the best available market quotation price. By allowing members to execute buy-ins for "regular way" delivery (settlement in five business days after trade date) when the need for securities is not urgent, the proposed rule change will allow buy-ins to be executed at or near the best available market quotation and will eliminate the risks and costs related to the failure to obtain execution. In addition, because the rules of registered clearing agencies exclude "cash" or "guaranteed" delivery transactions from their systems, allowing buy-ins to be executed for "regular way" delivery will facilitate the processing of buy-ins through the less labor-intensive and more efficient facilities of registered clearing agencies.

The NASD believes that the proposed rule change furthers the goal of section 15A(b)(6) of the Act which requires, among other things, that the rules of registered national securities associations be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market. * * *"

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission on or before February 26, 1982. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NASD-82-1.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of the filing and of any subsequent amendment also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3135 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18459; File No. SR-NYSE-82-1]

New York Stock Exchange, Inc.; Self-regulatory Organizations

In the matter relating to the Utilization of a Registered Securities Depository for the Confirmation, Acknowledgement and Book Entry Settlement of Depository Eligible COD Transactions. Comments requested on or before February 26, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1982 the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of proposed amendments to Rule 387 (COD [1] Orders) which would require that member organizations, with certain exemptions, accept COD orders only when the customer or its agent utilizes the facilities of a registered securities depository for the confirmation, acknowledgement and book entry settlement of all transactions in depository eligible securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed amendment is to help solve the COD/DK [2] problem, a problem exacerbated during periods of high volume. It is also intended to address the problem of the physical movement of stock certificates, and is responsive to industry concerns regarding capacity to handle sustained volume of 90 million and peaks of 150 million share days. Electronic confirmation, acknowledgement and book entry settlement through a registered securities depository will provide for more expenditious and efficient settlement of COD transactions, thus facilitating more cost efficient operations during normal and high volume periods. It is designed to reduce the clerical, interest and error costs associated with the processing of COD/DK's.

The rule amendment provides an exemption for COD transactions between a member organization and a customer when: the member organization and its agent are not currently participants in a registered securities depository; or, the customer and its agent are not currently participants in a registered securities depository. Therefore, any entity not currently a participant in a registered securities depository will not be required to become one.

(b) The proposed amendment to Rule 387 is consistent with the requirements of section 6(b)(5), 17A.(a) (1) and (2), and 17A(e) of the Act.

The proposal is consistent with Section 6(b)(5) in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

The proposed amendment is consistent with sections 17A.(a)(1) of the Act, in that it addresses the findings of Congress relative to the clearance and settlement of securities transactions in adopting the Securities Acts Amendments of 1975. The proposed amendment is further consistent with the Congressional mandate of section 17A.(a)(2) that the Commission facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities. This amendment, which in effect encourages expanded use by current participants of clearance and settlement facilities already in existence, by design will facilitate the implementation of such a national system. The amendment will encourage the use of more efficient depository procedures for confirmation, acknowledgement and settlement of COD transactions. A diminished reliance on less efficient methods would reduce the clerical, interest and other related costs borne by broker/dealers and eventually passed along to their customers.

Under section 17A(e) of the Act, the Commission is directed to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities consummated by means of the mails or any means or instrumentalities of interstate commerce. To the extent that this proposal will promote book entry settlement, it will correspondingly reduce the physical delivery and receipt of securities in connection with the settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposal does not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization has consented, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before February 26, 1982.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 1, 1982.

George A. Fitzsimmons,

Secretary.

[1] COD—While the Rule is entitled COD Orders (Collect on Delivery), it also refers and applies to POD Orders (Payment on Delivery).

[2] DK—Don't Know Rejected Trades—Attempted deliveries of securities against payment that are rejected because the receiver says it has no instructions from its customer to accept the securities.

Exhibit A

Rule 387

(a) No member organization shall accept an order from a customer pursuant to an arrangement whereby payment for securities purchased or delivery of securities sold is to be made to or by an agent of the customer unless all of the following procedures are followed:

(1) The member or member organization shall have received from the customer prior to or at the time of accepting the order, the name and address of the agent and the name and account number of the customer on file with the agent.

(2) Each order accepted from the customer pursuant to such an arrangement has noted thereon the fact that it is a payment on delivery (POD) or collect on delivery (COD) transaction.

(3) The member organization delivers to the customer a confirmation, or all relevant data customarily contained in a confirmation with respect to the execution of the order, in whole or in part, not later than the close of business on the next business day after any such execution, and

(4) The member organization has obtained an agreement from the customer that the customer will furnish his agent instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each confirmation, or the relevant data as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will assure that such instructions are delivered to his agent no later than:

(i) In the case of a purchase by the customer where the agent is to receive the securities against payment (COD), the close of business on the fourth business day after the date of execution of the trade as to which the particular confirmation relates; or

(ii) In the case of a sale by the customer where the agent is to deliver the securities against payment (POD), the close of business on the third business day after the date of execution of the trade as to which the particular confirmation relates.

(5) The customer or its agent shall utilize the facilities of a securities depository for the confirmation, acknowledgment and book intry settlement of all depository eligible transactions.

. . . Supplementary Material

.10 The following transactions shall be exempt from the provisions of paragraph (a)(5) of thie Rule:

(1) Transactions that are to be settled outside of the United States.

(2) Transactions wherein both a member organization and its agent are not participants in a securities depository.

(3) Transactions wherein both a customer and its agent are not participants in a securities depository.

.20 The exemptions contained in .10 (2) and (3) of this Supplementary Material shall be periodically reviewed by the Exchange in order to determine their continued necessity.

"securities depository" shall mean a clearing agency as defined in Section 3(a)(23) of the Securities Exchange Act of 1934, that is registered with the Securities and Exchange Commission pursuant to Section 17A(b)(2) of the Act.

.40 For the purposes of this rule, "depository eligible transactions" shall mean transactions in those securities for which confirmation, acknowledgment and book entry settlement can be performed through the facilities of a securities depository as defined in Rule 387.30.

.50 Rule 387(a)(5) and Supplementary Material .10, .20, .30 and .40 shall become effective January 1, 1983.

[FR Doc. 82-3141 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-18460; Filed No. SR-OCC-82-3]

Options Clearing Corp.; Self-Regulatory Organizations

In the matter relating to the disposition of certain open positions of suspended Clearing Members; Comments requested on or before February 26, 1982.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. § 78s(b)(1), notice is hereby given that on January 15, 1982, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Proposed Rule Change

The proposed rule change would amend OCC Rule 1106 in various minor respects. First, it would eliminate OCC's obligation, in the event of the suspension of a Clearing Member, to attempt to transfer segregated long positions and certain covered short positions of suspended Clearing Member to other Clearing Members. Instead, it would require such positions to be maintained by OCC subject to the instructions of the suspended Clearing Member or its representative.

Second, the proposed rule change would make it clear that if and when OCC specifies "automatic exercise" intervals for expiring options on securities other than stocks, those intervals will apply for the purposes of Rule 1106(a) (which provides for the automatic exercise of certain expiring in-the-money options carried by a suspended Clearing Member if OCC is unable to obtain exercise instructions from the Clearing Member or its representative).

Third, the proposed rule change would make it clear that OCC may discharge its obligation to notify customers of a suspended Clearing Member whose short positions are closed out or transferred by giving appropriate notice to the suspended Clearing Member or its representative.

Fourth, the proposed rule change would clarify OCC's authority to pass on to a suspended Clearing Member commissions that it incurs in closing out the Clearing Member's open positions.

II. Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified below. OCC has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to make various minor revisions in OCC's procedures for handling open positions of suspended Clearing Members. Some of the proposed revisions reflect OCC's recent experience with suspensions of Clearing Members; others are of a technical and drafting nature.

The proposed rule change would eliminate OCC's obligation to attempt to transfer certain open positions of suspended Clearing Members to other Clearing Members in order to avoid potential conflicts between the obligations of OCC and the responsibilities of SIPC or other trustees and to relieve OCC of obligations that it may not be able to discharge, both for legal and practical reasons.

The balance of the proposed rule change is intended to clarify and formalize OCC's existing procedures for handling open positions of suspended Clearing Members.

The proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 because it promotes the protection of investors and the public interest by improving OCC's procedures for handling open positions of suspended Clearing Members and eliminating unnecessary

conflicts between the obligations of OCC and the responsibilities of SIPC or other trustees in the event of a Clearing Member's insolvency.

(B) Burden on Competition

The proposed rule change will have no impact on competition.

(C) Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before February 26, 1982.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: February 1, 1982.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82-3139 Filed 2-4-82; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Thursday, February 18, 1982, at the U.S. Small Business Administration, 2nd Floor Conference Room, 1441 L Street, NW., Washington, D.C. 20416, to discuss such business as may be presented by the Committee members. The meeting will be open to the interested public, however, space is limited.

Persons wishing to present written statements should notify Mr. Milton Wilson, Jr., Office of Capital Ownership Development, Small Business Administration, Room 317, 1441 L Street, NW., Washington, D.C. 20416, (202) 653-6526, in writing or by telephone no later than February 12, 1982.

Dated: February 1, 1982.

Edna E. Powers,

Director, Office of Advisory Councils.

[FR Doc. 82-2992 Filed 2-4-82; 8:45 am]

BILLING CODE 8025-01-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 25
Friday, February 5, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Federal Communications Commission	1
Federal Energy Regulatory Commission	2, 3
Federal Reserve System	4
International Trade Commission	5
Nuclear Regulatory Commission	6

1

FEDERAL COMMUNICATIONS COMMISSION

The Federal Communications Commission will hold a Special Open Meeting on the subject listed below on Monday, February 8, 1982, at 3:00 p.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Report and Order in General Docket No. 81-768 concerning Random Selection Technique for Choosing Among Mutually Exclusive Applicants for Initial Telecommunications Licenses. *Summary:* The Commission will consider whether and how to establish a system of random selection by amending Part 1.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: January 1, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-179-82 Filed 2-3-82; 2:18 pm]

BILLING CODE 6717-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION

February 3, 1982.

TIME AND DATE: 10 a.m., February 11, 1982.

PLACE: Room 9306, 825 North Capitol Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Acting Secretary; Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—743rd Meeting, February 10, 1982, Regular Meeting (10 a.m.)

CAP-1. Project Nos. 3142, 3143, 3150 and 3152, City of Ann Arbor, Michigan
CAP-2. Project No. 3824-000, Continental Hydro Corp.; Project No. 3967-000, Energenics Systems, Inc.; Project No. 4512-000, City of Bountiful, Utah; Project No. 4596-000, Utah Municipal Power Co.; Project No. 4867-000, Utah Power & Light Co. and Orangeville City, Utah
CAP-3. Project No. 3592, Fluid Energy Systems, Inc.; Project No. 4125, Kern County Water Agency
CAP-4. (a) Project No. 3635-000, Mitchell Energy Co., Inc.; Project No. 3865-000, Guadalupe Blanco River Authority; Project No. 3955-000, Energenics Systems, Inc.; Project No. 4921-000, Pedernales Electric Cooperative Inc.; (b) Project No. 3635-000, Mitchell Energy Co., Inc., Project No. 3685-000, Guadalupe Blanco River Authority; Project No. 3966-000, Energenics Systems, Inc. Project No. 4291-000, Pedernales Electric Cooperative, Inc.
CAP-5. Project No. 5090-000, City of Idaho Falls, Idaho
CAP-6. Project No. 4805-001, Bloomfield Ranch Hydropower Project
CAP-7. Project No. 4223-000, Little Wood River Irrigation District
CAP-8. Project Nos. 5175 and 5176, Bluepond Associates
CAP-9. Project No. 459, Union Electric Co.
CAP-10. Project Nos. 67 and 2868, Southern California Edison Co.; Project No. 2904, Cities of Anaheim and Riverside, California
CAP-11. Docket Nos. ER81-457-000 and EL81-13-000, Louisiana Power & Light Co.
CAP-12. Docket Nos. ER80-592, et al., Allegheny Power System; Docket No. ER80-592, Allegheny Power System Cos.
CAP-13. Docket No. ER82-155-000 and ER81-188-000, Central Maine Power Co.
CAP-14. Docket No. ER82-160-000, Central Telephone & Utilities Corp. (Western Power Division)
CAP-15. Docket No. ER82-161-000, New England Power Co.
CAP-16. Omitted
CAP-17. Docket No. ER-71, Central Illinois Public Service Co.
CAP-18. Docket Nos. ER81-166-000, ER81-175-000, ER77-354 and ER78-14, Missouri Utilities Co.
CAP-19. Docket No. ER81-708-000, Public Service Co. of Indiana
CAP-20. Docket No. ER81-180-000, Montaup Electric Co.
CAP-21. Docket No. ER81-179-004, Arizona Public Service Co., Town of Wickenberg, Arizona
CAP-22. Docket No. ER-179-005, Arizona Public Service Co. (Washington Water Power Co.)
CAP-23. Omitted
CAP-24. Project No. 4770, Wells River Hydro Associates
CAP-25. Docket No. ER81-177-000, Southern California Edison Co.

Consent Miscellaneous Agenda

CAM-1. Docket No. QF-23-000, Vulcan Materials Co.
CAM-2. Docket No. RN2- , Revision of Annual Report of System Flow Diagrams: Format No. FERC 567
CAM-3. Docket No. RM79-76 (Louisiana—6), High-cost gas produced from tight formations
CAM-4. Docket No. RM79-76 (Louisiana—5), High-cost gas produced from tight formations
CAM-5. Docket No. RM79-76 (Texas—14), High-cost gas produced from tight formations
CAM-6. Docket No. GP80-109, Cabot Oil Corp.; Docket No. GP81-8-000, Pelto Oil Co., et al.; Docket No. GP-18-000, Hurley Petroleum Corp., et al.
CAM-7. Docket No. GP80-24, Transcontinental Gas Pipe Line Corp.
CAM-8. Docket No. GP81-44-000, Railroad Commission of Texas, Section 107 NGPA determination, Tom F. Marsh, Inc., and Clarence Zybach No. 1-14 Well, RRC; Docket No. F-10-026392, FERC No. JD81-12735
CAM-9. Docket Nos. RO81-62-000 and RA81-48-000 (Consolidated), Henry Petroleum Corp.
CAM-10. Docket No. RA80-5 and RA80-82 (Consolidated), San Ann Service, Inc.
CAM-11. Docket No. RM81-33, Montaup Electric Co.

Consent Gas Agenda

CAG-1. Docket No. RP82-36-000, Penn-York Energy Corp.
CAG-2. Docket No. RP81-97-001, Great Lakes Gas Transmission Co.
CAG-3. Docket No. RP80-107-006, Natural Gas Co. of America
CAG-4. Docket No. RP75-059-005, Colorado Interstate Gas Co.
CAG-5. Docket No. CP79-84-007, Panhandle Eastern Pipe Line Co.
CAG-6. Docket No. CP77-253-013, Panhandle Eastern Pipe Line Co.
CAG-7. Docket No. TA82-1-10-001 (PGA82-1a), Tennessee Natural Gas Lines Inc.
CAG-8. Docket No. TA82-1-9 (PGA82-1, IPR82-1, DCA82-1, R&D82-1 and GRI82-1), Tennessee Gas Pipeline Co.

CAG–9. Docket No. RP80–106, Trunkline Gas Co.
CAG–10. Docket No. SP82–6–000, Association of Oil Pipe Lines
CAG–11. Docket Nos. ST80–299 and ST80–336, Sugar Bowl Gas Corp.
CAG–12. Docket No. ST82–95, Red River Pipeline Co.
CAG–13. Docket Nos. ST81–106 and CP82–104, Producer's Gas Co.
CAG–14. Docket No. CI82–48–000, Mesa Petroleum Co.; Docket No. CI82–51–000, Pioneer Production Corp.; Docket No. CI82–21–000, McMoran Offshore Production Co.; Docket No. CI82–38–000, The Superior Oil Co.; Docket No. CI82–22–000, Chevron U.S.A. Inc.; Docket No. G–7167–000, Gulf Oil Corp.
CAG–15. Docket No. CI81–437–000, Sonat Exploration Co.
CAG–16. Docket No. CI64–26, Gulf Oil Corp.
CAG–17. Docket Nos. CP81–189–000, CP81–189–001 and CP81–190–000, Delhi Gas Pipeline Corp.
CAG–18. Docket No. CP81–483–000, Equitable Gas Co.; Docket No. CP81–485–000, Texas Eastern Transmission Corp.
CAG–19. Docket No. CP81–349–000, Northern Natural Gas Co., Division of Internorth, Inc.
CAG–20. Docket No. CP82–6–000, Tarpon Transmission Co.
CAG–21. Docket No. CP81–140–000, Northern Natural Gas Co., Division of Internorth, Inc.
CAG–22. Docket No. CP81–532–000, Texas Gas Transmission Corp.
CAG–23. Docket No. CP81–273–000, Cities Service Gas Co.
CAG–24. Docket No. CP79–289, Michigan Wisconsin Pipe Line Co.
CAG–25. Docket Nos. CP82–45–000 and CP82–45–001, Northern Natural Gas Co., Division of Internorth, Inc.
CAG–26. Docket No. CP81–70–000, Mountain Fuel Supply Co.
CAG–27. Docket No. CP81–450–000, Texas Gas Transmission Corp. and Texas Eastern Transmission Corp.
CAG–28. Docket No. CP81–499–000, El Paso Natural Gas Co.
CAG–29. Docket No. CP81–489–000, Panhandle Eastern Pipe Line Co.
CAG–30. Docket No. CP81–475–000, Transcontinental Gas Pipe Line Corp. and Columbia Gulf Transmission Co.

Power Agenda

I. Licensed Project Matters

P–1. Reserved

II. Electric Rate Matters

ER–1. Docket No. ER79–126, Arizona Public Service Co.
ER–2. Docket No. ER82–23–000, West Texas Utilities Co.
ER–3. Docket No. ID–1424, Edwin I. Hatch
ER–4. (a) Docket No. ER81–577–000, Arkansas Power & Light Co.; (b) Docket Nos. ER82–180–000 and ER81–577–000, Arkansas Power & Light Co.

Miscellaneous Agenda

M–1. Docket No. QF82–6–000, Mercy Hospital and Medical Center, Small Power Production and Cogeneration Facilities—Qualifying Status
M–2. Docket No. QF81–19–000, Resources Recovery (Dade County), Inc.
M–3. Omitted
M–4. Reserved
M–5. Reserved
M–6. Docket No. RM82– , Fees Applicable to the Natural Gas Policy Act
M–7. Docket No. RM82– , Discontinuance of quarterly report of pipeline companies; Form ICC–QPS
M–8. Docket No. RM80–42, Tax normalization for certain items reflecting timing differences in the recognition of expenses or revenues for ratemaking and income tax purposes; Docket No. R–424, Accounting for premium, discount and expense of issue, gains and losses on refunding and reacquisition of long-term debt, and interperiod allocation of income taxes; Docket No. R–446, Amendments of the uniform systems of accounts for classes A, B and C public utilities and licensees and natural gas companies: deferred income taxes
M–9. Docket No. GP80–11–002, Columbia Gas Transmission Corp.

Regular Gas Agenda

I. Pipeline Rate Matters

RP–1. Docket Nos. RP79–36, RP80–65 and RP81–11–000, Michigan Wisconsin Pipe Line Co.

II. Producer Matters

CI–1. Reserved

III. Pipeline Certificate Matters

CP–1. (a) Docket No. RP76–91, Montana-Dakota Utilities Co.; (b) Docket No. CP81–316, Montana-Dakota Utilities Co.; Docket No. CP81–488, Colorado Interstate Gas Co.; Docket No. CP81–373, MIGC, Inc.; (c) Docket No. CP82–181, Michigan Wisconsin Pipe Line Co.
CP–2. Omitted
CP–3. Docket No. CP81–124–000, Pacific Interstate Transmission Co.
CP–4. Docket No. CP79–470, Interstate Natural Gas Association of America

Lois D. Cashell,

Acting Secretary.

[S–180–82 Filed 2–3–82; 4:11 pm]

BILLING CODE 6717–01–M

3

FEDERAL ENERGY REGULATORY COMMISSION

February 2, 1982.

TIME AND DATE: 11 a.m., February 4, 1982.

PLACE: Room 9306, 825 North Capitol Street, NE., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Project No. 199.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb; Telephone (202) 357–8400.

[S–176–82 Filed 2–3–82; 8:45 am]

BILLING CODE 6717–01–M

4

FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, February 10, 1982.[1]

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed amendment to Regulation Z (Truth in Lending) to exempt from the regulation real estate brokers who arrange seller financing of homes. (Proposed earlier for public comment; Docket No. 0368)
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204.

Dated: February 3, 1982.

James McAfee,

Assistant Secretary of the Board.

[S–177–82 Filed 2–3–82; 11:05 am]

BILLING CODE 6210–01–M

5

INTERNATIONAL TRADE COMMISSION

TIME AND DATE: 10 a.m., Thursday, February 18, 1982.

PLACE: Hearing Room, 701 E Street, NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
   a. Drill point screws (Docket No. 795).
5. Investigations 701–TA–86/144 [Preliminary] and 731–TA–53/86 [Preliminary] (Steel)—briefing and vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–178–82 Filed 2–3–82; 2:15 pm]

BILLING CODE 7020–02–M

6

NUCLEAR REGULATORY COMMISSION

DATE: Tuesday, February 9, 1982.

[1] The closed meeting originally announced for 10 a.m. will convene following the conclusion of the above announced meeting.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Tuesday, February 9:

2:00 p.m.

Discussion of Phase II of Diablo Canyon Report (Open/closed status to be determined)

ADDITIONAL INFORMATION: By a vote of 3–0, Commissioners Bradford and Ahearne not present, on February 1, 1982, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules, that Commission business required that Discussion of Congressional Testimony (Closed Meeting), held that day, be held on less than one week's notice to the public. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, (202) 634–1410.

Dated: February 2, 1982.

Walter Magee,

Office of the Secretary.

[S–181–82 Filed 2–3–82; 4:11 pm]

BILLING CODE 7590–01–M

federal register

Friday
February 5, 1982

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama: AL81–1295	Oct. 9, 1981.
Alaska: AK81–5136	July 24, 1981.
California:	
CA81–5119	May 15, 1981.
CA81–5132	July 7, 1981.
CA81–5143	Aug. 21, 1981.
Colorado:	
CO81–5145	Sept. 4, 1981.
CO81–5146	Sept. 4, 1981.
CO81–5148	Sept. 4, 1981.
Idaho: ID81–5157	Oct. 9, 1981.
Maine: ME80–2069	Aug. 15, 1980.
Kansas: KS82–4003	Jan. 15, 1982
Nevada:	
NV81–5102	Feb. 6, 1981.
NV81–5104	Feb. 20, 1981.
NV81–5161	Nov. 6, 1981.
North Dakota: ND81–5131	July 6, 1981.
New Jersey: NJ81–3053	Oct. 9, 1981.
Oregon: OR81–5127	July 6, 1981.
Pennsylvania:	
PA80–3055	Oct. 3, 1980.
PA80–3074	Dec. 12, 1980.
PA81–3027	July 17, 1981.
PA81–3068	Sept. 25, 1981.
PA81–3072	Oct. 2, 1981.
PA81–3066	Oct. 23, 1981.
Washington:	
WA81–5100	Mar. 6, 1981.
WA81–5163	Dec. 4, 1981.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Connecticut: CT81–3001 (CT82–3001)	Jan. 23, 1981.
Georgia: GA79–1067 (GA82–1002)	Apr. 20, 1979.
Mississippi: MS80–1121 (MS82–1001)	Dec. 12, 1980.
Montana: MT81–5139 (MT82–5101)	Aug. 7, 1981.
Oregon: OR80–5109 (OR82–5102)	Mar. 14, 1980.

Signed at Washington, D.C., this 29th day of January 1982.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION AL81-1295 - Mod. #2 (46 FR 50222 - October 9, 1981)					
Montgomery County, Alabama Building Construction					
CHANGE					
Carpenters	$7.37				
Electricians	7.71				
DECISION NO. AK81-5136 - Mod. #2 (46 FR 38243 - July 24, 1981)					
Statewide, Alaska					
Change:					
Carpenters:					
Area 1:					
Piledrivermen	$20.24	$ .90	$3.00		.20
Areas 2 and 3:					
Piledrivermen	20.24	.90	3.00		.20
Cement Masons:					
Area 1	19.12	1.55	3.00		.15
Area 2	18.87	1.55	3.00		.15
Marble Setters	20.02	1.34	2.80		
Plasterers:					
Area 1	19.12	1.55	3.00		.15
Area 2	18.87	1.55	3.00		.15
Power Equipment Operators:					
Group 1	20.47	1.50	3.25		.15
Group 1-A	21.73	1.50	3.25		.15
Group 2	19.92	1.50	3.25		.15
Group 3	19.40	1.50	3.25		.15
Group 4	18.26	1.50	3.25		.15
Omit:					
Truck Drivers Schedule as originally issued					
Add:					
Truck Drivers:					
Group 1	19.44	2.14	4.10		.30
Group 1-A	20.30	2.14	4.10		.30
Group 2	18.58	2.14	4.10		.30
Group 3	18.01	2.14	4.10		.30
Group 4	17.65	2.14	4.10		.30
Group 5	17.06	2.14	4.10		.30

DECISION NO. AK81-5136 (Cont'd)

TRUCK DRIVERS' CLASSIFICATIONS

Group 1: Ready Mix: over 12 up to and including 15 yards; Semi with double Box Mixer; Dump Trucks (including Rockbuggy and trucks with pups) over 40 up to and including 60 yards; Deltas, Commanders, Rollogons and similar equipment when pulling sleds, trailers or similar equipment; Boat Coxswains; Helicopter Transporters; Lowboys including attached trailers and jeeps 12 axles

Group 1-A: Dump Trucks (including Rockbuggy and trucks with pups) over 60 yards up to and including 100 yards

Group 2: Turn-o-wagon or DW-10 (not self loading); Ready Mix: over 7 yards up to and including 12 yards; All Deltas, Commanders, Rollogons and similar equipment; Mechanics, Dump Trucks (including Rockbuggy and trucks with pups) over 20 yards up to and including 40 yards

Group 3: Dump Trucks (including Rockbuggy and trucks with pups) over 10 yards up to and including 20 yards; Lowboys including attached trailers and jeeps up to and including 11 axles; Oil Distributor Drivers; Ready Mix: over 5 yards up to and including 7 yards; Compactor (when pulled by rubber tired equipment); Water Wagon, when pulled by Euclid or similar equipment

Group 4: Buggymobile; Semi or truck and trailer; Dumpster; Batch Trucks over 5 yards; Dump Trucks (including Rockbuggy and trucks with pups) up to and including 10 yards; Gin Pole Driver; Track Truck Equipment; Stringing Truck; Fuel Truck, Fuel Handler with truck; Grease Truck; Flat Bed, dual rear axle; Hyster Operators (handling bulk aggregate); Lumber Carriers; Ready Mix over 3 yards up to and including 5 yards; Water Wagon, semi; Water Wagon, dual axle; Winch Truck, Wrecker, Flat Bed including "A" Frame over 5 tons; Bull Lifts and Fork Lifts, Fork Lifts with power boom and swing attachment over 5 tons; Front End Loader with forks; Bus Operator over 30 passengers; all Terrain Vehicles; Boom Truck, Knuckle Truck over 5 tons; Foam Distributor Truck/dual axle; Hydro-Seeders, dual axle; Vacuum Trucks, Truck Vacuum Sweepers, dual axle; Loadermaster (air and water); Air Cushion or similar type; Fire Truck, dual axle; Combination Truck - fuel/Grease; Greasers; Rigger-non-warehouse Operation; Expeditor

Group 5: Batch Trucks up to and including 5 yards; Gravel Spreader Box Operator on truck; Flat Beds, single rear axle; Ready Mix up to and including 3 yards; Boom Truck/Knuckle Truck up to and including 5 tons; Pickups (pilot cars and all light duty vehicles); Swampers; Water Wagon, single axle; Winch Truck, Wrecker, Flat Bed including "A" Frame 5 tons and under; Bull Lifts and Fork Lifts (Fork Lifts with power boom and swing attachments up to and including 5 tons); Bus Operators, up to 30 passengers; Farm type rubber tired tractor when material handling or pulling wagons; Foam Distributor, single axle; Team Drivers (horses, mules, and similar equipment); Vacuum Trucks, single axle; Rigger, warehouse operation; Fuel Handler; Ambulance; Hydro-Seeder, single axle

DECISION NO. CA81-5119 - Mod. # 4
(46 FR 27017 - May 15, 1981)
Alameda, Amador, Calaveras, Contra Costa, Del Norte, El Dorado, Humboldt, Marin, Mariposa, Merced, Monterey, Napa, Nevada, Placer, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Cruz, Santa Clara, Solano, Sonoma, Sutter, Tuolumne, Yolo and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Brick Tenders:					
Area 1	$14.73	1.30	1.75		
Area 2	15.48	1.20	2.50		

DECISION NO. CA81-5132 - Mod. # 5
(46 FR 35860 - July 7, 1981)
Alameda, Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Cruz, Santa Clara, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba Counties, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Brick Tenders:					
Area 1	$14.73	1.30	1.75		
Area 2	15.48	1.20	2.50		

DECISION NO. CA81-5143 - Mod. #2
(46 FR 42591 - August 21, 1981)
San Diego County, California

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Carpenters:					
Carpenters	$16.81	$1.11	$1.75		.07
Millwrights; Pneumatic Nailer; Hardwood Floorlayers	17.41	1.11	1.75		.07
Piledrivers	17.06	1.11	1.75		.07
Divers:					
Divers	38.62	1.11	1.75		.07
Stand-by Divers	19.31	1.11	1.75		.07
Tenders	18.31	1.11	1.75		.07
Drywall Installers	18.20	1.11	1.75		.07
Drywall Finishers	17.10	1.23	1.78	.75	.07
Lathers	18.20	1.11	1.75		.07
Power Equipment Operators:					
Group 1	15.10	1.25	2.95	1.17	.14
Group 2	15.38	1.25	2.95	1.17	.14
Group 3	15.67	1.25	2.95	1.17	.14
Group 4	15.81	1.25	2.95	1.17	.14
Group 5	16.03	1.25	2.95	1.17	.14
Group 6	16.14	1.25	2.95	1.17	.14
Group 7	16.26	1.25	2.95	1.17	.14
Group 8	16.43	1.25	2.95	1.17	.14
Group 9	16.56	1.25	2.95	1.17	.14
Power Equipment Operators:					
Dredging (Hydraulic Suction Dredge):					
Leverman	16.95	1.25	2.95	.92	.04
Watch Engineer; Welder	16.37	1.25	2.95	.92	.04
Deckmate	16.37	1.25	2.95	.92	.04
Winchman (Stern Winch or Dredge)	15.82	1.25	2.95	.92	.04
Bargeman; Deckhand; Fireman; Oiler; Leveehand	15.53	1.25	2.95	.92	.04
(Clamshell Dredges):					
Leverman	16.95	1.25	2.95	.92	.04
Watch Engineers	16.37	1.25	2.95	.92	.04
Deckmate	16.37	1.25	2.95	.92	.04
Bargemate	15.89	1.25	2.95	.92	.04
Bargeman; Deckhand; Fireman; Oiler	15.28	1.25	2.95	.92	.04

DECISION NO. CO81-5145 - Mod. #6 (46 FR 44602-September 4, 1981) Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld Counties, Colorado	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$14.97	$1.375	$1.15		.05
Bricklayers; Stonemasons:					
Boulder and Grand Counties	14.35	.85	1.10		.05
Marble Setters:					
Elbert, Lake and Park Counties	13.31	.85	.70		

DECISION NO. CO81-5146-Mod. #5 (46 FR 44607-September 4, 1981) El Paso County, Colorado	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$14.97	$1.375	$1.10		.05
Elevator Constructors' Helpers	10.42	1.345	.95	a	.035
Marble Setters	13.31	.85	1.15		.05

DECISION NO. CO81-5148-Mod. #5 (46 FR 44616-September 4, 1981) Las Animas, Otero, and Pueblo Counties, Colorado	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$14.97	$1.375	$1.15		.05

DECISION NO. ID81-5157 - Mod #5 (46 FR 50223 - October 9, 1981) Statewide Idaho	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
LINE CONSTRUCTION (Area 1): Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties:					
Cable Splicers; Leadman Pole Sprayer	$19.30	.45	3%+2.00	.10	1/2%
Lineman; Pole Sprayer					
Heavy Line Equipment Man					
Certified Lineman Welder	17.44	.45	3%+2.00	.10	1/2%
Tree Trimmer	15.74	.45	3%+2.00	.10	1/2%
Line Equipment Man	15.02	.45	3%+1.30	.10	1/2%
Head Groundman (Chipper);					
Head Groundman; Powderman;					
Jackhammer Man	13.13	.45	3%+1.30	.10	1/2%
Groundman	12.34	.45	3%+1.30	.10	1/2%
ZONE PAY FOR AREA 1 ONLY:					
Each classification, with the exception of Tree Trimmer and Head Groundman (Chipper), will receive the Base Rate Plus					
Zone A - $2.00					
Zone B - $2.75					
Zone C - $3.50					
Zone D - $4.75					
ELECTRICIANS:					
Area 1:					
Electricians	18.95	.95	3%+1.30		.02
Cable Splicers	19.35	.95	3%+1.30		.02

DECISION NO. ME80-2069 - MOD. #4 (45 FR 54614 - August 15, 1980) Cumberland County, Maine	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS	13.00	.80	3%+.25		.02

DECISION #KS82-4003-Mod.#1
47 FR 27048-January 15, 1982
Douglas, Jefferson, Leavenworth, Miami, and Shawnee Counties, Kansas

CHANGE:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Under Carpenters & Piledrivermen:					
Zone 3	$11.34	.70	.75		.05
Change:					
Cement masons					
Zone 1	$14.11	.80	.85		
Omit:					
Truck Drivers (Page 6)					
Add:					
Truck Drivers (Page 6) schedule attached					

DECISION NO. KS82-4003 Page 6

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Zone 1: Leavenworth County:					
Group 1	$8.89	.75	$1.00	.75	
Group 2	9.09	.75	1.00	.75	
Group 3	9.40	.75	1.00	.75	
Group 4	9.55	.75	1.00	.75	
Group 5	8.665	.75	1.00	.75	
Zone 2: Douglas and Shawnee Counties:					
Group 1	8.65	.70	.50		
Group 2	8.75	.70	.50		
Group 3	8.90	.70	.50		
Zone 3: Miami County	8.35	.75	1.00	.75	

CLASSIFICATIONS - ZONE 1

Group 1: One Team; Station Wagons; Pickup Trucks; Material Trucks, single axle; Tank Wagon Drivers, single axle

Group 2: Material Trucks; Tandem; Two Teams; Semi-trailers; Winch Trucks-Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix Tank Wagon Drivers, single axle; Tank Wagon Drivers; Tandem or Semi-trailer; Insley Wagons; Dump Trucks; Excavator, 5 cu. yds. and over; Dumpsters; Half-tracks; Speedace; Euclids and other similar excavating equipment

Group 3: A-frame; Lowboy; Boom Truck Drivers

Group 4: Mechanics and Welders

Group 5: Mechanics' Helpers; Oilers and Greasers

CLASSIFICATIONS - ZONE 2

Group 1: Pickups; Panel Trucks; Station Wagons; Flat Beds; Dump and Batch Trucks, single axle

Group 2: Tandem Trucks; Warehousemen or Partsmen; Mechanic Helpers and Servicemen

Group 3: Lowboys; Semi-trailers; all Transit Mixer Trucks (single or tandem axle); A-frame and Winch Trucks when used as such; Euclid, End and Bottom Dump; Tournarockers, Atheys, Dumpsters and similar off-road equipment and Mechanics on such equipment

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

DECISION NO. NV81-5102 - Mod. #7
(46 FR 11482 - February 6 1981)
Clark County (does not include the Nevada Test Site), Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$20.26	$1.28	$1.52		
Boilermakers	19.61	1.30	1.25	1.00	.04
Bricklayers; Stonemasons	16.59	1.10	.70		.06
Electricians:					
Electricians;					
Technicians	19.56	1.41	3%+2.80		.08
Cable Splicers	19.89	1.41	3%+2.80		.08
Elevator Constructors:					
Elevator Constructors	18.67	1.345	1.085	a	.035
Helpers	13.07	1.345	1.085	a	.035
Probationary Helpers	9.335				
Marble Masons	16.59	1.10	.70		.06
Marble, Terrazzo, Tile Finishers	12.90	1.10	.70		
Power Equipment Operators: (Except Piledriving and Steel Erection):					
Group 1	15.25	1.25	2.80	1.17	.14
Group 2	15.53	1.25	2.80	1.17	.14
Group 3	15.82	1.25	2.80	1.17	.14
Group 4	15.96	1.25	2.80	1.17	.14
Group 5	16.18	1.25	2.80	1.17	.14
Group 6	16.29	1.25	2.80	1.17	.14
Group 7	16.41	1.25	2.80	1.17	.14
Group 8	16.58	1.25	2.80	1.17	.14
Group 9	16.71	1.25	2.80	1.17	.14
Roofers	20.40	1.00			
Soft Floor Layers	17.12	1.65			.25
Terrazzo Workers; Tile Setters	16.59	1.10	.70		.06

DECISION NO. NV81-5104 - Mod. #8
(46 FR 13482-February 20, 1981)
Washoe County, Nevada

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	$22.36	$1.25	$1.45		.11
Boilermakers	19.61	1.30	1.25	1.00	.04
Bricklayers; Stonemasons	16.32	1.16	.75		.04
Brick Mod Carriers	13.51	1.15	1.35		.10
Carpenters	14.80	1.33	1.93	1.30	.11

DECISION NO. NV81-5104 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons:					
Lake Tahoe Area:					
Cement Masons	$15.55	$1.33	$1.27	$2.00	.10
Mastic, Magnesite and all Composition Masons	15.80	1.33	1.27	2.00	.10
Troweling Machine; Grinder Operator and Kelly Float	16.05	1.33	1.27	2.00	.10
Remainder of Washoe County:					
Cement Masons	13.80	1.33	1.27	2.00	.10
Mastic, Magnesite and all Composition Masons	14.05	1.33	1.27	2.00	.10
Troweling Machine; Grinder Operator and Kelly Float	14.30	1.33	1.27	2.00	.10
Electricians:					
Washoe County, does not include Lake Tahoe Area:					
Electricians;					
Technicians	20.73	1.09	3%+2.09		.14
Cable Splicers	22.80	1.09	3%+2.09		.14
Lake Tahoe Area:					
Electricians;					
Technicians	22.23	1.09	3%+2.09		.14
Cable Splicers	24.30	1.09	3%+2.09		.14
Lake Tahoe Area:					
Electricians;					
Technicians	22.23	1.09	3%+2.09		.14
Cable Splicers	24.30	1.09	3%+2.09		.14
Elevator Constructors:					
Elevator Constructors	24.22	1.345	1.085	a	.035
Helpers	16.95	1.345	1.085	a	.035
Probationary Helpers	12.11				
Laborers:					
Group 1	11.71	1.15	1.35		.10
Group 2	11.81	1.15	1.35		.10
Group 3	11.96	1.15	1.35		.10
Group 4	12.21	1.15	1.35		.10
Group 5	12.51	1.15	1.35		.10
Group 6-A	12.51	1.15	1.35		.10

DECISION NO. NV81-5104 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 6-B	$12.21	$1.15	$1.35		.10
Group 6-C	11.86	1.15	1.35		.10
Marble Masons	15.04	1.16	.75		.01
Marble, Terrazzo, Tile Finishers	8.83	1.16	.75		.01
Painters:					
Brush and Roller	16.79	.84	.75		.02
Brush-swing stage up to 40 ft.; Brush-steel	17.04	.84	.75		.02
Spray; Taper; Paperhangers; Sandblaster	17.29	.84	.75		.02
Spray-swing stage, up to 40 ft.; Spray-steel	17.54	.84	.75		.02
Plasterers	14.72	1.33	1.50		.05
Plumbers; Steamfitters	18.24	1.23	1.25	2.10	.20
Sheet Metal Workers:					
Residential Construction not over 3 stories in height where each individual family apartment is individually conditioned by a separate and independent unit or system	13.26	1.30	2.36	1.66	.14
All other residential construction	16.57	1.30	2.36	1.66	.14
Terrazzo Workers; Tile Setters	15.04	1.16	.75		.01

DECISION NO. NV81-5161 - Mod. #1
(46 FR 55210 -November 6, 1981)
Nevada Test Site including Tonopah Test Range in Clark, Lincoln, and Nye Counties, Nevada

Change:

Bricklayers	$16.59	$1.10	.70		.06
Marble Setters	16.59	1.10	.70		.06
Terrazzo Workers, Tile Setters	16.59	1.10	.70		.06
Roofers	20.40	1.00			

DECISION NO. ND81-5131 - Mod. #2
(46 FR 35008 - July 6,1981)

Burleigh, Cass, Grand Forks, Morton, Richland, Steele, Traill, Walsh, and Ward Counties, North Dakota	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Boilermakers	$14.97	$1.375	$1.15		.05
Bricklayers;Stonemasons:					
Area 3	13.20	.60	.50	.30	
Cement Masons:					
Area 1	13.15				
Drywall Tapers:					
Area 1	12.20	.25	.50		
Electricians:					
Area 1:					
Zone A:					
Electricians	12.95	.75	3%+.80	6%	1%
Cable Splicers	13.60	.75	3%+.80	6%	1%
Zone B:					
Electricians	13.57	.75	3%+.80	6%	1%
Cable Splicers	14.22	.75	3%+.80	6%	1%
Zone C:					
Electricians	14.45	.75	3%+.80	6%	1%
Cable Splicers	15.10	.75	3%+.80	6%	1%
Ironworkers:					
Ornamental; Structural; Reinforcing	13.60	1.16	.88		.10
Laborers:					
Grand Forks, Steele, and Traill Counties:					
Group 1	8.62	.60	.15		
Group 2	8.72	.60	.15		
Group 3	8.87	.60	.15		
Burleigh and Morton Cos.:					
Group 1	8.50	.60	.15		
Group 2	8.60	.60	.15		
Group 3	8.70	.60	.15		
Cass and Richland Cos.:					
Group 1	8.50	.60	.15		
Group 2	8.60	.60	.15		
Group 3	8.70	.60	.15		
Ward County:					
Group 1	8.50	.60	.15		
Group 2	8.60	.60	.15		
Group 3	8.70	.60	.15		
Millwrights	13.96	.80		.60	.02
Plumbers:					
Area 1	14.86	1.04	1.04		.06
Area 2	15.38	.90	.65		.04
Area 3	15.51	.90	.65		.04

DECISION NO. ND81-5131 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet Metal Workers:					
Area 1	$13.57	.60	.36	.72	.07
Soft Floor Layers:					
Area 2	10.90	.25	.50		
Truck Drivers:					
Site Preparation Excavation and Incidental Paving:					
Single Axle	8.57	.65	.35		
Tandem	8.69	.65	.35		
Agitator Dumpcrete; Off road heavy end dumps, 20 yards and under; Tandem semi, Lowboy	9.00	.65	.35		
Euclid, over 20 yds.	9.77	.65	.35		
Add:					
Piledrivermen to Area 3-					
Carpenters:					
Piledrivermen	12.24	.18	.70		.03
DECISION NO. NJ81-3053 - MOD. #5 (46 FR 50243 - October 9, 1981) BERGEN, ESSEX, HUDSON, HUNTERDON, MIDDLESEX, MORRIS, PASSAIC, SOMERSET SUSSEX, UNION AND WARREN COUNTIES, NEW JERSEY					
CHANGE:					
LABORERS, BUILDING CONSTRUCTION					
ZONE 9	10.20	.70	.85		.10
ZONE 12	10.15	.85	.75		.10

DECISION NO. OR81-5127 - Mod #9
(46 FR 35019 - July 6, 1981)
Statewide Oregon

CHANGE:
LINE CONSTRUCTION:

	BASE ZONE	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Group 1: Cable Splicer, Leadman Pole Sprayer	$19.30	21.30	22.05	22.80	24.05
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	17.44	19.44	20.19	20.94	22.19
Group 3: Tree Trimmer	15.74				
Group 4: Line Equipment Man	15.02	17.02	17.77	18.52	19.77
Group 5: Head Groundman, Powderman, Jackhammer Man	13.13	15.13	15.88	16.63	17.88
Group 6: Head Groundman (Chipper)	13.13				
Group 7: Groundman	12.34	14.34	15.09	15.84	17.09

FRINGE BENEFITS PAYMENTS:	GROUPS 1 to 3	GROUPS 4 to 6
Health and Welfare	.45	.45
Pension	3% + 2.00	3% + 1.30
Vacation	.10	.10
Apprenticeship Training	1/2%	1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA80-3055					
MOD. NO. 14					
(45 FR 65902 - October 3, 1980)					
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania					
CHANGE:					
BUILDING, HEAVY & HIGHWAY CONSTRUCTION					
ELECTRICIANS					
ZONE 3					
COMMERCIAL	$15.27	6%	3%+13%		1/2 of 1%
DECISION NO. PA80-3074					
MOD. NO. 12					
(45 FR 81981 - December 12, 1980)					
Clinton, Centre, Huntingdon, Fulton & Mifflin Counties, Pennsylvania					
CHANGE:					
Plasterers					
Fulton County	$10.83	.90	.90		.01
DECISION NO. PA81-3027					
MOD. NO. 4					
(46 FR 37212 - July 17, 1981)					
Franklin County, Pennsylvania					
CHANGE:					
Carpenters	$12.65	6½%	8%	10%	
Cement Masons	12.10	.90	.90		
Sheet Metal Workers	13.51	1.17	2.17		.23
Painters, Brush:					
Metal, Letterkenny, Hamilton, Green, South Hampton, Lurgan, Fanett, Chambersburg, Shipensburg Townships and Boroughs	10.92	.55	.43		.02
Washington, Antrim, Hamilton, Guilford, Montgomery, Warren Peters, St. Thomas, Quincy	10.00	.45	.15		
ADD:					
Plasterers	10.83	.90	.90		.01
Sprinkler Fitters	15.56	.95	1.40		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA81-3068					
MOD. NO. 3					
(46 FR 47403 - September 25, 1981)					
Lebanon County, Pennsylvania					
CHANGE:					
Sheet Metal Workers	$13.51	1.17	2.17		.23
DECISION NO. PA81-3072					
MOD. NO. 2					
(46 FR 48851 - October 2, 1981)					
Adams & York Counties, Pennsylvania					
CHANGE:					
Cement Masons					
Adams County	12.10	.90	.90		
Millwrights					
Adams County	12.49	.85	.80		.03
Plasterers					
Adams County	10.83	.90	.90		.01
Sheet Metal Workers	13.51	1.17	2.17		.23
DECISION NO. PA81-3066					
MOD. NO. 2					
(46 FR 52082 - October 23, 1981)					
Dauphin, Cumberland, Perry, Juniata, New Cumberland Depot, in York County, Pennsylvania					
CHANGE:					
Cement Masons	12.10	.90	.90		
Plasterers	10.83	.90	.90		.01
Sheet Metal Workers	13.51	1.17	2.17		.23

DECISION NO. WA81-5100 - Mod #1 (46 FR 15636 - March 6, 1981) Statewide Washington	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
King County	$11.95	.98	3% + .10	.24	.05

DECISION NO. WA81-5163 - Mod. #4
(46 FR 59457 - December 4, 1981)
Statewide Washington

CHANGE:
LINE CONSTRUCTION:

	BASE ZONE	ZONE 1	ZONE 2	ZONE 3	ZONE 4
Group 1: Cable Splicer, Leadman Pole Sprayer	$19.30	21.30	22.05	22.80	24.05
Group 2: Lineman, Pole Sprayer, Heavy Line Equipment Man, Certified Lineman Welder	17.44	19.44	20.19	20.94	22.19
Group 3: Tree Trimmer	15.74				
Group 4: Line Equipment Man	15.02	17.02	17.77	18.52	19.77
Group 5: Head Groundman, Powderman, Jackhammer Man	13.13	15.13	15.88	16.63	17.88
Group 6: Head Groundman (Chipper)	13.13				
Group 7: Groundman	12.34	14.34	15.09	15.84	17.09

FRINGE BENEFITS PAYMENTS:	GROUPS 1 to 3	GROUPS 4 to 6
Health and Welfare	.45	.45
Pension	3% + 2.00	3% + 1.30
Vacation	.10	.10
Apprenticeship Training	1/2%	1/2%

SUPERSEDEAS DECISION

STATE: CONNECTICUT COUNTIES: FAIRFIELD, LITCHFIELD AND WINDHAM
DECISION NO: CT82-3001 DATE: DATE OF PUBLICATION
Supersedes Decision No. CT81-3001 dated January 23, 1981 in 46 FR 7721
DESCRIPTION OF WORK: Building, Residential (excluding Windham Co.), Highway and Heavy (excluding tunnel construction) Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS					
Area 1	16.04	.90	1.64		
Area 2	15.21	1.04	1.50		.01
Area 3	13.18	1.45	1.63		
BOILERMAKERS	16.53	1.275	10%		.04
BRICKLAYERS, CEMENT MASONS, FINISHERS, MASONS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, TILE SETTERS					
BUILDING CONSTRUCTION:					
Area 1	11.05	.75	.75		
Area 2	11.05	.75	.75		
Area 3	11.05	.75	.75		
Area 4	11.47	.83	.25		
Area 5	13.85	1.20	1.25		.03
Area 6	13.50	.75	1.00	a	
Area 7	11.05	.75	.75		
Area 8	13.50	.75	1.00	a	.03
Area 9	11.05	.75	.75		
HEAVY AND HIGHWAY CONSTRUCTION					
Area 1, 2, 3, 6, 7, 8 & 9	11.90	.75	1.00		
Area 4	12.57	.83	.25		
Area 5	11.45	1.20	1.00		

DECISION NO. CT82-3001

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: FAIRFIELD COUNTY; Litchfield County (Barkhamsted, Bethlehem, Bridgewater, Cornwall, Goshen, Harwinton, Kent, Litchfield, Morris, New Hartford, New Milford, Plymouth, Roxbury, Sharon, Torrington, Warren, Washington, Watertown, Winchester, Woodbury & Thomaston); WINDHAM COUNTY (Ashford, Chaplin, Eastford, Hampton, Scotland & Windham)
Area 2: LITCHFIELD COUNTY ounty (Canaan, Colbrook, Norfolk, N. Canaan & Salisbury); WINDHAM COUNTY (Woodstock)
Area 3: WINDHAM COUNTY (Brooklyn, Canterbury, Killingly, Plainfield, Pomfret, Putnam, Sterling, & Thompson)

BRICKLAYERS; CEMENT MASONS; FINISHERS; MASONS; PLASTERERS; STONE MASONS; TERRAZZO WORKERS; TILE SETTERS
Area 1: FAIRFIELD COUNTY (Bridgeport, Easton, Farfield, Monroe, Stratford & Trumbull)
Area 2: FAIRFIELD COUNTY (Ansonia, Derby & Shelton)
Area 3: FAIRFIELD COUNTY (New Canaan, Forwalk, Ridgefield, Weston, Westport & Wilton)
Area 4: FAIRFIELD COUNTY (Darien & Stamford)
Area 5: FAIRFIELD COUNTY (Greenwich)
Area 6: FAIRFIELD COUNTY (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding & Sherman; LITCHFIELD COUNTY (Bridgewater, Kent, New Milford & Roxbury)
Area 7: LITCHFIELD COUNTY (Barkhamsted, Bethlehem, Canaan, Colebrook, COrnwall, Goshem, Harwinton, Litchfield, Morris, New Hartford, Norfolk, N. Canaan, Salisbury, Sharon, Torrington, Warren, Washington & Winchester)
Area 8: LITCHFIELD COUNTY (Plymouth, Terryville, Thomaston, Watertown & Woodbury)
Area 9: WINDHAM COUNTY

DECISION NO. CT82-3001

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN & SOFT FLOOR LAYERS					
BUILDING CONSTRUCTION					
Area 1	12.90	.90	.65	b	c
Area 2	12.60	.90	.65		.10
Residential	11.80	.60	.65		.10
Area 3	12.35	.90	.65		.10
Area 4	12.95	.90	.65		.05
Area 5	12.90	.90	.65		.03
Millwrights	13.40	.90	.65		.03
HEAVY AND HIGHWAY CONSTRUCTION					
Area 1	12.80	.90	.65	d	c
Area 2	12.80	.90	.65	d	.10
Area 3	12.80	.90	.65	d	.10
Area 4	12.80	.90	.65	d	.05
Area 5	12.80	.90	.65	d	.03

AREA DESCRIPTIONS

CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN & SOFT FLOOR LAYERS
Area 1: FAIRFIELD COUNTY (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull, Weston & Westport)
AREA 2: FAIRFIELD COUNTY (Bethel, Brookfield, Danbury, Darien, Greenwich, New Canaan, New Fairfield, Newton, Norwalk, Redding, Ridgefield, Sherman, Stamford, & Wilton)
Area 3: LITCHFIELD COUNTY (Barkhamsted, Bethlehem, Bridgewater, Canaan, Colebrook, Cornwall, Goshen, Kent, Litchfield, Morris, New Hartford, New Milford, Norfolk, North Canaan, Roxbury, Salisbury, Sharon, Torrington, Warren, Washington, WInchester & Woodbury)
Area 4: LITCHFIELD COUNTY (Harwinton, Plymouth, Thomaston & Watertown)
Area 5: WINDHAM COUNTY

DECISION NO. CT82-3001

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Area 1	13.24	1.18	3%+.65	6%	¼%
Area 2	14.55	1.20	3%+1.25		¼%
Area 3	15.79	6%+e	9½%	10%	½%+.02
Area 4	14.85	1.07	3%+.65		¼%
Area 5	13.10	1.22	3%+.60	e	1/8%
Area 6	14.30	1.25	3%+2.60		½%
ELEVATOR CONSTRUCTORS	14.79	1.345	1.085	f+g	.035
ELEVATOR CONSTRUCTORS' HELPERS	10.35	1.345	1.085	f+g	.035
PROBATIONARY	7.395				
GLAZIERS:					
Area 1	13.75	.66	1.91	.67	.01
Area 2	13.68	1.35	.47	h	.01
Area 3	11.66	.84	2.15	h+.35	
IRONWORKERS	15.80	1.03	2.45	i	.10
LATHERS					
Area 1	10.60	.50	.40		.01
Area 2	10.01	.50	.20	.75	.01
Area 3	10.60	.50	.50		.01
Area 4	11.15	.50	.40		.01
Area 5	9.99	.65	.75		.01

DECISION NO. CT82-3001

AREA DESCRIPTIONS

ELECTRICIANS:
Area 1: FAIRFIELD COUNTY (Norwalk, WIlton, Weston & Westport)
Area 2: FAIRFIELD COUNTY (Bethel, Bridgeport, Brookfield, Danbury, Easton, Fairfield, Monroe, New Fairfield, Newton, Redding, Ridgefield, Shelton, Sherman, Stratford & Trumbull); LITCHFIELD COUNTY (Bridgewater & New Milford)
Area 3: FAIRFIELD COUNTY (Darien, Greenwich, New Canaan & Stamford)
Area 4: LITCHFIELD COUNTY (Plymouth)
Area 5: LITCHFIELD COUNTY (Reaminder of County)
Area 6: WINDHAM COUNTY

GLAZIERS:
Area 1: FAIRFIELD COUNTY (GREENWICH)
Area 2: FAIRFIELD COUNTY (Remainder of County; LITCHFIELD COUNTY
Area 3: WINDHAM COUNTY

LATHERS:
Area 1: FAIRFIELD COUNTY (Bridgeport, Easton, Fairfield, Monroe, Redding, Ridgefield, Shelton, Stratford, Trumbull, Weston, Westport & Wilton)
Area 2: FAIRFIELD COUNTY (Greenwich, New Canaan, Norwalk & Stamford)
Area 3: FAIRFIELD COUNTY (Bethel, Brookfield, Danbury, New Fairfield, Newton & Sherman); LITCHFIELD COUNTY (Bethlehem, Bridgewater, Cornwall, Goshen, Harwinton, Litchfield, Morris, New Milford, N. Canaan, Plymouth, Roxbury, Thomaston, Terrington, Warren, Washington, Watertown & Woodbury)
Area 4: LITCHFIELD COUNTY (Barkhamsted, Colebrook, New Hartford, Norfolk & Winchester); WINDHAM COUNTY (Chaplin, Hampton, Scotland & Windham)
Area 5: WINDHAM COUNTY (Danielson)

DECISION NO. CT82-3001	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Area 1					
Lineman	13.15	6%+e	9½%	10%	.02
Compressor Operator	10.94	6%+e	9½%	10%	.02
Lamp Changer	10.22	6%+e	9½%	10%	.02
Area 2					
Linemen, Cable Splicers & Dynamite Man	15.15	.70	3%+1.00	j	
Heavy Equipment Operator	13.79	.70	3%+1.00	j	
Equipment Operator, Tractor Trailer Driver, Field Mechanic	13.01	.70	3%+1.00	j	
Material Man	12.79	.70	3%+1.00	j	
Groundman Truck Driver	11.69	.70	3%+1.00	j	
Groundman	10.34	.70	3%+1.00	j	
PAINTERS: BRIDGE					
Structural Steel	20.20				
Sandblaster and power tool operator	21.20				
Spray	23.70				
PAINTERS:					
Area 1					
Brush, Structural Steel, Paperhangers, Tapers	12.25	.20	.75	.30	
Spray	18.38	.20	.75	.30	
Area 2					
Brush	11.05	.50	.65	k	
Bosun Chair, Swing Stage	11.80	.50	.65	k	
Spray, Epoxy	13.55	.50	.65	k	
Taper	11.55	.50	.65	k	
Sandblasting	13.05	.50	.65	k	
Area 3					
Brush	11.80	.50	.75	.30	.01
Roller, Paperhangers, Tapers, Epoxy	12.30	.50	.75	.30	.01
Spray	14.00	.50	.75	.30	.01

DECISION NO. CT82-3001	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Area 4					
Brush	14.60	.50	1.00	k	
Steel	16.40	.50	1.00	k	
Tapers	14.60	.50	1.00	k	
Epoxy	17.50	.50	1.00	k	
Residential	12.85	.50	1.00	k	
Spray	21.90	.50	1.00	k	
Vinyl & all wall covering	16.00	.50	1.00	k	
Area 5					
Brush	11.65	.70	1.33	.50	
Spray	12.65	.70	1.33	.50	
Steel, Swing Stage, Boatswain chair	13.314	.70	1.33	.50	
Drywall, Taper	12.45	.70	1.33	.50	
AREA 6					
Brush	13.00	.50	1.00	1	.01
Hand roller, paperhangers, swing stage	13.50	.50	1.00	1	.01
Structural Steel, polyester	14.00	.50	1.00	1	.01
Spray	17.00	.50	1.00	1	.01
Epoxy	15.00	.50	1.00	1	.01
Are 7					
Brush & Tapers	12.85	1.20	1.25		.03
Paperhangers	13.35	1.20	1.25		.03
Riding Steel, Steamcleaning, Sandblasting, tanks, towers, & hazardous work	13.43	1.20	1.25		.03
Spray	15.85	1.20	1.25		.03
Area 8					
Brush	12.95	.80	.90		.01
Sandblasting and steam cleaning	17.14	.80	.90		.01
Paperhanging, taping	13.91	.80	.90		.01
Rollers	13.46	.80	.90		.01
Structural steel, swing stage	13.76	.80	.90		.01
Spraying oil paint	16.11	.80	.90		.01
Spraying epoxy	18.64	.80	.90		.01

DECISION NO. CT82-3001

AREA DESCRIPTIONS

LINE CONSTRUCTION:
Area 1: FAIRFIELD COUNTY (Darien, Greenwich, New Canaan, Stamford, & that portion of Norwalk, West of Five Mile River)
Area 2: FAIRFIELD COUNTY (Remainder of County); LITCHFIELD COUNTY; WINDHAM COUNTY

PAINTERS:
Area 1 - FAIRFIELD COUNTY (Greenwich)
Area 2: FAIRFIELD COUNTY (Bridgeport, Easton, Fairfield, Southport, Stratford & Trumbull)
Area 3: FAIRFIELD COUNTY (Darien, Stamford, New Canaan, Norwalk, Weston, Westport & Wilton)
Area 4: FAIRFIELD COUNTY (Bethel, Brookfield, Newton, Redding, Ridgefield, Sandy Hook & Sherman); LITCHFIELD COUNTY (New Milford)
Area 5: FAIRFIELD COUNTY (Byran)
Area 6: FAIRFIELD COUNTY (Monroe and Shelton)
Area 7: WINDHAM COUNTY (Willimantic & Windham); LITCHFIELD COUNTY (Remainder of County)
Area 8: WINDHAM COUNTY (Remainder of County)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & PIPEFITTERS:					
Area 1					
Plumbers	16.21	1.10	1.39		.20
Pipefitters	15.08	1.16	2.00		.13
Area 2	13.88	1.00	1.40	8%	.07
Area 3	15.44	.75	1.40	5%	.07
Area 4	15.45	.75	1.40	5%	.07
Area 5	15.80	.75	1.40	.70	.07
Area 6	15.75	.75	.80	5%	.07
Area 7	15.20	.88	1.40	n	.05
Area 8	17.17	.80	1.95	o	.10
ROOFERS:					
Area 1	14.90	1.35	.45		
Area 2					
Composition	12.05	.675	.95	.55	
Slate and tile	12.55	.675	.95	.55	

DECISION NO. CT82-3001

AREA DESCRIPTIONS

PLUMBERS & PIPEFITTERS:
Area 1: WINDHAM COUNTY (Windham)
Area 2: FAIRFIELD COUNTY (Greenwich)
Area 3: FAIRFIELD COUNTY (Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford & Trumbull)
Area 4: FAIRFIELD COUNTY (Georgetown, Norwalk, S. Norwalk, Weston, Westport, & Wilton)
Area 5: FAIRFIELD COUNTY (Bethel, Brookfield, Danbury, New Fairfield, Newton, Redding, Ridgefield & Sherman); LITCHFIELD COUNTY (Bridgewater & New Milford)
Area 6: FAIRFIELD COUNTY (Darien, New Canaan & Stamford)
Area 7: LITCHFIELD (Remainder of County)
Area 8: WINDHAM COUNTY (Remainder of County)

ROOFERS:
Area 1: FAIRFIELD COUNTY; LITCHFIELD COUNTY (Bethlehem, Bridgewater, Kent, New Milford, Roxbury, Washington & Woodbury)
Area 2: WINDHAM COUNTY; LITCHFIELD COUNTY (Remainder of County)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS:					
FAIRFIELD AND LITCHFIELD COUNTIES	13.91	9½%	7%		.03
WINDHAM COUNTY	13.24	.81	1.23		.09
SPRINKLER FITTERS	14.00	.85	1.20		.08
TILE, MARBLE & TERRAZZO FINISHERS	10.65	.50	1.00		

DECISION NO. CT82-3001

PAID HOLIDAYS:
A-New Year's Day, B-Memorial Day, C-Independence Day, D-Labor Day, E-Thanksgiving Day, F-Christmas Day, G-Good Friday, H-Washington's Birthday, I-Columbus Day, J-Christmas Eve, K-Friday after Thanksgiving, L-New Year's Eve

FOOTNOTES:
a. Paid Holidays: ½ day on J & L
b. Paid Holidays: B, C, D, and G provided employee works 14 consecutive days prior to holiday
c. $100 per year
d. Paid Holidays: B, C, and D
e. Paid Holidays: ½ day on J
f. Paid Holidays: A through G
g. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% of basic hourly rate for 6 months to 5 years of service as vacation pay credit
h. Paid Holidays: A through I
i. Paid Holiday: The last 4 hours on Christmas Eve if employee has worked 5 consecutive days prior to Christmas Eve
j. Paid Holidays: A through H and a floating holiday provide employee has been employed for a period of 5 working days prior to the holiday and workd the schedule work days immediately preceding and following the holiday
k. Paid Holidays: C and D providing the employee works the day before and the day after the holiday
l. Paid Holidays: B, C, D and E providing the employee works the day before and the day after the holiday
m. Paid Holidays: Labor Day
n. Paid Holidays: B and D and one half day on G, J. and K
o. Paid Holidays: D and one half day on K

DECISION NO. CT82-3001

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	*Vacation	Education and/or Appr. Tr.
LABORERS:					
BUILDING CONSTRUCTION:					
Laborers, carpenter tenders, wrecking laborers	10.05	.80	1.20		.15
Jackhammer hammer operator, mason tenders, mortar mixer, pipe layers, plasterers tenders, power buggy operators, powdermen	10.30	.80	1.20		.15
Air track operators, wagon drill operators, sand blasters, blasters	10.80	.80	1.20		.15
Open air caisson, cylindrical work and boring crew:					
Bottom men	10.55	.80	1.20		.15
Top men	10.05	.80	1.20		.15
HEAVY & HIGHWAY CONSTRUCTION:					
Laborers	10.05	.80	1.20		.15
Acetylene burners; asphalt raker; chain saw operator; concrete & power buggy operators; fence & guard rail erectors; form setters; hand operated vibratory compactor operators; mason tenders; pipelayers; pneumatic gas & electric drill operators; powdermen & wagon drill operators	10.30	.80	1.20		.15
Air track operators; block paver; curb setters	10.55	.80	1.20		.15
Blasters	10.80	.80	1.20		.15

DECISION NO. CT82-3001	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION:					
Derrick, hoisting engineer 2 drums and over, hoisting structural steel, pile driver & setting stone	15.29	1.20	1.25	a	.20
Dragline forklift - over 5' lift, front end loader - 7 cy. or over, gradall, hoisting engineer (all types of equipment where a drum and cable are used to hoist, pull, motive power or operation), Koehring scooper loader and/or hoe, master mechanic, shovel & tower crane	15.14	1.20	1.25	a	.20
Maintenance engineer	15.00	1.20	1.25	a	.20
Central mix operator, Coleman loader and screening plant or similar equipment, combination hoe and loader over ½ yd, conveyoes - regardless of motive power, front end loader 3 cy. up to 7 cy. joy drill limited to joy heavy weight champion or equivalent, mucking machine, post hole digger, pumpcrete machine, rock boring machine, vibratory hammer, welder & well digger	14.65	1.20	1.25	a	.20
Asphalt spreader	14.35	1.20	1.25	a	.20
Bulldozer, carry-all Operators, grader & scraper pan	14.26	1.20	1.25	a	.20

DECISION NO. CT82-3001	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Combination hoe and loader machine, concrete mixer - 5 bags and over, front end loader under 3 cy., powerstone spreader	14.20	1.20	1.25	a	.20
Fork lift not over 4' & Steam Jenny	14.05	1.20	1.25	a	.20
Mechanical Heater	12.82	1.20	1.25	a	.20
Roller	13.91	1.20	1.25	a	.20
Dinky machine, power pavement breaker	13.68	1.20	1.25	a	.20
Fireman (High Pressure	12.53	1.20	1.25	a	.20
Oiler	11.88	1.20	1.25	a	.20

Crane with boom excluding jib, over 150' - $.25 extra

Crane with boom, excluding jib, over 200' - $.50 extra

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday

DECISION NO. CT82-3001

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
HEAVY & HIGHWAY					
Class 1	15.33	1.20	1.25	a	.20
Class 2	15.11	1.20	1.25	a	.20
Class 3	14.67	1.20	1.25	a	.20
Class 4	14.40	1.20	1.25	a	.20
Class 5	14.18	1.20	1.25	a	.20
Class 6	13.93	1.20	1.25	a	.20
Class 7	13.63	1.20	1.25	a	.20
Class 8	12.40	1.20	1.25	a	.20
Class 9	12.55	1.20	1.25	a	.20
Class 10	13.04	1.20	1.25	a	.20
Class 11	13.53	1.20	1.25	a	.20
Class 12	11.91	1.20	1.25	a	.20
Class 13	12.95	1.20	1.25	a	.20
Class 14	7.88	1.20	1.25	a	.20
Crane with 150' boom $.25 extra					
Crane with 200' boom $.50 extra					

Class 1: Erecting and handling structural steel; front end loader (7 cy. or over)
Class 2: Piledriver; power shovel and crane; dragline; gradall; trenching machine; lighter derrick; paver (concrete); derrick (stiff leg and guy); steel pile sheeting; koehring loader (scooper) master machine
Class 3: Drill (joy heavy weight champion or equivalent); side boom; loader (euclid); mucking machine; pumpcrete; rock and earth boring machine; post hole digger; well digger; & hammer (vibratory) central mix; combination hoe & loader (over ½ yd.)
Class 4: Asphalt spreader
Class 5: Front end loader (3 yds. or over); grader; power stone spreader; combination hoe and loader
Class 6: Asphalt roller; bulldozer; carryall; maintenance engineer concrete mixer (5 bags and over); welder
Class 7: Front end loader (under 3 yds.); roller; power chipper; fork lift; finishing machine; asphalt plant; power pavement breaker; dinky machine
Class 8: Compressor; pump
Class 9: Fireman (high pressure)
Class 10: Well point system
Class 11: Compressor battery
Class 12: Oiler
Class 13: Batch plant; bulk cement
Class 14: Track backhoe oiler

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day Labor Day, Thanksgiving Day, Christmas Day and Good Friday

DECISION NO. CT82-3001

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
Class 1	10.26	1.14	1.20	a	
Class 2	10.36	1.14	1.20	a	
Class 3	10.46	1.14	1.20	a	
Class 4	10.41	1.14	1.20	a	
Class 5	10.51	1.14	1.20	a	
Class 6	10.56	1.14	1.20	a	

Class 1: Two axle trucks; helpers
Class 2: Three axle trucks; two axle ready mix
Class 3: Four axle trucks; heavy duty trailer-up to 40 tons
Class 4: Three axle ready mix
Class 5: Four axle ready-mix; specialized earth moving equipment other than conventional type on-the road trucks and semi-trailer (including Euclids)
Class 6: Heavy duty trailer-40 tons and over

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Good Friday

SUPERSEDEAS DECISION

STATE: GEORGIA
COUNTIES: BRYAN, BULLOCH, CHATHAM, EFFINGHAM, EVANS, LIBERTY, LONG, SCREVEN.
DECISION NUMBER: GA82-1002 DATE: DATE OF PUBLICATION
Supersedes Decision Number GA79-1067, dated April 20, 1979, in 44 FR 23735.
DESCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS (includes single family homes and apartments up to and including four (4) stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$ 7.18				
BRICKLAYERS	8.00				
CARPENTERS	6.26				
CEMENT MASONS	7.20				
DRYWALL FINISHERS	9.43				
DRYWALL HANGERS	7.52				
ELECTRICIANS	7.22				
INSULATION INSTALLERS	5.09				
LABORERS:					
Unskilled	4.12				
Mason tenders	4.32				
Asphalt rakers	4.75				
PAINTERS	6.87				
PLASTERERS	7.30				
PLUMBERS & PIPEFITTERS	7.17				
ROOFERS	5.87				
SHEET METAL WORKERS	7.10				
SOFT FLOOR & CARPET LAYERS	8.22				
TILE SETTERS	8.14				
TRUCK DRIVERS	5.05				
WELDERS - Rate for craft.					
POWER EQUIPMENT OPERATORS:					
Asphalt spreader/paver	5.90				
Backhoe	8.00				
Bulldozer	7.00				
Front end loader	6.27				
Motor grader	6.77				
Roller	5.08				
Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).					

SUPERSEDEAS DECISION

STATE: Mississippi COUNTY: Statewide
DECISION NUMBER: MS82-1001 DATE: Date of Publication
Supersedes Decision Number MS80-1121 dated December 12, 1980 in 45 FR 81975
DESCRIPTION OF WORK: Heavy Construction (including Water & Sewer Lines) excluding all work in conjunction with the Tennessee Tombigbee Waterway Project.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$8.00				
Carpenters	6.23				
Cement Masons	4.50				
Electricians	9.84				
Ironworkers	8.15				
Laborers:					
Unskilled	3.82				
Pipelayers	4.68				
Drillers	4.95				
Painters	7.00				
Plumbers	7.81				
Power Equipment Operators:					
Backhoe	5.56				
Bulldozer	5.38				
Crane	6.61				
Dragline	5.94				
Front End Loader	5.40				
Mechanic	8.15				
Motor Grader	5.25				
Scraper	5.00				
Oiler	5.51				
Welders - receive rate for craft towhich it is incidental					

Unlisted classifications needed for work not included within the scope of this classification may be added only after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Montana COUNTIES: Statewide
DECISION NUMBER: MT82-5101 DATE: Date of Publication
Supersedes Decision No. MT81-5139 dated August 7, 1981, in 46 FR 40448
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$18.84	.78	$1.45		.04
BOILERMAKERS	14.97	1.375	1.15		.05
BRICKLAYERS; MARBLE MASONS:*					
Area 1	14.20		.55		
Area 2	14.60	1.15	.55		
Area 3	16.20		.90		
Area 4	12.55	.70	.60		
Area 5	14.15		.55		
Area 6	15.45	.85	1.00		
Area 7	13.60	.90	.75		
Area 8	14.45	.90	.55		
Area 9	12.00				
CARPENTERS:*					
Area 1:					
Carpenters	12.05	.90	1.25		.06
Piledrivermen	13.05	.90	1.25		.06
Millwrights	12.30	.90	1.25		.06
Area 2:					
Carpenters	11.93	.90	1.25		.06
Piledrivermen	12.93	.90	1.25		.06
Millwrights	12.18	.90	1.25		.06
Area 3:					
Carpenters	12.52	.90	1.25		.06
Piledrivermen; Millwrights	12.77	.90	1.25		.06
Area 4:					
Carpenters	11.93	.90	1.25		.06
Piledrivermen	13.12	.90	1.25		.06
Millwrights	12.23	.90	1.25		.06
Area 5:					
Carpenters	12.08	.90	1.25		.06
Piledrivermen	12.23	.90	1.25		.06
Millwrights	13.08	.90	1.25		.06
Area 6:					
Carpenters	12.98	.90	1.25		.06
Piledrivermen; Millwrights	13.48	.90	1.25		.06
CEMENT MASONS:*					
Area 1:					
Cement Masons	13.75	1.00	.50		
Grinder, Bush Hammer and Chipping Gun, preparing finished surface, Epoxy	14.10	1.00	.50		

*See AREA Descriptions - Page 2

AREA DESCRIPTIONS

BRICKLAYERS; MARBLE MASONS:
Area 1: Beaverhead County; Jefferson County (except northern tip of County); Madison County, and Silver Bow Counties
Area 2: Gallatin and Park Counties
Area 3: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Sweet Grass, Stillwater, Treasure, Wibaux, and Yellowstone Counties
Area 4: Broadwater, Lewis & Clark, and Meagher Counties
Area 5: Deer Lodge, Powell, and Granite Counties
Area 6: Cascade, Chouteau, Glacier, Pondera, and Teton Counties
Area 7: Blaine, Daniels, Hill, Liberty, Phillips, Roosevelt, Sheridan, Toole, and Valley Counties
Area 8: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties
Area 9: Fergus, Garfield, Golden Valley, Judith Basin, Musselshell, Petroleum, and Wheatland Counties

CARPENTERS:
Area 1: Cascade, Chouteau, Fergus, Glacier, Judith Basin, Liberty, Meagher, Pondera, Teton, and Toole Counties
Area 2: Blaine, Broadwater, Carter, Custer, Daniels, Dawson, Fallon, Flathead, Gallatin, Hill, and Jefferson Counties; Lake County (excluding the area south of the Town of Ravalli from the point where Highways #10-A and #93 intersect, excluding the area east of the Town of Superior); Lewis & Clark, Lincoln, Madison, and McCone Counties; Mineral County (that portion lying southeast of the southeastern City limits of the Town of Superior); Park, Phillips, Powder River, Prairie, Richland, and Roosevelt Counties; Sanders County (except S. E. corner portion); Sheridan, Sweet Grass, Valley, and Wibaux Counties
Area 3: Deer Lodge and Granite Counties; Powell County (area lying south of the N.E. corner of Granite County)
Area 4: Lake County (southern area including the Town of Ravalli from the point where Highways #10-A and #93 intersect); Mineral County (area southeast of the southeastern City limits of the Town of Superior); Missoula County; Powell County (area lying north of the N. E. corner of Granite County); Ravalli County); Sanders County (southeastern portion)
Area 5: Big Horn, Carbon, Garfield, Golden Valley, Musselshell, Petroleum, Rosebud, Stillwater, Treasure, Wheatland, and Yellowstone Counties
Area 6: Beaverhead and Silver Bow Counties

CEMENT MASONS:
Area 1: Beaverhead, Deer Lodge, and Granite Counties; Jefferson County (Southern area including Town of Wickes); Madison County; Powell County (southern area, including Town of Deer Lodge); Silver Bow County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:* (Cont'd)					
Area 2	$11.95	.85	.40		
Area 3	12.30	1.00			
Area 4	10.00				
ELECTRICIANS:*					
Area 1	15.75	.70	3%+.50		.08
Area 2:					
Electricians	16.30	.70	3%+.75		1/2%
Cable Splicers	16.75	.70	3%+.75		1/2%
Area 3	11.47		3%		1/2%
Area 4:					
Contracts under $75,000:					
Electricians	14.45	.70	3%+.75		1/2%
Cable Splicers	15.17	.70	3%+.75		1/2%
Contracts over $75,000:					
Electricians	15.90	.70	3%+.75		1/2%
Cable Splicers	16.70	.70	3%+.75		1/2%
Area 5:					
Electricians	14.95	.70	3%+.50		1/2%
Area 6:					
Electricians	15.90	.70	3%+.75		1/2%
Cable Splicers	16.70	.70	3%+.75		1/2%
Area 7:					
Electricians	17.61	.70	3%+.50		1/2%
Cable Splicers	18.49	.70	3%+.50		1/2%
Area 8:					
Electricians	14.05	.70	3%+.50		1/2%
Cable Splicers	14.75	.70	3%+.50		1/2%
Area 9:					
Electricians	13.85	.70	3%+.50		1/2%
Cable Splicers	14.54	.70	3%+.50		1/2%
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	14.865	1.345	1.085	a	.035
Helpers	10.405	1.345	1.085	a	.035
Probationary Helpers	7.43				
IRONWORKERS:*					
Area 1	14.41	1.05	1.60		.15
Area 2	16.74	1.00	2.15		.15
Area 3	14.41	1.05	1.60		.15

*See AREA DESCRIPTIONS - Page 5

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:*					
Area 1:					
Lineman, Pole Sprayer	$14.71	.45	3%+.50		1/2%
Cable Splicer	15.73	.45	3%+.50		1/2%
Line Equipment Operator; Powderman	13.00	.45	3%+.50		1/2%
Groundman	10.52	.45	3%+.50		1/2%
Area 2:					
Lineman	13.92	.45	3%+.50		1/2%
Cable Splicer	15.49	.45	3%+.50		1/2%
Pole Sprayer	12.37	.45	3%+.50		1/2%
Line Equipment Operators	11.87	.45	3%+.50		1/2%
Powderman, Jackhammerman, Compressorman	10.29	.45	3%+.50		1/2%
Groundman "A"	9.65	.45	3%+.50		1/2%
Tree Trimmer	12.83	.45	3%+.50		1/2%
PAINTERS:*					
Area 1:					
Brush, Roller; Floor Layers	11.56	.78	.50		.10
Brush, Roller on steel and roofs, Pot Tender; Paperhanger	11.81	.78	.50		.10
Perfataper (hand tools)	11.66	.78	.50		.10
Perfataper (machine tools)	12.06	.78	.50		.10
Spray (not steel)	12.54	.78	.50		.10
Sandblaster, commercial and steel; Spray on structural steel and tanks	12.79	.78	.50		.10
Area 2:					
Brush; Preparatory work; Pot Tender; Parking Lot Striping and related work; Roller up to 9"	12.42	.69	.40		1%
Hand Taper	12.82	.69	.40		1%
Machine Taper	14.07	.69	.40		1%
Paperhanger, Brush on steel	12.92	.69	.40		1%
Roller over 9" long	16.02	.69	.40		1%
Spray and Roller (in shop)	12.78	.69	.40		1%
Spray and Roller (out shop)	14.18	.69	.40		1%

*See AREA Descriptions - Page - 5

AREA DESCRIPTIONS

CEMENT MASONS: (Cont'd)
Area 2: Big Horn, Carbon, Golden Valley, Stillwater, Treasure, Wheatland, and Yellowstone Counties
Area 3: Blaine, Cascade, Chouteau, Hill, Liberty, Pondera, Teton, and Toole Counties
Area 4: Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Richland, and Wibaux Counties

ELECTRICIANS:
Area 1: Beaverhead, Deer Lodge, Granite, Jefferson, Madison, Powell, and Silver Bow Counties
Area 2: Big Horn, Carbon, Carter, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone Counties
Area 3: Custer and Garfield Counties
Area 4: Blaine, Chouteau, Daniels, Fergus, Glacier, Hill, Judith Basin, Liberty, McCone, Petroleum, Pondera, Phillips, Richland, Roosevelt, Sheridan, Teton, Toole, Valley, and Wheatland Counties
Area 5: Broadwater, Lewis & Clark, and Meagher Counties
Area 6: Cascade County
Area 7: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties
Area 8: Gallatin County
Area 9: Park and Sweet Grass Counties

IRONWORKERS:
Area 1: Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, and Jefferson Counties; Lewis & Clark County (the City of Wolf Creek and area south of an east-west line at that point); Madison, Park, Powell, Ravalli, and Silver Bow Counties
Area 2: Flathead, Glacier, Lake, Lincoln, Mineral, Missoula, and Sanders Counties
Area 3: Remaining Counties (including northern half of Lewis & Clark County)

LINE CONSTRUCTION:
Area 1: Statewide, except Flathead, Lake, and Lincoln Counties
Area 2: Flathead, Lake, and Lincoln Counties

PAINTERS:
Area 1: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, Wibaux, and Yellowstone Counties
Area 2: Cascade County; Chouteau County (south of a line running east and west through the southern limits of Big Sandy); Daniels, and Fergus Counties; Glacier County (excluding Glacier National Park); Garfield and Judith Basin Counties; Lewis & Clark County (northern portion from a line running east and west through the northern limits of Craig); McCone, Phillips, Pondera, Petroleum, Richland, Roosevelt, Sheridan, Teton, Toole, and Valley Counties; Wheatland County (northern area from a line running east and west through the southern limits of Harlowtown)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:* (Cont'd)					
Area 2: (Cont'd)					
Water and Sandblasting; Application of cold tar products, epoxies and polyurethanes and acid resistant paints; Spraying and airless spray	$14.67	.69	.40		1%
Area 3:					
Painters	10.02				
Perfataper	10.27				
Paint Mitts	10.52				
Application of cold tar products, epoxies, polyurethanes and acid resistant paints; Water sandblasting and steam cleaning; Stacks and Steeples; Brushing of steel; Spraying and airless spraying; Work over 30 feet	12.80				
Area 4:					
Wet sandblasting, brush or roller; Application of cold tar epoxies, and acid resistant materials	14.08	.59	.50		.03
Brush or Roller; Prep work; Pot Tender	12.08	.59	.50		.03
Spray application of cold tar epoxies, and acid resistant materials	17.08	.59	.50		.03
Paper or Vinyl Hanger	12.08	.59	.50		.03
Structural steel; Brush or Roller	14.08	.59	.50		.03
Perfataping	12.58	.59	.50		.03
Structural Steel; Spraying	15.08	.59	.50		.03
Airless Spraying	13.08	.59	.50		.03
Area 5	10.90				
Area 6	13.67	.84	.50		.04

*See AREA Descriptions - Page 8

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:*					
Area 1	$10.50	.75	.35		
Area 2	13.75	1.00	.50		
Area 3	10.95	.85	.40		
Area 4	10.00				
PLUMBERS:*					
Area 1	15.78	.75	.70		.15
Area 2	16.20	.90	1.10		.17
Area 3	16.45	.85	1.00		.10
Area 4	17.60	1.00	1.10		.20
ROOFERS; Waterproofers:*					
Area 1:					
Roofers	12.94		.25		
Kettleman	12.81		.25		
Area 2:					
Roofers	11.40	.95	.25		
Irritable bituminous Roofer, Waterproofer, Kettleman	13.40	.95	.25		
Area 3	11.32	.70	.60		
Area 4:					
Roofers	13.65	.95	.75		.10
Irritable bituminous Roofer, Waterproofer, Kettleman	15.15	.95	.75		.10
Area 5:					
Roofers	13.00	.95	.50		.10
Irritable bituminous Roofer, Waterproofer, Kettleman	15.00	.95	.50		.10
Area 6	13.50	.55			
SHEET METAL WORKERS:*					
Area 1	15.47	.83	.66		.24
Area 2	15.38	.83	.98		.24
Area 3	15.19	1.34	.98		.24
Area 4	15.19	.83	.75		.24
Area 5	14.99	.83	.98		.24
SOFT FLOOR LAYERS:*					
Area 1	12.50				
SPRINKLER FITTERS	14.81	.95	1.40		.08
TERRAZZO WORKERS & TILE SETTERS:					
Area 1	12.55		.60		
Area 2	15.00	.70	.75		
Area 3	14.45	.90	.55		
Area 4	13.60	.90	.75		
Area 5	14.45	1.00	.85		

*See AREA Descriptions - Pages 8 & 9

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTE:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six (6) Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

AREA DESCRIPTIONS

PAINTERS: (Cont'd)
Area 3: Deer Lodge County and the southern part of Granite County from a line east-west through the southern limits of Phillipsburg
Area 4: The entire Counties of Beaverhead, Gallatin, Park, and Silver Bow. The northern portion of Jefferson County from a line running east and west (5) miles south of the southern City limits of Boulder, Montana; The south part of Jefferson County from a line running due west from the south limits of Tosten, Montana; the southern portion of Lewis & Clark County from a line running east and west through the southern limits of Craig, Montana; the southern portion of Powell County from a line running east and west through the southern limits of Helmsville, Montana; the west part of Madison County from a line running north and south through the west limits of Harrison, Montana
Area 5: Blaine, Hill, and Liberty Counties; Chouteau County (north of the southern limits of the City of Big Sandy)
Area 6: Flathead County; Granite County (northern area north of the limits of Phillipsburg); Lake County (southern area including the City of Ronan); Lincoln, Mineral, and Missoula Counties; Powell County (northern area through south limits of Helmsville); Ravalli and Sanders Counties

PLASTERERS:
Area 1: Granite County; Lake County (southern area, including the City of Pablo); Mineral and Missoula Counties; Powell County (northern area including the City of Helmsville); Ravalli County; Sanders County (south portion, including the City of Paradise)
Area 2: Beaverhead, Deer Lodge, and Granite Counties; Jefferson County (southern area, including Town of Wickes); Madison County; Powell County (southern area, including Town of Deer Lodge); Silver Bow County
Area 3: Big Horn, Carbon, Golden Valley, Stillwater, Treasure, Wheatland, and Yellowstone Counties
Area 4: Carter, Custer, Dawson, Fallon, Powder River, Prairie, Richland, Rosebud, and Wibaux Counties

PLUMBERS:
Area 1: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties
Area 2: Blaine, Cascade, Chouteau, Fergus, Glacier, Hill, Judith Basin, Liberty, McCone, Meager, Phillips, Pondera, Roosevelt, Teton, Toole, and Valley Counties

AREA DESCRIPTIONS (Cont'd)

PLUMBERS: Cont'd)
Area 3: Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis & Clark, Madison, Park, Powell, Silver Bow, and Sweet Grass Counties
Area 4: Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Golden Valley, McCone, Musselshell, Petroleum, Powder River, Prairie, Richland, Rosebud, Sheridan, Stillwater, Treasure, Wheatland, Wibaux, and Yellowstone Counties

ROOFERS; Waterproofers:
Area 1: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Richland, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone Counties
Area 2: Blaine, Cascade, Chouteau, Daniels, Fergus, Garfield, Glacier, Hill, Judith Basin, Liberty, McCone, Petroleum, Phillips, Pondera, Roosevelt, Sheridan, Teton, Toole, and Valley Counties
Area 3: Deer Lodge, Powell, and Silver Bow Counties
Area 4: Flathead, Lake, Lincoln, Mineral, Missoula, and Sanders Counties
Area 5: Lewis and Clark County
Area 6: Beaverhead, Broadwater, Gallatin, Jefferson, Madison, Meagher, Park, Sweet Grass, and Wheatland Counties

SHEET METAL WORKERS:
Area 1: Broadwater County; Jefferson County (including north half of the City of Boulder); Lewis & Clark and Meagher Counties
Area 2: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties
Area 3: Big Horn, Carbon, Carter, Custer, Daniels, Dawson, Fallon, Fergus, Gallatin, Garfield, Golden Valley, McCone, Musselshell, Park, Petroleum, Phillips, Powder River, Prairie, Richland, Rosebud, Roosevelt, Sheridan, Stillwater, Sweet Grass, Treasure, Valley, Wibaux, Wheatland, and Yellowstone Counties
Area 4: Blaine, Cascade, Chouteau, Glacier, Hill, Judith Basin, Liberty, Pondera, Teton, and Toole Counties
Area 5: Beaverhead, Deer Lodge, and Granite Counties; Jefferson County (southern half); Madison, Powell, and Silver Bow Counties

SOFT FLOOR LAYERS:
Area 1: Cascade County; Chouteau County (south of a line running east and west through the southern limits of Big Sandy); Daniels, and Fergus Counties; Glacier County (excluding Glacier National Park); Garfield and Judith Basin Counties; Lewis & Clark County (northern portion from a line running east and west through the northern limits of Craig); McCone, Phillips, Pondera, Petroleum, Richland, Roosevelt, Sheridan, Teton, Toole, and Valley Counties; Wheatland County (northern area from a line running east and west through the southern limits of Harlowtown)

TERRAZZO WORKERS and TILE SETTERS:
Area 1: Broadwater, Lewis & Clark, and Meagher Counties; Jefferson County (northern area north of Boulder Hill)
Area 2: Big Horn, Carbon, Carter, Custer, Dawson, Fallon, McCone, Powder River, Prairie, Richland, Rosebud, Sweet Grass, Stillwater, Treasure, Wibaux, and Yellowstone Counties
Area 3: Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties
Area 4: Blaine, Daniels, Hill, Liberty, Phillips, Roosevelt, Sheridan, Toole, and Valley Counties
Area 5: Cascade, Chouteau, Glacier, Pondera, and Teton Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
AREA 1:					
Group 1	$10.16	.75	.65	.30	.05
Group 2	10.36	.75	.65	.30	.05
Group 3	10.41	.75	.65	.30	.05
Group 4	10.66	.75	.65	.30	.05
Group 5	10.76	.75	.65	.30	.05
AREA 2:					
Group 1	10.29	.75	.65	.30	.05
Group 2	10.45	.75	.65	.30	.05
Group 3	10.54	.75	.65	.30	.05
Group 4	10.79	.75	.65	.30	.05
Group 5	10.89	.75	.65	.30	.05
AREA 3:					
Group 1	10.03	.75	.65	.30	.05
Group 2	10.19	.75	.65	.30	.05
Group 3	10.29	.75	.65	.30	.05
Group 4	10.53	.75	.65	.30	.05
Group 5	10.63	.75	.65	.30	.05
AREA 4:					
Group 1	10.50	.75	.65	.30	.05
Group 2	10.66	.75	.65	.30	.05
Group 3	10.75	.75	.65	.30	.05
Group 4	11.00	.75	.65	.30	.05
Group 5	11.10	.75	.65	.30	.05

AREA DESCRIPTIONS

AREA 1: Beaverhead and Deer Lodge Counties; Jefferson County (south half, excluding the City of Boulder); Madison County (west of the Gravely Mountain Range); Powell County (west of a north-south line at the west edge of the Town of Elliston); and Silver Bow County
AREA 2: Broadwater County (north of an east-west line north of the City of Tosten); Jefferson County (north half, including the City of Boulder); Lewis & Clark and Meagher Counties; Powell County (east of a north-south line at the west edge of the Town of Elliston)
AREA 3: Broadwater County (south of an east-west line north of the City of Tosten); Gallatin County; Madison County (east of the Gravely Mountain Range); Park, Sweet Grass, and Wheatland Counties
AREA 4: Cascade, Chouteau, and Fergus Counties; Glacier County (excluding Glacier National Park); Judith Basin, Pondera, Teton, and Toole Counties

LABORERS:
(AREAS 1, 2, 3, and 4)

Broadwater, Cascade, Chouteau, Deer Lodge, Fergus, Gallatin, Glacier, Jefferson, Judith Basin, Lewis & Clark, Madison, Meagher, Park, Pondera, Powell, Silver Bow, Sweet Grass, Teton, Toole, and Wheatland Counties

Group 1: Axeman; Caisson Workers (free air); Carpenter Tender; Car and Truck Loaders, Scissorman; Chuck Tender and Nipper (above ground); Concrete Laborers (wet or dry); Bucketman and Signalman; Cosmoline, applying and removing; Dumpman (Spotter); Fence Erector and Installer (includes the installation and erection of fences, guard rails, median rails, reference posts, right-of-way markers and guide posts); Form Setter; Form Stripper; General Laborer - Building and structure; Crusher and Batch Plant Laborers; Heater Tender (not covered by joint board decision - such as radiant type or butane fire, without blowers or fans - General Laborers Scale); Landscape Laborer; Riprap Tender; Stake Jumper for equipment; Sandblasting Tail Hoseman, Pot Tender; Sod Cutter, hand operated (General Laborers); Tool Houseman; Tool Checker

Group 2: Burning Bar; Cement Handlers; Choker Setter; Concrete or Asphalt Saws; Curb Machine; Dumpman (Grade Man); Hand Faller; Nozzleman - air, water, Gunite and Placo Machine; Pipelayer (all types); Laser Equipment Operator; Pipewrapper

Group 3: Asphalt Raker; Concrete Vibrator (3" and over); Drills, Air Track (all types); Equipment Handler; Grade Setter; Grout, Concrete Pump and Nozzleman; High Scaler; High pressure Machine Nozzleman; Jackhammer, Pavement Breaker, Wagon Driller, Concrete Vibrator, Mechanical Tamper

Group 4: Cement Mason Tender and Hod Carriers; Powderman

Group 5: Core Drill Operator; Cutting Torch and Air Arc Operator

LABORERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 5:					
Group 1	$10.60	.75	.65	.30	.05
Group 2	10.75	.75	.65	.30	.05
Group 3	10.90	.75	.65	.30	.05
AREA 6:					
Group 1	10.20	.75	.65	.30	.05
Group 2	10.42	.75	.65	.30	.05
Group 3	10.45	.75	.65	.30	.05
Group 4	10.75	.75	.65	.30	.05
AREA 7:					
Group 1	10.35	.75	.65	.30	.05
Group 2	10.57	.75	.65	.30	.05
Group 3	10.60	.75	.65	.30	.05
Group 4	10.75	.75	.65	.30	.05

AREA DESCRIPTIONS

AREA 5: Flathead County, and Glacier National Park; Lake County (north of a line (5) miles north of the 5th Parallel); Lincoln County; Sanders County (north of a line (5) miles north of the 5th Parallel)
AREA 6: Carter, Custer, Dawson, Fallon, Powder River, Prairie, and Wibaux Counties
AREA 7: Big Horn, Carbon, Golden Valley, Musselshell, Rosebud, Stillwater, Treasure, and Yellowstone Counties

LABORERS (Cont'd)
(AREA 5)

Flathead County and Glacier National Park; Lake County (north of a line (5) miles north of the 5th Parallel); Lincoln County; Sanders County (north of a line (5) miles north of the 5th Parallel)

Group 1: General Laborers; Form Strippers; Carpenter Tender

Group 2: Concrete Handlers, conveying and handling concrete; Nozzlemen (air or water); Sand Blast Tail Hoseman; Powderman Tender ; Power driven Wheelbarrow; Rodder and Spreader; Form Setters (paving); Bucketman (small air tool Operators, including Blow Pipe) Small Power Tool Operators; Rigger; Chuck Tenders; Asphalt Rakers; Dumpman; Rip Rapping; Pipe Wrapper; Pot Tender; Concrete Pumper Hoseman; Jackhammer; Pavement Breakers; Vibrator; Mechanical Tamper and other air tools; Cement Handlers (sack or bulk); Burning Bar

Group 3: Pipe Layers (non-metallic); Metal Culvert Pipe Layer; Mason and Plaster Tenders; Cement Finisher Tender; Small Concrete Mixer Operator; Shoring and Lagging open ditches; Concrete Saw; Powderman; Drills, Air-trac, Wagon Drill, cat or truck mounted air operated Drills; Sand Blaster (wet or dry); Gunite Nozzleman; Barco Tamper; Welder, Laser Equipment and tools; Cutting Torch, Equipment Man

AREAS 6 and 7

Big Horn, Carbon, Carter, Custer, Dawson, Fallon, Golden Valley, Musselshell, Powder River, Prairie, Rosebud, Stillwater, Treasure, Wibaux, and Yellowstone Counties

Group 1: Axeman; Car and Truck Loaders (weighing loaded trucks); Cosmoline, applying and removing; Concrete Laborer; Chucktenders and Nippers; Crusher Laborer; Form Stripper; General Laborer; Hand Faller; Landscape Laborer; Riprap Tender; Stake Jumper

Group 2: Applicator, hand or nozzle (applying hot protective materail of oil or asphalt base); Asphalt Raker; Barco Tamper; Caulker, Collarman, Jointer, Mortarman; Cement Handler (sack or bulk); Choker Setter; Concrete and Asphalt Saws; Concrete Bucketman; Creosote Material Handler; Curb Machine; Dumpman, Grademan; Dumpman, Spotter; Equipment Handler (trucks, Bobcats); Form Setters; Gunite, Pumpcrete and Placo Machine Operator; Machine Operator; Jackhammer Operator; Mechanical Tampers; Laser Beam Operator; Pipelayers (all types); Plastic Pipe Layer; Pavement Breaker Operator; Pneumatic and electric tool Operator; Pipe Wrapper; Powderman Tender, Primerhouseman; Power-driven Wheelbarrow; Power Saw (bucking and falling); Rip Wrapper (hand placed); Rodder and Spreader; Shoring and Lagging (open ditch); Tar Pot Operator

Group 3: Air Track mounted drills; Air Cat mounted Drills; Cat or truck mounted drills; Core Drill Operator; High Scaler; Mobile Drills; Nozzleman, concrete (outside); Powderman; Riggers and Jackers; Wagon Drillers

Group 4: Tenders, Trowel Trades (scaffolding, staging, forklifts for Masons and Plasterers)

LABORERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AREA 8:					
Group 1	$10.57	.75	.65	.30	.05
Group 2	10.82	.75	.65	.30	.05
Group 3	10.97	.75	.65	.30	.05
AREA 9:					
Group 1	10.50	.75	.65	.30	.05
Group 2	10.75	.75	.65	.30	.05
Group 3	10.85	.75	.65	.30	.05
Group 4	10.90	.75	.65	.30	.05
Group 5	11.00	.75	.65	.30	.05
Group 6	11.22	.75	.65	.30	.05

AREA DESCRIPTIONS

AREA 8: Granite County (western portion); Lake County (south of a line (5) miles north of the 5th Parallel); Mineral, Missoula, and Ravalli Counties; Sanders County (south of a line (5) miles north of the 5th Parallel)
AREA 9: Blaine, Daniels, Garfield, Hill, Liberty, Petroleum, Phillips, Richland, Roosevelt, Sheridan, and Valley Counties

LABORERS: (Cont'd)
AREA 8

Granite County (western portion); Lake County (south of a line (5) miles north of the 5th Parallel); Mineral, Missoula, and Ravalli Counties; Sanders county (south of a line (5) miles north of the 5th Parallel)

Group 1: General Laborers; Form Strippers; Carpenter Tenders; Concrete Handler, conveying and handling concrete

Group 2: Nozzleman (air or water); Sand Blast Tailhoseman; Powderman Tender; Power driven Wheelbarrow; Rodder and Spreader; Form Setters (paving); Bucketman; Rigger; Small Air Tool Operators, including Blow Pipes; Small power tool Operators; Chuck Tenders; Asphalt Rakers; Dumpman; Rip Rapping; Pipe Wrapper; Pot Tenders; Concrete Pumper Hoseman; Cutting Torch; Jackhammer; Pavement Breaker; Vibrator; Mechanical Tamper and other air tools; Cement Handlers (sack or bulk); Burning Bar

Group 3: Pipelayers (non-metallic); Metal Culvert Pipelayers; Mason and Plaster Tenders; Cement Finisher Tender; Small Concrete Mixer Operator; Shoring and Lagging Open Ditches; Concrete Saw; Powderman; Drills, Air-trac, Wagon Drill, Cat or Truck mounted air operated Drills; Laser Equipment and Tool, Welder; Sand Blaster (wet or dry); Gunnitemen; Barco Tamper

AREA 9
Blaine, Daniels, Garfield, Hill, Liberty, Petroleum, Phillips, Richland, Roosevelt, Sheridan, and Valley counties

Group 1: General and Building Laborers and Form Stripper and Carpenter Tender; Car and Truck Loaders; Concrete Laborers (wet or dry breaking of concrete requiring sledge hammer); Dumpmen (Spotter); Small power tools, Chippers, Clay Spaders, Pogo Stick, etc.; Fence Erectors and Installers includes installation and erection of fences, guard rails, median rails, reference posts, guide posts and right-of-way markers

Group 2: Dumpmen (Grade)

Group 3: Power driven Concrete Buggies or power driven Wheelbarrows; Pipe Layers (non-metallic); Sandblaster, Concrete Nozzleman, Placo Operator, Jackhammer, Pavement Breaker, Vibrator (2½" and over); Barco Tamper, Vibrator Turtle; Small Concrete Mixers, Concrete Saw; Nozzleman (air and water); Sandblaster, Tailhoseman, Pot Tender, Tar Pot Tender; Gunite Nozzleman; Caisson Workers (free air); Tunnels and Shafts (free air); Bull Gang, Pot Tender; Chuck Tender, Muckers and Nippers, Primerhouseman

Group 4: Brick Tenders handling bricks and blocks only

Group 5: Hod Carriers and Plaster Tenders (men carrying mortar either by hod, pail or barrow); High Scaler; Wagon Driller, Cat or truck mounted air operated Drills; Asphalt Rakers and Tampers, Gunite, Form Setter (slab steel forms); Stake Setter, Stake Jumper, Rodder and Spreader, Grademan; Concrete Nozzleman; Miners

Group 6: Powdermen; Laser Tools and Equipment; Small Concrete Mixers; Concrete Saw

POWER EQUIPMENT OPERATORS: Broadwater, Flathead, Lake, Lewis & Clark, Lincoln, Mineral, Missoula, Northern half of Powell, Ravalli and Sanders Counties:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
A-Frame Truck Crane, Winch Truck and similar	$12.80	.97	.85	.50	.10
Air Compressor, single	12.49	.97	.85	.50	.10
Air compressor, two or more	12.66	.97	.85	.50	.10
Air Doctor	12.96	.97	.85	.50	.10
Asphalt Paving Machine Operator	12.96	.97	.85	.50	.10
Asphalt Paving Machine Screed Operator	12.96	.97	.85	.50	.10
Automatic Finegrader, Gurries and other similar types	13.09	.97	.85	.50	.10
Belt Finish Machine Operator	12.66	.97	.85	.50	.10
Bit Grinder	12.96	.97	.85	.50	.10
Bituminous Mixer Paving, Travel Plant	12.96	.97	.85	.50	.10
Boring Machine (small), Jeep, Pickup or Farm Tractor mounted	12.55	.97	.85	.50	.10
Boring Machine (large)	12.96	.97	.85	.50	.10
Broom, self-propelled	12.63	.97	.85	.50	.10
Cableway Highline Operator	13.47	.97	.85	.50	.10
Cement Silo Operator	12.75	.97	.85	.50	.10
Central Mixing Plants, Concrete dam and stationary	13.21	.97	.85	.50	.10
Chain Bucket Loader	12.68	.97	.85	.50	.10
Chip or Gravel Spreader, self-propelled	12.68	.97	.85	.50	.10
Concrete Batch Plant, one and two Mixers	12.96	.97	.85	.50	.10
Concrete Batch Plant, three and four Mixers	13.16	.97	.85	.50	.10
Concrete Batch Plant, five Mixers and over	13.36	.97	.85	.50	.10
Concrete Batch Plant Oiler, up to and including two Mixers	12.48	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Concrete Batch Plant Oiler, three Mixers and over	$12.79	.97	.85	.50	.10
Concrete Bucket Dispatcher	12.96	.97	.85	.50	.10
Concrete Curing Machine	12.96	.97	.85	.50	.10
Concrete Finish Machine Paving	12.96	.97	.85	.50	.10
Concrete Float-Spreader	12.96	.97	.85	.50	.10
Concrete Mixer, three bags and under	12.55	.97	.85	.50	.10
Concrete Mixer, four bags and over	12.72	.97	.85	.50	.10
Concrete Power Saw, self-propelled	12.96	.97	.85	.50	.10
Concrete Travel Batcher	12.96	.97	.85	.50	.10
Concrete Conveyor under 40 feet	12.54	.97	.85	.50	.10
Concrete Conveyor over 40 feet	13.29	.97	.85	.50	.10
Concrete Pump	13.29	.97	.85	.50	.10
Conveyor Loader Operator, up to and including 42' belt	12.54	.97	.85	.50	.10
Conveyor Loader Operator over 42' belt	12.66	.97	.85	.50	.10
Crane, to and including 80' boom	13.12	.97	.85	.50	.10
Crane, 81' to 130' boom	13.27	.97	.85	.50	.10
Crane, 131' to 150' boom	13.32	.97	.85	.50	.10
Crane, 151' boom and over	13.37	.97	.85	.50	.10
Crane Oiler	12.53	.97	.85	.50	.10
Crane with jibs an additional $.15 per hour					
Crusher Operator	12.96	.97	.85	.50	.10
Crusher Oiler	12.45	.97	.85	.50	.10
Crusher Conveyor, when required	12.42	.97	.85	.50	.10
Distributor Operator	12.96	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DW 10, 15, or 20 tractor pulling Roller	$12.68	.97	.85	.50	.10
Electric Overhead Cranes	13.14	.97	.85	.50	.10
Elevating Grader	12.96	.97	.85	.50	.10
Farm type tractor up to and including 50 HP engine	12.42	.97	.85	.50	.10
Farm Type tractor, over 50 HP engine	12.50	.97	.85	.50	.10
Fireman	12.55	.97	.85	.50	.10
Forklift, on construction job site	12.77	.97	.85	.50	.10
Form Grader Operator	12.73	.97	.85	.50	.10
Gradall Operator	12.96	.97	.85	.50	.10
Grade Setter	12.42	.97	.85	.50	.10
Heavy Duty Drills, all types	12.96	.97	.85	.50	.10
Herman-Nelson Heaters and similar type	12.50	.97	.85	.50	.10
Hoist Operator, single drum	12.73	.97	.85	.50	.10
Hoist, two or more drums	12.96	.97	.85	.50	.10
Helicopter Hoist Operator	13.46	.97	.85	.50	.10
Hot Plant Operator	12.96	.97	.85	.50	.10
Hot Plant Fireman, when in operation	12.96	.97	.85	.50	.10
Hot Plant Oiler, 100 ton per hour or over	12.45	.97	.85	.50	.10
Hydra Lift and similar types	12.86	.97	.85	.50	.10
Industrial Locomotive all classes	12.96	.97	.85	.50	.10
Mechanic and/or Welder on job	13.06	.97	.85	.50	.10
Mechanic Shop (Dec. - April 1)	12.66	.97	.85	.50	.10
Mixermobile	13.04	.97	.85	.50	.10
Motor Patrol Operator	13.09	.97	.85	.50	.10
Mountain Logger or similar type	12.96	.97	.85	.50	.10
Mucking Machine Operator	12.96	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Oiler-Driver, Rubber tired Cranes	$12.53	.97	.85	.50	.10
Oiler, other than Shovels and Cranes	12.45	.97	.85	.50	.10
Oiler, Hoist House, dams	12.86	.97	.85	.50	.10
Pavement Breakers, Emsco and similar	12.96	.97	.85	.50	.10
Paving and Mixing Machine	13.09	.97	.85	.50	.10
Power Auger, large truck or tractor mounted and Punch	12.96	.97	.85	.50	.10
Power Mixer, single or double drum	12.96	.97	.85	.50	.10
Power Saw, multiple cut, self-propelled	12.96	.97	.85	.50	.10
Pumpcrete or Grout Machine	12.96	.97	.85	.50	.10
Pumpman	12.49	.97	.85	.50	.10
Push Tractor	12.96	.97	.85	.50	.10
Quad Cat	13.26	.97	.85	.50	.10
Quad Loader and similar type	13.54	.97	.85	.50	.10
Radiator Repairman	12.77	.97	.85	.50	.10
Raygo Gaint	13.54	.97	.85	.50	.10
Refrigeration Plant Operator	12.96	.97	.85	.50	.10
Retort Operator	12.55	.97	.85	.50	.10
Roller, on blade or hot mix oil paving	12.96	.97	.85	.50	.10
Roller, on other blade or hot mix paving	12.66	.97	.85	.50	.10
Roller, 25 ton or over	12.96	.97	.85	.50	.10
Ross and similar type Carriers, on construction site	12.96	.97	.85	.50	.10
Rubber-tired Dozer	12.96	.97	.85	.50	.10
Rubber-tired Front End Loader, 1 cu. yd. and under	12.67	.97	.85	.50	.10
Rubber-tired Front End Loader, 1 cu. yd. to and including 3 cu. yds.	12.96	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Rubber-tired Front End Loader, over 3 cu. yds. to and including 5 cu. yds.	$13.08	.97	.85	.50	.10
Rubber-tired Front End Loader, over 5 cu. yds. to and including 10 cu. yds.	13.18	.97	.85	.50	.10
Rubber-tired Front End Loader, over 10 cu. yds. to and including 15 cu. yds.	13.28	.97	.85	.50	.10
Rubber-tired Front End Loader, over 15 cu. yds.	13.38	.97	.85	.50	.10
Scraper, DW 15, 20, 21 and similar type if power unit is not used	12.96	.97	.85	.50	.10
Scraper, single or twin engine pulling Belly Dump Trailer	13.34	.97	.85	.50	.10
Scraper, single engine	13.09	.97	.85	.50	.10
Scraper, twin engine	13.19	.97	.85	.50	.10
Scraper, tandem engine or 3 engine	13.45	.97	.85	.50	.10
Self-propelled Sheepfoot and similar type	12.96	.97	.85	.50	.10
Shovels, including all attachments, under 1 cu. yd.	12.96	.97	.85	.50	.10
Shovels, including all attachments, 1 cu. yd. to and including 3 cu. yds.	13.14	.97	.85	.50	.10
Shovels, including all attachments, over 3 cu. yds. to and including 5 cu. yds.	13.41	.97	.85	.50	.10
Shovels, including all attachments over 5 cu. yds.	13.54	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Shovel Oiler, 3 cu. yds. and under	$12.45	.97	.85	.50	.10
Shovel Oiler, over 3 cu. yds.	12.86	.97	.85	.50	.10
Slip Form Paver Operator	13.09	.97	.85	.50	.10
Stiff Leg Derrick and Guy Derrick	13.41	.97	.85	.50	.10
Track-type Front End Loaders, up to and including 5 cu. yds.	12.96	.97	.85	.50	.10
Track-type Front End Loaders, over 5 cu. yds. to and including 10 cu. yds.	13.19	.97	.85	.50	.10
Track-type Front End Loaders, over 10 cu. yds. to and including 15 cu. yds.	13.29	.97	.85	.50	.10
Track-type Front End Loaders, over 15 cu. yds.	13.39	.97	.85	.50	.10
Track-type Tractor w/wo attachments	12.96	.97	.85	.50	.10
Track-type Tractor, on Euclid Loader	13.14	.97	.85	.50	.10
Trenching Machine	12.96	.97	.85	.50	.10
Turnhead Conveyor, or Head Tower on Batch Plant	12.96	.97	.85	.50	.10
Wagner Roller and similar type	12.96	.97	.85	.50	.10
Whirley Crane Operator	13.49	.97	.85	.50	.10
Whirley Crane Oiler	12.86	.97	.85	.50	.10
Water Pull when used for compaction	12.96	.97	.85	.50	.10
Washing and Screening Plant Operator	12.96	.97	.85	.50	.10
Washing and Screening Plant Oiler	12.45	.97	.85	.50	.10
Yo-Yo Cat, both ends	13.16	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Big Horn, Carbon, Carter, Custer, Fallon, Garfield, Golden Valley, Musselshell, Petroleum, Powder River, Prairie, Rosebud, Stillwater, Sweet Grass, Treasure, and Yellowstone Counties:					
A-Frame Truck Crane Operator	$12.71	.97	.85	.50	.10
Air Compressor Operator, single	12.45	.97	.85	.50	.10
Asphalt Paving Machine Operator	12.96	.97	.85	.50	.10
Air Doctor	12.96	.97	.85	.50	.10
Belt Finishing Operator	12.63	.97	.85	.50	.10
Bit Grinder	12.96	.97	.85	.50	.10
Bituminous Mixer Operator	12.96	.97	.85	.50	.10
Bulldozer Operator	12.96	.97	.85	.50	.10
Boring Machine Operator, small	12.52	.97	.85	.50	.10
Boring Machine Operator, large	12.96	.97	.85	.50	.10
Cableway Operator	13.48	.97	.85	.50	.10
Cement Silo Operator	12.73	.97	.85	.50	.10
Concrete Batch Plant Operator	12.85	.97	.85	.50	.10
Concrete Finish Machine, paving	12.96	.97	.85	.50	.10
Concrete Float Operator and Spreader	12.96	.97	.85	.50	.10
Conveyor Operator	12.66	.97	.85	.50	.10
Chip and Gravel Spreader	12.66	.97	.85	.50	.10
Crane Operator, to and including 80' boom	13.12	.97	.85	.50	.10
Crane Operator, 81' to 130' boom	13.27	.97	.85	.50	.10
Crane Operator, 131' to 150' boom	13.32	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Crane Operator, 151' to 170' boom (an additional $0.05 per hour is added for each 20' of boom) All Cranes with jibs, an additional $0.25 per hour is added to above Crane rates.	$13.37	.97	.85	.50	.10
Crane Oiler-Driver, rubber tired	12.51	.97	.85	.50	.10
Electric Overhead Crane Operator	13.15	.97	.85	.50	.10
Crusher and/or Screening Plant Operator, portable	12.96	.97	.85	.50	.10
Crusher and/or Screening Plant Tender, if over 2 units	12.45	.97	.85	.50	.10
Crusher and/or Screening Plant Operator, Stationary	12.85	.97	.85	.50	.10
Distributor Operator	12.96	.97	.85	.50	.10
Drilling Machine Operator, does not include Jack-hammer, Wagon Driller, Waterliner	12.86	.97	.85	.50	.10
Euclid Loader and similar type	13.15	.97	.85	.50	.10
Tractor, rubber-tired, Industrial	12.40	.97	.85	.50	.10
Elevating Grader	12.96	.97	.85	.50	.10
Fireman	12.52	.97	.85	.50	.10
Fork Lift on construction site	12.75	.97	.85	.50	.10
Front End Loader, rubber-tired, under 1 yard	12.65	.97	.85	.50	.10
Front End Loader, 1 yard and including 3 yards	12.96	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Front End Loader, rubber-tired, over 3 yards and including 5 yards	$13.09	.97	.85	.50	.10
Front End Loader, rubber-tired, over 5 yards and including 10 yards	13.19	.97	.85	.50	.10
Front End Loader, rubber-tired, over 10 yards and including 15 yards	13.29	.97	.85	.50	.10
Front End Loader, rubber-tired, over 15 yards (factory struck rating, not to include sideboards)	13.39	.97	.85	.50	.10
Grade Setter	12.42	.97	.85	.50	.10
Heavy Duty Drills-Rotary-Quarry Master	12.96	.97	.85	.50	.10
Heavy Duty Rotary Drill Tender	12.41	.97	.85	.50	.10
Helicopter Hoist Operator	13.46	.97	.85	.50	.10
Herman Nelson Heaters and similar type	12.42	.97	.85	.50	.10
Hoist Operator, single drum	12.71	.97	.85	.50	.10
Hoist Operator, two or more drums	12.96	.97	.85	.50	.10
Hot Plant Operator	12.96	.97	.85	.50	.10
Hot Plant Fireman	12.96	.97	.85	.50	.10
Industrial Locomotive	12.96	.97	.85	.50	.10
LeTourneau Operator, single and similar type	13.09	.97	.85	.50	.10
LeTourneau Operator, Tandem and similar type	13.26	.97	.85	.50	.10
Loaders, Barber Green and similar types	12.60	.97	.85	.50	.10
Mechanic and/or Welder on job	13.06	.97	.85	.50	.10
Mechanic and/or Welder Tender	12.41	.97	.85	.50	.10
Mixer Operator, Concrete, 3 bags or under	12.52	.97	.85	.50	.10
Mixer Operator, Concrete, 4 bags or over	12.77	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Mixermobile	$13.05	.97	.85	.50	.10
Motor Patrol Operator	13.09	.97	.85	.50	.10
Mucking Machine Operator	12.96	.97	.85	.50	.10
Oiler	12.41	.97	.85	.50	.10
Pavement Breaker, Emsco and similar type	12.96	.97	.85	.50	.10
Paver Mixer Operator	12.96	.97	.85	.50	.10
Power Saw Operator, self-propelled, multiple cut	12.96	.97	.85	.50	.10
Pumpcrete or Grout Machine Operator	12.96	.97	.85	.50	.10
Pumpman	12.46	.97	.85	.50	.10
Quad Cat	13.26	.97	.85	.50	.10
Retort Operator	12.52	.97	.85	.50	.10
Roller Operator, grade or finish	12.65	.97	.85	.50	.10
Roller Operator, finish high type pavement	12.96	.97	.85	.50	.10
Ross and similar type Carriers, on construction site	12.96	.97	.85	.50	.10
Roller, 25 ton or over	12.96	.97	.85	.50	.10
Screed Operator	12.96	.97	.85	.50	.10
Shovels, including all attachments under 1 yard	12.96	.97	.85	.50	.10
Shovels, including all attachments 1 yard to and including 4 yards	13.15	.97	.85	.50	.10
Shovels, over 4 yards	13.45	.97	.85	.50	.10
Shovel Oiler for shovel over 4 yards ($.05 per hour under Shovel Operator)					
Stiff Leg and Guy Derrick Operator	13.45	.97	.85	.50	.10
Tournapull, DW 20, 21, and similar type	13.15	.97	.85	.50	.10
Scraper, twin engine	13.19	.97	.85	.50	.10
Scraper, Tandem, 3 engine	13.45	.97	.85	.50	.10

POWER EQUIPMENT OPERATORS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Track type Tractor, with or without attachments including Track-type Loader, Front end up to and including 5 yards	$12.96	.97	.85	.50	.10
Track type Front End Loaders, over 5 yards to and including 10 yards	13.19	.97	.85	.50	.10
Track type Front End Loaders, over 10 yards to and including 15 yards	13.29	.97	.85	.50	.10
Track type Front End Loaders, over 15 yards	13.39	.97	.85	.50	.10
Traxcavator, and Athey type Loader	12.96	.97	.85	.50	.10
Trench Machine Operator	12.90	.97	.85	.50	.10
Wagner Roller and similar type	12.96	.97	.85	.50	.10
Winch Truck Operator with Hydraulic Boom	12.86	.97	.85	.50	.10
Tower Crane	13.45	.97	.85	.50	.10
Automatic Finegrader, Gurries and similar type	13.09	.97	.85	.50	.10
Concrete Conveyor, under 40'	12.54	.97	.85	.50	.10
Concrete Conveyor, over 40'	13.29	.97	.85	.50	.10
Concrete Pump	13.29	.97	.85	.50	.10
Raygo Giant	13.54	.97	.85	.50	.10
Quad Loader and similar type	13.54	.97	.85	.50	.10
Leadman: $0.25 per hour above highest paid Operator					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Statewide, except Gallatin, Park, Sweet Grass, Broadwater (south of U.S. Highway #12) Counties:					
COMBINATION TRUCK; Concrete Mixer and Transit Mixer:					
To & including 4 cu. yds.	$11.10	.82	.84		
Over 4 cu. yds. to and including 6 cu. yds.	11.18	.82	.84		
Over 6 cu .yds. to and including 8 cu. yds.	11.26	.82	.84		
Over 8 cu. yds. to and including 10 cu. yds.	11.34	.82	.84		
Over 10 cu. yds.-additional $.08 per hour each additional 2 cu. yds. increment					
DISTRIBUTOR DRIVER	11.08	.82	.84		
DRY BATCH TRUCKS:					
3 Batch or under	10.85	.82	.84		
Over 3 Batch to and including 5 Batch	11.98	.82	.84		
Over 5 Batch to and including 10 Batch	11.14	.82	.84		
Over 10 Batch to and including 15 Batch	11.30	.82	.84		
Over 15 Batch-additional $.15 per hour each additional 5 Batch increment					
PICKUP DRIVER, HAULING MATERIALS	10.95	.82	.84		
DUMPMAN, GRAVEL SPREADER BOX OPERATOR; Pilot Car Driver, Teamsters	10.85	.82	.84		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS: (Cont'd)					
DUMP TRUCKS And SIMILAR EQUIPMENT, DW 20, DW 21, or EUCLID TRACTORS, Pulling P.R. 21 or similar Dump Wagons:					
Water Level Capacity, including Sideboards:					
7 cu. yds. or less	$10.85	.82	.84		
Over 7 cu. yds. to and including 10 cu. yds.	10.98	.82	.84		
Over 10 cu. yds. to and including 15 cu. yds.	11.14	.82	.84		
Over 15 cu. yds. to and including 20 cu. yds.	11.28	.82	.84		
Over 20 cu. yds. to and including 25 cu. yds.	11.34	.82	.84		
Over 25 cu. yds. to and including 30 cu. yds.	11.40	.82	.84		
Over 30 cu. yds. to and including 35 cu. yds.	11.46	.82	.84		
over 35 cu. yds. to and including 40 cu. yds.	11.52	.82	.84		
Over 40 cu. yds. to and including 45 cu. yds.	11.58	.82	.84		
Over 45 cu. yds.-additional $.10 per hour each additional 5 cu. yds. increment					
DUMPSTERS	10.98	.82	.84		
POWER TRUCK DRIVER (bulk unloader type)	11.03	.82	.84		
FLAT TRUCKS:					
To and including 3 tons	11.00	.82	.84		
Over 3 tons factory rating	11.20	.82	.84		

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FUEL TRUCK DRIVERS; TIREMEN	$11.44	.82	.84		
LOWBOYS, FOUR-WHEEL TRAILER, FLOAT SEMI-TRAILER	11.44	.82	.84		
LUMBER CARRIERS, LIFT TRUCK and FORK LIFTS	11.20	.82	.84		
POWER BROOM	10.94	.82	.84		
WATER TANK DRIVERS, PETROLEUM PRODUCTS DRIVERS:					
2,500 gallons and under	10.85	.82	.84		
Over 2,500 gallons to and including 4,500 gallons	11.14	.82	.84		
Over 4,500 gallons to and including 6,000 gallons	11.34	.82	.84		
Over 6,000 gallons to and including 8,000 gallons	11.40	.82	.84		
Over 8,000 gallons to and including 10,000 gallons	11.48	.82	.84		
Over 10,000 gallons + additional $.10 per hour each additional 2,000 gallons increment					
TRUCK MECHANIC	11.84	.82	.84		

TRUCK DRIVERS: (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Broadwater County (south of U.S. Highway #12); Gallatin, Park, and Sweet Grass Counties					
DUMP TRUCKS:					
7 yards or less	$10.43	$1.23	.61		
Over 7 yards to and including 10 yards	10.68	1.23	.61		
Over 10 yards to and including 15 yards	10.84	1.23	.61		
Over 15 yards to and including 20 yards	10.98	1.23	.61		
PICKUP DRIVER, hauling materials	10.43	1.23	.61		
FLAT TRUCKS:					
Less than 2-ton factory rating	10.43	1.23	.61		
2 - 5 tons	10.58	1.23	.61		
5 - 8 tons	10.68	1.23	.61		
SEMI and 4-WHEEL TRAILERS	10.68	1.23	.61		
SERVICE TRUCKS and A-FRAME TRAILERS	10.43	1.23	.61		
HOUSE MOVERS	10.52	1.23	.61		

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Oregon COUNTIES: Lane, Linn, and Marion

DECISION NUMBER: OR82-5102 DATE: Date of Publication

Supersedes Decision No. OR80-5109 dated March 14, 1980 in 45 FR 16818

DESCRIPTION OF WORK: Residential Projects consisting of single family homes and apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS:					
Lane and Linn Counties	$13.85	$ .95	$1.00		.12
Marion County	14.26	.95	1.00		.15
CARPENTERS	8.70				
ELECTRICIANS:					
Lane County (western part)	15.45	.90	3%+2.00		.04
Lane County (eastern part), Linn and Marion Counties	18.05	.90	3%+2.00		.06
LABORERS	6.50				
PAINTERS:					
Painters	10.82	.55	.70		.10
Tapers	11.42	.55	.70		.10
PLUMBERS:					
Linn (northern half) and Marion Counties	12.18	1.60			.12
Lane County (except the City of Florence) and southern half of Linn County	13.00	1.54			.21
POWER EQUIPMENT OPERATORS:					
Asphalt Roller	10.96	1.00	1.21	.50	.05
Blade, Finish	11.34	1.00	1.21	.50	.05
Loader, 4 cu. yds. or less	11.12	1.00	1.21	.50	.05
ROOFERS	9.00				
SHEET METAL WORKERS:					
Lane County	13.715	.71	.60		.045
Linn and Marion Counties	14.24	3%+.98	1.28	1.00	.08
SOFT FLOOR LAYERS	10.435	.50	.90	*	.08
TRUCK DRIVERS:					
Dump Trucks under 6 cu. yds.	10.29	.68	.70	.88	.05

*FOOTNOTE:
SOFT FLOOR LAYERS:
4% of all gross wages to be paid to the credit of employees with less than one year of service; 6% of all gross wages to be placed to the credit of employees with more than one year of service.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses 29 CFR, 5.5 (a)(1)(ii)

[FR Doc. 82-2805 Filed 2-4-82; 8:45 am]

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federal register

Friday
February 5, 1982

Part III

Department of Health and Human Services

Social Security Administration

Aid To Families With Dependent Children; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Parts 205, 206, 232, 233, 234, 235, 238 and 239

Aid to Families With Dependent Children

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations implement changes made in the Aid to Families With Dependent Children (AFDC) program by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). The statutory changes are generally effective October 1, 1981. The key provisions fall within four basic areas, as follows:

(1) Enable families to move from welfare dependency to job-based self-sufficiency by providing States flexibility to develop work alternatives, including community work experience, provision of jobs instead of welfare, and by letting each State agency, if it so requests, demonstrate its own work incentive (WIN) program.

(2) Target assistance to the neediest by:

—Setting a total income limit of 150 percent of the State's need standard; and

—Standardizing and changing the sequence of the earned income disregards by allowing a standard $75 disregard, actual child care costs up to $160 per child, then $30, then one-third of the remainder. The $30 and one-third disregards will be applied only to the first 4 consecutive months in which they occur.

(3) In calculating need, count existing sources of income which are available to families but which were previously excluded by:

—Counting the income of a stepparent, after appropriate disregards, to determine the need of stepchild(ren) with whom he or she is living;

—Allowing States to count the value of Food Stamps and housing subsidies an AFDC family receives to the extent this value is duplicated by money for food and housing in the AFDC payment;

—Assuming on an ongoing basis receipt of the advance earned income credit (EIC) for those eligible to receive it;

—Counting nonrecurring income in excess of the State's need standard as available to meet future needs; and

—Treating resources (excluding the home and a reasonably valued car, and at State option certain basic items essential to day-to-day living) in excess of $1,000 equity value (or a lower State-set limit) as available to meet needs, thereby making the family ineligible.

(4) Improve program administration through requiring:

—Retrospective accounting and monthly recipient reporting;

—Recovery of all overpayments and payment of underpayments to current recipients; and

—Elimination of payments to those eligible for amounts less than $10.

Changes made by these final regulations are limited to the AFDC program and do not affect the adult financial assistance programs in the territories.

EFFECTIVE DATE: These final regulations interpret the statutory changes required by Pub. L. 97–35 and were effective on October 1, 1981, except § 233.20 which contains information collection requirements subject to OMB approval.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Siegel, Transpoint Building, 2100 Second Street, SW., Washington, D.C. 20201, (202) 245–2141.

SUPPLEMENTARY INFORMATION:

Timing and Form of Regulations

On September 21, 1981, we published interim final regulations for the Aid to Families with Dependent Children Program. (See Volume 46 of the **Federal Register**, pages 46750–46773.) In accordance with section 2321 of Pub. L. 97–35, these interim final regulations were effective on October 1, 1981, except where the State welfare agency satisfactorily demonstrated to the Secretary that legal barriers under State law prevented its compliance on that date. In such case, the Secretary, after review, could waive the effective date for one or more provisions with legal impediments until no later than the first month beginning after the close of the next session (of any sort) of the State legislature.

Regulatory Burden

Regulatory Impact Analysis

These regulations may have an annual effect on the economy of more than $100 million. They may, therefore, be "major rules" as defined in Executive Order 12291, and require a regulatory impact analysis. Such analysis must contain a description of potential benefits and costs and net benefits of the rule (including those that cannot be put into monetary terms) and a description of alternative approaches and their potential costs and benefits. For the reasons stated below, we have not written a separate analysis but instead have incorporated it into the preamble on a section-by-section basis.

The statutory changes which these regulations implement are projected to save the Federal government more than $6 billion, and State and local governments more than $5 billion, over the next five years. These savings arise primarily from retargeting scarce resources on these most in need and restricting eligibility to the truly needy.

These reforms will have effects both on AFDC recipients and on the economy as a whole. Their aim is fair allocation of scarce resources among the most needy; cost savings through more efficient program administration, and increased opportunities for work that will be of value both to the recipients and their communities. These statutory changes represent, in the best judgment of the legislative and executive branches of the Federal government, the kinds of reductions of cost and retargeting of benefits that will be the most productive for both recipients and taxpayers.

To effect these savings, the statute contains numerous provisions affecting the AFDC program. The provisions with the greatest fiscal effects on Federal and State budgets and on recipients leave little regulatory latitude. For example, receipt of the $30 and one-third disregard is statutorily limited to four consecutive months; work expense deductions are standardized at $75 for full-time employment.

For the most part, therefore, the economic effects of these changes are not created or caused by these regulations. There are, however, several provisions of these regulations which result in substantial costs. Although these costs may not meet the criteria for a major rule, we have voluntarily prepared a regulatory impact analysis.

Because of the above considerations, this regulatory impact analysis is limited in scope. For purposes of the regulatory impact analysis, there were two areas in the legislation in which there are both regulatory latitude and the effects of adopting different options could significantly impact on costs and benefits—Determination of Resources and, the Community Work Experience Program. We have focused the regulatory impact analysis on the major decisions which were made in these two areas of the regulation. Overall economic effects of adopting different alternatives are small in comparison to the projected economic effects of the statutory changes as a whole. Furthermore, the available information

on costs that are expressible in monetary terms is limited to costs to Federal, State and local governments. Because of these limitations, it seems preferable not to prepare a separate analysis, but instead to expand discussions of non-selected options, which would be required independently of whether an impact analysis was undertaken, into cost/benefit tradeoffs as far as this is possible.

The Secretary, with the concurrence of the General Counsel, has determined in accordance with Executive Order 12291, that these regulations are clearly within the authority delegated by law and are consistent with Congressional intent.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each particular rule with a "significant impact on a substantial number of small entities" (e.g., small businesses), we must publish an initial analysis describing the rule's impact on small business. This analysis should indicate the purpose and reason for the rule, the number of small businesses to which it would apply, anticipated reporting and recordkeeping requirements, possible overlap and conflict with other Federal rules, and a description of possible alternative means of accomplishing the stated objectives which would minimize the impact on small businesses.

The primary impact of these regulations are on State governments and individuals. We do not believe that any provision will have a significant impact on a substantial number of small businesses. The only provision that could conceivably have such an effect is the Earned Income Credit (EIC). Because of this possibility, we have voluntarily incorporated a regulatory flexibility analysis into the individual discussion of this provision in the preamble. However, we do not conclude that this provision would in fact have a "significant impact."

Recordkeeping/Reporting Burden

OMB has determined that the following five information collection requirements are subject to review and approval under the Paperwork Reduction Act of 1980 (Pub. L. 96–511): State plan requirements discussed throughout the regulation, Work Incentive Program (WIN) demonstration provision (§ 205.80), Community Work Experience Program (CWEP) (§ 238.64), monthly reporting (§ 233.36), and maintenance of overpayment recovery records (§ 233.20). OMB has approved the first four of these information collection requirements. The State plan requirements are cleared under OMB No. 0960–0252, the WIN demonstration provision under OMB No. 0960–0254, the CWEP recordkeeping requirements under OMB No. 0960–0256, and the monthly reporting requirement under OMB No. 0960–0260. We will seek OMB approval for the fifth requirement.

Discussion of Major Provisions and Response to Comments

A discussion follows of the major AFDC provisions of Pub. L. 97–35 and the options that we considered in developing the implementing regulations. Where appropriate to a particular provision, regulatory impact analysis or regulatory flexibility analysis is included in the discussion of the provision. For ease of reference, we are including where appropriate the discussion of each provision and options which were published in the interim final followed by a comment and response section based on comments received in response to the interim final.

The Department accepted and considered all comments on the interim final regulations received by December 7, 1981. Although the official comment period closed on November 20, 1981, the vast majority of comments were received after that date. In order to give full consideration to all relevant issues raised by interested parties in response to the interim rules we have also considered these late comments. Sixty-four letters of comment were received from States, agencies, organizations, private citizens, and in one case an institution of higher education. This preamble addresses any significant changes from the interim final regulations and responds to the comments received. Discussion of the specific provisions also includes issues raised at the State implementation conferences held in Philadelphia and Phoenix in September 1981. Many of the comments the Department received, such as raising the $1,000 resource limit and extending the time limit on the $30 and one-third income disregard are incompatible with the statute. We have not provided a rebuttal in this preamble to comments or criticism of the statute itself, but we do address all regulatory areas of concern. This discussion also indicates any changes we made based on public comment.

Section 205.10(a)(5) regarding State plan requirements for hearings has been returned to that language in effect prior to the interim rules. This revision and other revisions throughout the final regulation reinstates wording that was inadvertently deleted but is applicable to the adult financial assistance programs in the territories.

We have also made a number of minor and technical changes as the result of our own review of the interim final regulations. Incorrect citations and cross-references have been corrected and regulatory language has been clarified as necessary to aid implementation of these provisions.

Prohibition Against Payment of Aid in Amounts Below Ten Dollars (Section 233.20 of Final Regulations)

Under the new legislation, State payments of aid to assistance units for any month in which the amount of such payment would be less than $10 are prohibited.

Several options were reviewed in the development of the implementing regulations. An issue surfaced concerning those States in which payments are made on a "twice-a-month" basis. For example, if an AFDC family is determined eligible to receive a benefit of $16 per month, and the State issues two checks in the month for $8 each, these payments would still be permitted, under the interim regulations since the payments for the month total more than $10. The important element is whether the amount of the monthly grant which the AFDC family is determined eligible to receive is less than $10, prior to any adjustment. We believe this interpretation supports the intent of Congress.

A similar issue with respect to issuing checks under $10 arose concerning the recovery of overpayments. For example, an AFDC family is eligible to receive a monthly assistance payment of $28; and the State recovers an overpayment of $20. Under the implementing regulations, since the actual payment for the month prior to any adjustment is more then $10, the State would issue the $8 check to the AFDC family. The regulations also provide that any AFDC family denied a payment of aid solely because it is under $10 is deemed to be receiving AFDC for all other purposes except for eligibility to participate in a Community Work Experience Program (CWEP). This means that the family would still be considered eligible for Medicaid, social services, and where appropriate be required to register for the Work Incentive Program (WIN).

Comment: One commenter suggested that States should accrue payments of aid of less than $10 and issue a payment to the assistance unit whenever the total reached $10. States could also use this accrual for potential overpayments.

Response: This recommendation was rejected. Not only would this action be administratively very cumbersome, but Federal Financial Participation (FFP) is clearly prohibited under Section 402(a)(32) of the statute as "* * * no payment of aid shall be made under the plan for any month if the amount * * * would be less than $10 * * *".

Comment: A question was raised as to whether States may make payments of less than $10 to assistance units out of State funds only without having this payment considered as a quality control (QC) error.

Response: These cases will not be included in the regular quality control sample universe because there is no Federal matching. However, they could be sampled through the Negative Case Action sample which also includes suspensions, denials, and terminations.

Comment: Another commenter questioned whether the prohibition against payments of aid in amounts of less than $10 applies to foster care payments.

Response: The provision clearly applies to all payments made under title IV–A, including foster care payments.

Comment: One of the commenters did not agree that checks should be issued in cases where the recovery of an overpayment resulted in an assistance payment of under $10.

Response: We do not concur. The amount of aid to which the assistance unit is entitled for that month is over $10, even though the recoupment of the overpayment may reduce the amount actually paid directly to the recipient below $10.

Comment: One commenter asked how the treatment of monthly child support collections will be affected when the AFDC case is eligible for less than $10 per month.

Response: All eligible cases for IV–A payments must have an assignment of rights to support, and these cases are referred to the child support enforcement agency under 45 CFR 235.70. The cases are entitled to all of the services of that agency. Any collections made on a monthly support obligation will be distributed under 45 CFR 302.51, in the same manner as cases receiving a IV–A payment.

Limitation on AFDC to Pregnant Women (Section 233.90(c)(2) of Final Regulations)

Although the prior statute did not directly reference payments to pregnant women for their unborn children, AFDC regulations permitted such payments as a State option. A total of 34 States now make some kind of payments starting at varying stages of the pregnancy.

Under the new statutory provision, money payments with respect to a pregnant woman otherwise eligible for AFDC can begin with the third month prior to the month that it has been medically verified that the child is expected to be born. However, FFP is not available to meet the needs of the unborn child, only those of the pregnant woman.

Under the final regulation, therefore, the State may cover pregnant women having no other children. Under these circumstances the payment would be based on the amount identified in the standard for one adult. The payment may not include an amount for the unborn child. Similarly, the monthly assistance paid to an AFDC mother cannot be increased for the unborn child.

Special needs for pregnant women with no other children and those already receiving AFDC. A State can also provide for a pregnant woman through a special need. A special need is considered an amount in recognition of a special circumstance that is included as an item in the standard in addition to basic needs. For example, the State may wish to provide in its standard for a special need such as a special diet, a crib, or other items needed to prepare for the birth of the child. As specified in § 233.20(a)(2)(v) of the final regulations, if the State agency includes such special needs items in its standard it must describe those that will be recognized, the circumstances under which they will be included, and provide that they will be considered in the need determination for all applicants and recipients requiring them. This means that such special needs items must be available to all pregnant women, including recipients.

When coverage for pregnant women begins. States may not pay pregnant women under this provision until the sixth month of a medically verified pregnancy. For example, for the pregnant woman with no other children, if it has been medically determined that she is expected to deliver her baby in December, the State may make AFDC payments to that woman as early as September. For the woman who is already on the rolls, and who is expected to deliver her baby in December, the State may increase the existing payment as early as September for any special need identified in the State plan in recognition of her pregnancy. The State must identify in its State plan when coverage will begin, i.e., in the 6th, 7th, 8th, or 9th month.

Changes in circumstance. A premature or late birth will not create an underpayment or overpayment, provided all eligibility conditions were met. The present rule at 45 CFR 206.10(a)(9) relating to changes in circumstances applies to such changes.

Once the child is born, the State will apply its current policy of payment when a child joins the assistance unit in effecting payment for the child.

Medicaid coverage. Based on the new statute, in order to provide pregnant women with access to prenatal care during the entire period of pregnancy, States may provide Medicaid coverage to pregnant women (prior to the 6th month of pregnancy and eligibility for a cash benefit) who would qualify for AFDC if the child were born and living with her. This coverage may be provided at any time after the pregnancy has been medically verified.

Comment: Seven commenters were concerned with limiting AFDC eligibility for pregnant women to the last four months of pregnancy and the impact this would have on the health of the mother and her unborn child.

Response: The new statute permits States, at their option, to provide Medicaid coverage to an AFDC eligible pregnant woman after the pregnancy has been medically verified. This coverage can provide access to prenatal care and health services over the entire term of pregnancy.

Comment: Several commenters stated that the father's needs should be included in the assistance payment when the pregnant woman's eligibility is based on his unemployment or incapacity.

Response: Section 406(b) of the Act limits payment in such situations to only the pregnant woman. The father's eligibility is tied to the deprivation of the child and no dependent child's needs can be recognized in the payment to the pregnant woman.

Comment: One commenter believes it is inconsistent to limit the assistance payment to the needs of a pregnant woman but allow a special need item which appears to address the needs of the unborn child.

Response: The statute clearly prohibits any payments (including special needs) to meet the needs of an unborn child. The special needs allowance can only meet the needs of the woman occasioned by or resulting from her pregnancy and in preparation for the birth of the child.

Removal of Limit on Restricted Payments (Section 234.60 of Final Regulations)

The new statutory provision removes the 20 percent limit on the number of State AFDC cases in which protective,

vendor or two-party payments may be made. These determinations will continue to be made according to the existing regulations at 45 CFR 234.60, which describes the special provisions the State must consider before concluding that mismanagement exists, and requires documentation for the case file.

Under the new law and regulations, States, at their option, may also issue protective, vendor, or two-party payments when the recipient voluntarily chooses to have them made. The request must be made in writing and included in the case file. These payments are made without regard to the special provisions applicable to mismanagement situations; and must be discontinued promptly at the written request of the recipient.

Comment: Four commenters expressed concern that the interim regulations do not ensure that recipients' requests for voluntary restricted payments are truly voluntary. These commenters asked that States be required to notify recipients who request restricted payments that they do not have to agree to such payments except under specified circumstances, and that they may terminate the restricted payments at any time.

Response: We believe that existing regulations sufficiently address these concerns. States are currently required at § 206.10(a)(2)(i) to inform applicants of their rights and obligations under the program.

Comment: One commenter requested that States be required to immediately implement requests from recipients to terminate voluntary restricted payments.

Response: We believe that the provision at § 234.60(a)(14)(iii), which requires that any voluntary restriction be discontinued promptly upon the written request of the recipient, adequately addresses this concern.

Work Supplementation Program (Part 239 of Final Regulations)

The new statutory provision establishes an optional Work Supplementation Program. The purpose of the program is to allow States to make jobs available to recipients on a voluntary basis, as an alternative to aid otherwise provided under the State plan. States have broad discretion in administering the program. States will set their own eligibility criteria for participation, may adjust need standards, and may operate the program notwithstanding the July 1, 1969 floor for need standards (Section 402(a)(23)), definitions currently used by the State agency (Section 406), statewideness (Section 402(a)(1)), and current earned income disregards (Section 402(a)(8)).

States may use funds accrued from reducing need standards and modifying earned income disregards to help defray the costs of subsidizing employment opportunities. The total amount of program costs that will be matched by the Federal Government will be limited based on the formula set forth in the legislation and regulations.

Eligibility. The State shall determine which recipients are eligible to participate in the Work Supplementation Program. For purposes of administering the program, determining eligibility and adjusting need standards, a State may develop two or more categories of recipients.

Adjustment in need standards and payment levels. Need standards may vary among categories of recipients as the State determines to be appropriate on the basis of ability to participate in the Work Supplementation Program. Need standards in effect in areas of the State with a Work Supplementation Program may be different from the need standards in effect in areas that do not have such a program.

States may also reduce payments to recipients in order to offset increases in benefits from government supported needs related programs and reduce or eliminate the amount of earned income disregarded under the State plan.

A State may make these adjustments in need standards and payment levels prior to providing the recipient of aid with a subsidized job. The number of jobs to be provided through a Work Supplementation Program will be determined by the State. Eligible participants may choose to volunteer for jobs to the extent such jobs are available under a State's program. If the reduction in a State's standard results in no cash assistance payment, this does not affect eligibility for the Work Supplementation Program.

Matching funds and jobs. States may subsidize employment opportunities with public agencies administering the State plan, public and non-profit organizations, and under certain conditions proprietary day care centers.

States are to use money saved from lowering grant levels to subsidize employment opportunities. The amount of Federal funding to cover the cost of subsidizing employment opportunities (known as "program costs" or "cost under the State plan") is limited as stated in the legislation and Federal regulations. The Act limits Federal funding to the amount that would be available to a State under May 1981 standards in the State plan as modified by mandatory Federal law provisions enacted since that date. However, if the number of recipients increases and/or demographic changes occur, the amount available would correspondingly change.

Wages and conditions of work. Recipients who take a job under this program will be paid wages which will be treated as earned income for purposes of any other law. A State has discretion in negotiating with an agency hiring recipients under this program as to the wages, hours, benefits, and all other conditions of work including the length of time a subsidized position will be available for recipients.

State welfare agencies and other public agencies hiring recipients under this program are not required at any time to give participants "employee status." Non-profit agencies and proprietary day care centers need not give employee status to a person receiving a subsidized job during the first 13-week period of such person's tenure in such job. States may assign persons receiving a subsidized job for whatever length of time that the State and the job giver deem appropriate. Recipients may be assigned a series of jobs or placed in one job to run for a specified period of time.

A State may provide medicaid coverage to program participants and their families if such individuals would qualify for such coverage if the State did not have a Work Supplementation Program.

Participation in other work programs. A recipient is not excused from the requirements of the Work Incentive (WIN) Program or the Community Work Experience Program (CWEP) because of participation in the Work Supplementation Program. Coordination between the Work Supplementation Program and other work related programs is the responsibility of the State and the State agency administering the Work Supplementation Program.

Comment: Several States commented that imposing a ceiling on the total amount of FFP available for overall program and administrative costs as a condition of operating a Work Supplementation Program was inappropriate.

Response: We agree that the position taken in the interim rule is not compelled under the statute and acts as a substantial deterrent to States which otherwise would like to implement such a program. We believe that the statute may also be read so that the ceiling should be limited to expenditures under the Work Supplementation Program. Therefore, § 239.82 of the final

regulation is amended so that FFP is available to a State for the costs of its Work Supplementation Program to the extent that those expenditures do not exceed the amount of Federal savings resulting from the reductions in assistance payments made to eligible participants designated by the State. (This FFP availability is to be reduced by increased payment costs due to State plan amendments made after May 1981 unless required by Federal law.) To the extent that program costs are less than the savings generated through the reduction in assistance payments, both State and Federal governments derive a saving. No FFP is available to the State for expenditures which exceed the savings in FFP. Program costs which a State may claim within this FFP limitation include wage subsidies, necessary employment related services, and administrative overhead.

Training Costs (Section 235.64 of Final Regulations)

The Act changes the Federal matching rate for State and local training costs under title IV–A. Prior to October 1, 1981, the Federal government matched at the rate of 75 percent for the cost of training for State employees. All other administrative expenses were matched at a rate of 50 percent. The new law provides that all expenses related to adminiustration, including training expenses, will be matched by the Federal government at the regular 50-percent rate. The new regulation reflects this change. There are no changes in the coverage of training costs subject to Federal matching.

Unemployed Parents (Section 233.100 of Final Regulations)

The Supreme Court ruled in June 1979, in the case of "Califano v. Westcott", that section 407 of the Act (Dependent Children of Unemployed Fathers) unconstitutionally discriminated against similarly situated unemployed mothers. The effect of this decision has been that needy, intact families can qualify for welfare when either parent, if otherwise eligible, is unemployed—even if the other parent is employed. The statute at section 407 of the Act and these regulations now provide that only the unemployed principal earner can qualify the family for benefits. The principal earner is whichever of the dependent child's parents, in a home in which both parents of the child live, earned the greater amount of income over the 24-month period immediately preceding the month in which an application is filed for aid because of the parent's unemployment. This designation of a principal earner remains effective for each consecutive month for which the family receives AFDC–UP benefits on that basis. In calculating which parent will be the principal earner, it does not matter when their relationship started or whether, during the 24-month period prior to the date of application, the father and mother were not married to each other or living together. This is solely a test of the amount of earned income each had over the prior 24-month period. A State must use the same method of verification of earnings for AFDC–UP applicants and recipients that it uses for other applicants and recipients.

In the few cases that may arise where both parents have an identical amount of income, the State shall designate which parent will be considered the principal earner.

The principal earner must still meet all other eligibility requirements of the AFDC–UP program. As of October 1, 1981, all new AFDC–UP applicants must meet the "principal earner" test for the 24-month period prior to the month of application.

States with AFDC–UP programs which previously provided benefits to families in which the parent's unemployment resulted from participation in a strike may no longer provide these benefits. (Also, see preamble and regulation sections on strikers.)

The entire family would be ineligible for AFDC if the principal earner does not register for work or training, or refuses to participate in WIN or CWEP without good cause.

The regulation also provides that individuals may earn a quarter of work (to establish attachment to the work force, i.e., 6 of the last 13 quarters) by participating in CWEP under the amended section 409 of the Act and the implementing regulations. The regulation deletes "any other work and training program subject to the limitations in such section 409" as a way to earn a quarter of work. Thus, participation in other work programs—in and of itself—does not confer a "quarter of work" on those participants.

Comment: Several commenters stated that it is an administrative burden to require States to locate wage information for current recipients for the 24-month period prior to initial application.

Response: We agree that in some cases the information could be unavailable. Therefore, in order to provide some flexibility for determining the principal earner where the State is unable to secure the primary wage information, § 233.100(a)(3)(vi)(A) is revised so that, under the final rule, the State can designate the principal earner using the best evidence available. Section 233.100(a)(3)(vi)(A) is also revised to clarify that the relationship of the parents during the 24-month period preceding date of application has no effect on the calculation of the principal earner.

Technical changes have been made in the final regulations to reinstate portions of sections that were inadvertently omitted in the interim rules.

150 Percent Income Limit for Eligibility (Section 233.20(a)(3) of Final Regulations)

Under the previous law there was no limit on the amount of gross income a family could have and still be eligible for AFDC. Some families received AFDC even when they had high earnings. In order to limit assistance and ensure benefits for those most in need, the statute provides for an income limit at 150 percent of the State's need standard.

Implementing regulations provide that assistance units with gross income in excess of 150 percent of the need standard are ineligible to receive AFDC.

The first step in determining financial eligibility for AFDC will be to apply the assistance unit's total income, without benefit of the income disregards described in section 402(a)(8) of the Act, against a dollar standard equal to 150 percent of the State need standard for a family of the same size. If the unit has gross income in excess of the 150 percent limit, then it is not eligible. For recipients, if the agency determines that the assistance unit's income expected in a future month will be in excess of the 150 percent limit, the agency will not make a payment for that month. On the other hand, if the agency has not denied assistance prospectively, and the recipient's report of income during the budget month exceeds the 150 percent limit, the family is ineligible to receive a payment for the corresponding payment month. An assistance unit's gross income includes the income of those individuals who apply for or receive AFDC, the income of the natural, adoptive or stepparents (less applicable disregards in States without a law of general applicability), and any other persons whose income is taken into account in determining the AFDC grant.

Comment: Many commenters asked what is included in gross income to determine whether a family has income in excess of 150 percent of the standard of need.

Response: Gross income is all earned and unearned income that the State counts in determining need and the

amount of the assistance payment without application of disregards under 45 CFR 233.20(a)(11) (i) and (ii) (earned income of students, work and child care expense disregards, and the 30 and one-third disregard). However, a State shall apply applicable disregards to stepparent income (§ 233.20(a)(3)(xiv)) and to the income of an alien's sponsor (§ 233.51) before including it in applying the 150 percent needs test. Gross income also includes (1) the earned income credit advance payment that is considered in determining need and the amount of the assistance payment, (2) self-employment income after deducting business expenses as defined in § 233.20(a)(4), and (3) child support collections reported to the IV–A agency by the IV–D agency. We considered excluding the earned income credit from gross income but, after careful review, decided against this. It has no direct relationship to withholding or FICA payments and including it is more consistent with the intent of the provision.

Counting Food Stamps and Housing Subsidies as Income (Section 233.20(a)(3) (xi) and (xii) of Final Regulations)

Until enactment of this provision, States were prohibited by the Food Stamp Act from counting the value of food stamps as income in determining eligibility and the amount of the AFDC payment. In recent years, the substantial growth of Federal in-kind assistance programs has led to duplication of benefits at the Federal and State levels. This provision recognizes that overlap and under the implementing regulations States are permitted to reduce the amount of AFDC paid to the extent that the value of the food stamp coupons or housing subsidies duplicates the maximum amount payable under the plan for food or shelter to a family of the same composition with no income.

A State which chooses to implement this provision must specify in its plan how much of its payment standard, by family size, covers food, shelter, or both separately. If a State has adopted a consolidated payment standard and the components are no longer identified, it must define that portion of its consolidated payment standard which is for food and/or shelter by either historical projections or some other reasonable and supportable method. The regulations provide that the agency must determine the AFDC unit's share of food stamps in food stamp households which contain persons not in the assistance unit or similar situations in subsidized housing.

Comment: Four commenters suggested that the regulations should prohibit State agencies from counting as income any portion of the payment standard designated for food which the family actually spends on food over and above what it obtains by use of its food stamps. Likewise, the commenters suggested that State agencies be prohibited from counting any portion of the payment standard for housing which the family actually spends on housing.

Response: The statute provides that a State may count as income (to the extent it determines appropriate) an amount not to exceed the value of a family's food stamp allotment and/or housing subsidy to the extent it duplicates the amount for food and/or housing included in the maximum amount payable to a family of the same composition with no other income. The Conference Report published with Pub. L. 97–35 states that this would be done by treating the value of the food stamp coupons or housing subsidy as income up to the amount for food or shelter that is included in the State payment standard. A State may determine that it is appropriate to count less than the full value of the food stamp allotment or housing subsidy. It is our position that Congress intended to permit maximum flexibility for the States in this regard.

Comment: Two commenters questioned how the option to count the value of housing subsidies would operate in "as paid" States, which are States that provide an AFDC grant for shelter covering only what the family actually pays, up to a maximum.

Response: The State agencies in "as paid" States are permitted, as are all other State agencies, to count as income the value of a family's housing subsidy up to the amount for housing included in the maximum amount that would be payable to a family with no income. In "as paid" States, the maximum amount for housing that would be payable to any particular family is the actual amount that the State pays them for housing. There is no specific amount payable to a family with no income. Therefore, the State agency may in any case count the value of the housing subsidy up to the amount paid for housing to the family. Again, the State may determine that it is appropriate to count less than the full value of the subsidies.

Comment: Nine commenters expressed concern over the fact that in some cases, after a family's AFDC benefits are reduced due to the counting of their food stamp allotment and/or housing subsidy, the family may be entitled to an increase in its food stamp allotment and/or housing subsidy. This could lead to further reduction in the AFDC grant, again resulting in a possible increase in the subsidy and/or food stamp allotment. In some cases, such circular calculations could continue. Several commenters suggested that the regulations should require coordination between the various administering agencies to ensure that adjustments are prompt and accurate. Four commenters suggested requiring State agencies to notify affected individuals that when their AFDC grant levels are reduced, they may be entitled to an increase in their food stamp allotment and/or housing subsidy. Two commenters suggested requiring State agencies to inform affected individuals of the amount that is being counted as income, and in particular to inform them of the value of the housing subsidy.

Response: States differ in their methods of administering the AFDC, food stamp and housing subsidy programs. Some States already have joint program administration at the local level and may be able to provide automatic adjustment of housing subsidies and food stamp allotments when the AFDC grants are reduced. Some States may choose to prohibit more than one adjustment of the AFDC grant level due to the counting of the food stamp allotment or housing subsidy. We have decided that the best approach is to allow each State to determine the most efficient way to administer this provision, and not to hamper such efforts by setting out detailed administrative requirements.

Comment: Six commenters suggested that the regulations should specify how the State agencies should determine the value of the housing subsidies.

Response: There are various HUD programs which provide subsidies to benefit renters and buyers. Our agency is working with HUD to identify which programs are involved, how they operate and some ideas on how subsidies could be valued. We will publish an Action Transmittal in the near future. It is our position that, in the meantime, State agencies are free to develop reasonable and supportable approaches to valuing the subsidies provided.

Comment: One commenter suggested that the regulation should provide a safeguard to prevent States from exaggerating food and shelter allocations.

Response: The regulation does require that, in identifying the amounts in the assistance and payment standards which are for food and shelter, States which have a flat grant system must

estimate the amounts based on historical data or some other justifiable procedure.

Comment: Two commenters suggested that we amend § 233.20(a)(4)(ii)(*a*) of our current regulations to eliminate conflict with the option States now have of counting the value of food stamps. Section 233.20(a)(4)(ii)(*a*) prohibited State agencies from counting the value of the food stamp allotment.

Response: Section 233.20(a)(4)(ii)(*a*) has been amended by these final regulations to apply only in States which do not choose the option to count the value of food stamp allotments under § 233.20(a)(3)(xi).

Comment: One commenter suggested that we also amend §§ 233.20(a)(4)(ii) (*c*) and (*l*) to avoid conflict with the option.

Response: Section 233.20(a)(4)(ii)(*c*) requires States to disregard payments received under Title II of the Uniform Relocation Act of 1970. That Act requires that such payments be disregarded in determining eligibility for all Social Security Act programs. Therefore, the section has not been amended.

Section 233.20(a)(4)(ii)(*l*) required State agencies to disregard payments made under the Experimental Housing Allowance Program. These payments are made by HUD to households to help pay their housing costs. To the extent a State chooses to count governmental housing subsidies, it may count these payments. The final regulation has been amended to reflect this by deleting this section.

Comment: One commenter suggested that the regulation should require any State choosing the option to count food stamps or housing subsidies as income to raise benefit levels.

Response: Each State has the flexibility under the AFDC program to set benefit levels for the State. If a State chooses the option to count food stamps or housing subsidies, it may decide whether or not to raise benefit levels. That is a State decision.

Assumption of Stepparent Income (Section 233.20(a)(3)(xiv) of Final Regulations)

The new statute changes considerably how many States treat stepparent income. Under the prior law, the income of a stepparent could not be assumed available to the child unless the State had a law of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent. Currently, there are six States with laws of general applicability. These States are: Nebraska, New Hampshire, South Dakota, Utah, Vermont, and Washington. In these States, because the stepparent is held legally responsible to support his stepchildren as would be a natural or adoptive parent, no deprivation factor exists whenever the stepparent lives in the same household and is not incapacitated or in some States unemployed. Since no deprivation exists, the family is ineligible. The income of the stepparent living with the child is assumed available under the State plan just as if he or she were a natural or adoptive parent.

While the new statutory provision is silent as to whether it should be applied in States which have laws of general applicability as described above, we believe that Congress did not intend to disturb the way stepparents are treated in these States. The legislative history of this provision suggests that Congress was satisfied with these stepparent procedures and merely intended to require the other States to have minimal procedures for counting stepparent's income when he or she is in the same household as the assistance unit.

Further, support for this view of the statute can be found in the colloquy between Senators Dole and Gorton in the Congressional Record of July 31, 1981. In this discussion, Senator Dole, who was the floor manager of the reconciliation bill, states that the new stepparent statute represented a minimum level of stepparent responsibility and was not intended to weaken procedures in effect in States with laws of general applicability.

Accordingly, the regulation provides that in States which do not have a law of general applicability, the following disregards will be applied to stepparent income before it is counted in reducing the AFDC grant: (1) The first $75 of the stepparent's gross earned income. The State shall establish a lesser amount for a stepparent who is not employed on a full-time basis or not employed throughout the month if he or she lives in the same household; (2) and additional amount for the support of the stepparent and other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determination and are claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregard amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and the other individuals not in the assistance unit; (3) alimony and child support payments to individuals not living in the household; and (4) amounts actually paid by the stepparent to individuals not living in the home but who are claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability.

The following alternative approaches to several issues were considered but rejected:

- Whether the regulation should specify a maximum amount that could be allocated toward the support of a stepparent's dependents living outside the home.

The decision was made that States shall not be allowed to establish a maximum on the basis that: (1) The Act does not set a maximum; (2) stepparents should be able to establish the level of support they wish to provide dependents outside the household; and (3) stepparents should not be prohibited from paying the high cost of care of dependents in institutions such as nursing homes. However, the State is required to disregard only the obligations actually paid by the stepparent.

- Whether the regulations should specify how the work expense allowance should be adjusted for stepparents who work less than full-time or who are not employed throughout the month.

The Act requires that stepparents who are working full-time receive a $75 work expense allowance and gives the Secretary the authority to adjust the allowance for persons working less than full-time. The decision, on which the regulation is based, is to require a disregarded amount less than $75 for stepparents working less than full-time and permit States to establish their own procedures for determining and applying this amount. This approach provides increased State flexibility and recognizes that each State is in the best position to determine local circumstances and conditions particular to that State.

- Whether the stepparent disregards for alimony and child support payments refer to amount owed or actually paid.

The decision was to deduct only amounts actually paid rather than owed on the basis that it more clearly reflects the language in the Act. Therefore, a stepparent who fails to make his court-ordered support and/or alimony payment would not receive the disregard.

- Whether Supplemental Security Income (SSI) received by a stepparent can be counted as income. Section 402(a)(24) of the Act prohibits the counting of income and benefits of SSI recipients for purposes of determining

AFDC eligibility or benefit amounts. Therefore, the State may not consider the income of a stepparent receiving SSI to be available to the AFDC assistance unit.

Based on our own review in developing the final regulations, the stepparent provision has been modified slightly and appears in a different part of § 233.20. It formerly appeared under the part of § 233.20 entitled "Disregard of income." As a result, there was some confusion between the disregards which apply to stepparents and those which apply to applicants and recipients. Since the purpose of the regulations is to require that States count a portion of the incomes of certain stepparents, it is more appropriate to place the regulation with others detailing what the States must or may count as income to an assistance unit.

Two minor additions to the regulation were made to clarify two of the disregards. Subsections (B) and (C) deal with the disregard of amounts actually paid to individuals who are claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability.

Comment: One State asked what to do in the case where a stepparent is included in the assistance unit, specifically whether or not to apply to the general disregards or those related to stepparents in particular.

Response: Where the stepparent chooses to be included in the assistance unit and to receive benefits, the disregards which apply to all other applicants and recipients apply. To apply the broader disregards otherwise applicable to stepparents would result in unfair treatment since stepparents would be eligible for assistance at higher levels of income than other individuals. The broader disregards applicable to the incomes of stepparents were designed for those not seeking assistance.

Comment: Several States have asked whether the stepparent must have actually claimed dependents in order for the disregard to apply or whether it was sufficient that the stepparent could claim the individual as a dependent on a Federal income tax form.

Response: We believe that Congress intended to allow the disregards in cases where the stepparent actually claims the dependent on a Federal income tax form or where the stepparent could claim the individual as a dependent under the IRS rules. If the disregards were applied only to cases where the stepparent actually claimed the individual as a dependent on a Federal income tax form, those stepparents with the lowest incomes would not have the advantage of the disregards since they may not be required to file Federal income tax forms at all. The important factor is whether the stepparent could claim the individual as a dependent under the IRS rules, not whether the individual is actually claimed.

Comment: One State asked whether the fact that the stepparent claims his or her stepchildren as dependents for Federal income tax purposes has any effect on the stepchildren's eligibility for AFDC.

Response: The fact that the stepchildren are claimed as dependents for that purpose does not affect their eligibility. What does affect their eligibility is the amount of the payments the stepparent actually makes to the children or the amount of the stepparent's income which the State agency counts as available to them.

Comment: One organization suggested that the regulations should make clear that any State which decides to enact a law of general applicability and thus count all the income of a stepparent can do so.

Response: We believe the regulation, as written, leaves it open for States to enact laws of general applicability in the future thus making the stepparents' provision inapplicable.

Comment: Two organizations suggested that the regulation should define a "stepparent."

Response: The current definition which appears at 45 CFR 233.90 already applies. A stepparent is defined as a person who is ceremonially married to the child's parent under the State law.

Comment: One State has asked in its comments for clarification as to what payments and types of payments are allowable deductions from the stepparent's income when such payments are made to individuals living outside the home.

Response: The statute clearly provides that the State shall disregard from the stepparent's income amounts actually paid to individuals not living in the home but who are claimed as dependents by the stepparent. The statute does not in any way restrict the types of payments as long as they are made to an individual who can be claimed as a dependent. In writing the interim regulations we considered whether the regulation should specify a maximum amount that could be allocated to a dependent outside the home. We decided that States should not be allowed to set a maximum amount because the Act does not set a maximum. The same basis applies here. The statute does not limit payments to dependents outside the home to those payments required for support or any other particular purpose. The difficulty of judging each payment made to an individual outside the home to determine whether it is necessary for support or other purpose also favors a decision not to define the types of payments which can be disregarded from the stepparent's income. The important factor is that they be made to a dependent.

Comment: Two commenters suggested that the regulations should allow a disregard from the stepparent's income for the cost of childcare for his or her children living in the home but not receiving AFDC. They cited a situation where the stepparent's spouse is disabled or unavailable to provide care for the stepparent's children.

Response: The statute clearly sets out the disregards that will be allowed from a stepparent's income. An amount is disregarded for the support of each of the stepparent's dependents living in the home. A specific disregard for childcare expenses was not included.

Treatment of Income in Excess of the Standard of Need (Section 233.20(a)(3) of Final Regulations)

Prior to enactment of the new provision, any payments to an assistance unit that met the definition of income (e.g., retroactive Social Security benefits) were counted as income in the month of receipt, and considered a resource, to the extent retained, in the following months.

The new section 402(a)(17) of the Act requires all income to be considered available to meet the present and future needs of AFDC recipients. It is the responsibility of the caretaker relative to budget accordingly. To do this, States must first determine whether the family's total amount of earned and unearned income (excluding the AFDC grant and after applying income disregards) exceeds the State's need standard in the month of receipt of the income. If it does not exceed the unit's needs, States shall compute the grant as for any usual month. If it does exceed the unit's needs, but was caused by a regular and periodic extra paycheck from a recurring income source, the unit may be suspended (see § 233.34(d)). However, if it does exceed the State's standard of need, the rules provide that the unit will be ineligible for aid for the number of full months (including month of receipt) derived by dividing the total income by the need standard applicable to the family. (Please refer to comment and response section on this subject for an explanation of the change which has

been made in the final regulations.) In addition, any income remaining after this calculation is treated as if it is income received in the first month following the period of ineligibility and is considered available for use at that time.

An example of how this policy can be implemented is as follows. If an assistance unit has $600 nonrecurring income in October, it has $300 other countable income in that month (after the disregards) and the State's need standard for four is $400, the unit is ineligible in October and November and shall be considered to have $100 of income for December if the unit reapplies in that month. In drafting these rules, a question arose as to how this provision should be applied when the State discovers a nonrecurring income after the month of receipt. Must the assistance unit be considered ineligible in the month of receipt, or can States consider the first month of ineligibility to be in the month of discovery, or in the payment month corresponding to the month of receipt?

For the interim rule, the Department interpreted the statute and legislative history to require that a State consider the unit ineligible in the month of receipt of the nonrecurring income as this would represent the first month of ineligibility for which any overpayments would be recouped.

After a State makes a determination of future ineligibility based on this provision, future changes in family composition or other relevant circumstances do not change or alter the period of ineligibility for the members of the assistance unit which has been determined ineligible. There is also no waiver or good cause provision which can be applied to reduce the period of ineligibility. This provision applies to an applicant family only in the month of filing.

Comment: There were many comments strongly opposed to triggering the lump sum provision in every instance that income exceeds the standard of need. The commenters believed that the intent of the provision was to cover nonrecurring lump sum payments.

Response: We agree that the intent of this provision can be construed to encourage recipients to budget nonrecurring lump sum income. Therefore, we have revised § 233.20(a)(3)(ii) (D) of the final rule accordingly.

Comment: There were many suggestions that the period of ineligibility for assistance begin with the month following the month of receipt, or with the corresponding payment month, rather than the month of receipt. The commenters stated that neither the agency nor the family may know when the lump sum income will be received. Therefore, when ineligibility begins with the month of receipt, such income will usually be reported after the payment for that month has been issued, and is not compatible with retrospective budgeting.

Response: We believe, after careful review, that the statute can be interpreted to permit States to begin the period of ineligibility no later than the corresponding payment month, and have modified § 233.20(a)(3)(ii)(D) to enable States to process cases for which the lump sum provision applies in a more efficient manner and to avoid the overwhelming administrative problems cited by the States.

Comment: Many commenters proposed that the regulations should permit States to recalculate the period of ineligibility when former recipients reapply and there is good cause why their lump sum income is not available for the full period of ineligibility. They noted that there can be extenuating circumstances e.g., the assistance unit subsequently breaks up.

Response: We are aware that certain life-threatening circumstances may arise prior to the expiration of the period of ineligibility which require the assistance unit to expend part or all of the lump sum income in meeting such circumstances. The effect of this would be that the lump sum income would not be available for meeting the assistance unit's other needs during the entire period of ineligibility. Accordingly, under these circumstances, a State may shorten the period of ineligibility where it finds a life-threatening circumstance exists, and the non-recurring income causing the period of ineligibility has been or will be expended in connection with the life-threatening circumstance. Further, until that time the non-recurring income must have been used to meet essential needs and currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstances.

Comment: Several commenters asked that we clarify how the lump sum policy applies when there is an addition to the family, e.g., a baby is born during the period of ineligibility. They were concerned that the preamble in the interim rule precluded payments to family members who were not in the assistance unit when the lump sum was received.

Response: The lump sum provision applies only to individuals receiving AFDC for the month in which the lump sum payment was received. Other family members who apply may be eligible as a separate assistance unit.

Comment: Several questions were raised asking whether "the need standard applicable to the family" includes the stepparent when his/her lump sum income causes the AFDC unit's ineligibility for a period of time. The commenters contend that the standard of need should also be applicable to the stepparent to recognize his/her needs during the period of ineligibility.

Response: We agree and have revised § 233.20(a)(3)(ii)(D) of the final rule to require that States use the standard of need applicable to the size of the assistance unit plus any individual whose income is counted in determining the period of ineligibility.

Comment: Several commenters asked that we clarify how the lump sum policy applies to a sum of money which is earmarked for a specific purpose, i.e., monies paid for back medical bills resulting from accidents or injury.

Response: The Omnibus Budget Reconciliation Act of 1981 did not change how States treat income. States have always been permitted to exclude income which the recipient receives as settlement for back medical bills, compensation for loss of resources, etc., so long as the money is used for that purpose. Thus, this final rule does not alter this Federal policy.

Resources Considered in Determining Need (Section 233.20(a)(3) of Final Regulations)

Pub. L. 97–35 sets statutory limits for the first time on the amount of resources an assistance unit may have and be eligible for AFDC. Formerly, resource limitations were prescribed in the regulations. Those regulations prohibited States from setting the asset limit at more than $2,000 per recipient, excluding, as allowed by the State, a home, personal effects, an automobile, and income producing property. The courts ruled in "NWRO v. Weinberger" that in determining the $2,000 limit, equity value was to be used.

States must now set a resource limit of $1,000 or less on the equity value of the resources an assistance unit may own. A State must:

1. Deduct from the fair market value of the resources (as determined by the State) any obligations or debts still outstanding on those resources;

2. Exclude from consideration the equity value of a car up to $1,500 or at State option such lower limit as set in its State plan;

3. Exclude the value of a home owned by a member of the assistance unit and occupied by it;

4. Count the equity value of all other resources, except at State option basic items essential to day-to-day living, such as clothing, furniture, and other similarly essential items of limited value.

Prior to these changes, States had the option under regulations to exclude personal effects, income producing property, burial plots, cash value of life insurance policies, etc. This will no longer be permitted. Under the new regulations, States must exclude only those items specifically cited in the interim regulations of the home and the automobile up to $1,500 equity value. In addition, we have permitted States, at their option, to also exclude certain items of personal property essential to day-to-day living if they have limited value. The reason for this very limited exclusion is that we have been advised by States that the administrative cost of verifying the existence and nominal value of such items would far exceed any savings in assistance payments which might accrue if they were counted in determining a family's eligibility. Accordingly, in these regulations, we permit but do not require States to value all such items.

States will continue to establish their own methods for evaluating personal property and verifying resources. We chose $1,500 as the maximum equity value for an automobile on the basis of a Spring 1979 survey of food stamp recipients. Data from that survey suggest that 96 percent of all food stamp recipients who own cars had equity value in them of $1,500 or less. In that the Federal maximum limit should be set within the range of the vast majority of current recipients and given that the food stamp population tends to be, on the average, more affluent than AFDC recipients, this limit appears reasonable and supportable.

Comment: Several comments addressed the question of whether the Secretary has the authority to permit States to set a lower limit on the maximum $1500 equity value of one automobile.

Response: Section 402(a)(7)(B) provides that States have the authority to include as a resource "* * * so much of the family member's ownership interest in one automobile as does not exceed such amount as the Secretary may prescribe * * *" Clearly the statute authorizes the Secretary to set such a lower limit and this authority has been delegated to the States, because each State is in the best position to determine local circumstances and conditions particular to the State.

Comment: In relation to $1,500 equity value of one automobile the rationale for the limit set by the Secretary was questioned by a number of commenters.

Response: We stand by our original position. The choice of $1,500 as the maximum equity value for an automobile was based on the data from a Spring 1979 survey of food stamp recipients. We regard the limit of $1,500 equity value in an automobile as reasonable and supportable.

Comment: Another issue raised in relation to the maximum limit of $1,500 was whether the State should apply any amount over the $1,500 equity value of one automobile to the $1,000 resource limit.

Response: This is clarified under the final regulations (§ 233.20(a)(3)(i)(B)(*2*)) that the States must so apply excess equity value.

Comment: One State commented that the interim regulation language permitting at State option the exclusion of basic items essential to day-to-day living was worded too broadly to be of help to States in identifying and verifying non-essential items as personal property. Other commenters reacted to the State option to exclude certain items of personal property as too restrictive, or wanted the regulation to mandate that States exclude such basic and essential items. Still another respondent believed the Secretary overstepped his authority by permitting exceptions to the $1,000 resource limit for basic items of personal property essential for day-to-day living, and recommended that at the very least, the regulation should be written so that it clearly stresses the basic nature of these items and leaves no room for luxuries to be excluded.

Response: All of these comments were discussed and carefully reviewed. The law places a $1,000 limit on the resources of the assistance unit. The option to permit States at their own choice to exclude certain personal property items of limited value essential to day-to-day living is a reasonable interpretation of the statute and was included in the regulations from the standpoint of administrative efficiency in that the administrative costs of verifying the value of these basic items of little monetary value would far exceed any savings in assistance payments that might accrue. By permitting the option, State flexibility in the administration of the AFDC program is provided and the maximum Federal savings will be achieved. States can continue to establish their own methods for evaluating personal property and verifying resources and describe these methods in their State plans.

Comment: Several comments raised a concern about how the quality control system will treat identification and verification of essential and non-essential items of personal property.

Response: The regulations pertaining to Quality Control Systems (45 CFR 205.40) have not been changed. Quality Control reviews will continue to be based on permissible State practices.

Comment: Clarification was requested on how to proceed when an applicant or recipient has non-liquid resources such as a car or real property that could meet current need, but which must be disposed of to retain eligibility.

Response: Assistance cannot be paid for any month in which the recipient has liquid or non-liquid resources which exceed the $1,000 limit prescribed by the statute.

Comment: Several questioners asked how States should proceed when an applicant or recipient receives money from a third party that is for payment of medical bills, funeral and burial costs, replacement or repair of other resources.

Response: The new statute does not alter the current policy which permits States to exclude money received from a third party for such expenses in determining the availability of the income or resources to meet current need. Accordingly, this policy is not changed by this regulation.

Comment: One of the comments asked for a definition of "currently available" when applied to evaluating resources.

Response: The existing regulation at § 233.20(a)(3)(ii)(D) gives a clear statement of what "currently available" means, and is unchanged by the new statute.

Comment: One commenter questioned whether money received from the sale of allowable resources is exempt.

Response: As the term resources includes both liquid and non-liquid assets, the change from a non-liquid asset, e.g., a bicycle valued at $50 to cash of $50 through the sale of that asset, does not change the total value of the assets held and such resource would be exempt if the allowable statutory amount were not exceeded.

Comment: There was a suggestion that the States be given the option to exclude from the resource limit for a temporary period of time income producing property such as carpenter, plumber, or other worker tools when such an individual is temporarily out of work.

Response: States continue to have flexibility in defining what represents income producing property. However, the statute does not provide for the

exclusion of income producing property such as rental property, etc.

Comment: One of the commenters recommended that one burial plot per member of the assistance unit be exempt from the resource limit.

Response: The statute does not include this option. With the exception of a house and one automobile, the statute requires all resources to be included in the $1,000 equity value limit.

Comment: It was also brought to our attention that as regards the resources exclusion, an automobile cannot be used as a primary mode of transportation in certain areas of the country.

Response: Since we believe the intent of the statute was to permit a limited exemption for a primary mode of transportation, we agree that it is a reasonable construction of the statute to permit States to exempt an alternative primary means of transportation where determined appropriate by the State. Accordingly, the final rule in § 233.20(a)(3)(ii)(E) is amended.

Comment: One of the comments recommended a simplification of the method of determining the value of insurance policies. The recommendation was to either disregard insurance policies entirely, or be consistent with other assistance programs which disregard the cash value rather than loan value of the policies.

Response: Section 233.20(a)(3)(ii)(E) of the interim final rules required that States determine the loan value of insurance policies as a resource. We concur with the recommendation to count the cash value of insurance policies in determining its value. This method is administratively less cumbersome, more accurately reflects the total amount available to the recipient as a resource, and is less time consuming since the cash value of the policy can often be obtained from the policy without contacting the insurance company. Therefore, this change is made in the regulation at § 233.20(a)(3)(ii)(E). Insurance policies cannot be totally disregarded because they can be a resource.

Comment: One of the commenters questioned why checking accounts are considered resources since most AFDC recipients only have in their checking account money received from their current payments.

Response: As a point of clarification, assistance payments are not to be counted as resources for the month in which they were paid; however, any carry-over into the following month must be considered a resource. This is long-standing policy identified at § 233.30(a)(3)(ii)(E) and has not been affected by the new statute and interim rules.

Comment: One letter stated that the regulatory definition of fair market value was too cumbersome and relied too heavily on securing local estimates of value. They suggested language that would permit the States to determine the method for arriving at the equity value.

Response: We do not believe there are sufficient and compelling reasons to change the present definitions. It permits States to determine, through the use of objective means, the price of the item if sold on the open market in their geographic area. This method already permits flexibility and takes into account fluctuations in different localities.

Comment: One of the comments recommended a reconsideration of the use of the word "net" income at § 233.20(a)(3)(ii)(D).

Response: We agree that in this context, its use is confusing and have clarified it. Prior to the new statute, work expenses were always deducted from gross income in determining countable income on which to base eligibility and the amount of payment. However, because of the new 150 percent income test, this is no longer the case.

Comment: One letter asked whether a State can specify that a recipient may not retain certain resources while receiving assistance.

Response: Prior to the Omnibus Budget Reconciliation Act, the statute did not address how states should treat resources. The new statutory provision clearly specifies that, with certain narrow exclusions, all resources must be valued and considered towards the overall resouce limit. No authority exists for states to specify that certain resources cannot be owned by applicants or recipients as a condition of eligibility for assistance.

Community Work Experience Program (Part 238 of Final Regulations)

The Act provides that States may, if they choose, establish a Community Work Experience Program (CWEP). The purpose of CWEP is to provide on-the-job training and work experience for recipients in order to assist them in moving into regular employment. Participants in CWEP will continue to receive their regular AFDC checks and will neither be paid by, nor be considered employees of, the agencies with which they are assigned.

Eligibility.

Only recipients of aid, and not applicants for aid, may be required to participate in CWEP. A State may require AFDC recipients who are required to participate in the WIN program to participate in CWEP unless such persons are currently working no less than 80 hours per month and are earning not less than the applicable minimum wage, or are recipients of a monthly grant that is less than $10.00. Persons exempt from WIN due to caring for a child between the ages of three and six may also be required by a State to participate in CWEP if adequate child care is available. Additionally, persons exempt from WIN due to their residing too far away from a WIN project may be required to participate in CWEP, provided they do not have to travel an unreasonable distance from their home to the CWEP project site. The maximum number of hours a person may be required to work is to be calculated by dividing the total grant of the family by the higher of the State or Federal minimum wage. In the interim final, we took the position that where two or more persons in the same family meet the CWEP eligibility requirements, a State could require each family member to work the same number of hours as would be required if only one member of the family were eligible for CWEP (total family aid/minimum wage).

Types of jobs and conditions of work. All job creation projects developed under CWEP must serve useful public purposes, as defined by the State. These projects are limited to public agencies and non-profit organizations. Private for-profit entities may not be CWEP sponsors.

States implementing CWEP must assure that in all training and work experience projects certain conditions are met. Some of the most important conditions are:

- Maintenance of appropriate health standards
- Reasonable conditions of work are maintained, taking into account the proficiency of participants
- Recipients cannot fill established unfilled position vacancies
- Participants cannot be required to travel more than a reasonable distance from their homes or remain away from their homes overnight.

A State must provide for transportation and other costs directly borne by the participant which are both reasonably necessary and directly related (as defined by the State) to participation in the program. The maximum reimbursement to a recipient for costs such as transportation, etc., is $25 monthly. This is a federally matchable administrative cost. However, any child care costs incurred

by CWEP participants are matchable only under this provision and not as a routine administrative cost or as a special need. For this specific need, States should consider establishing CWEP projects to provide day care services using other participants and AFDC recipients.

A State may, if it wishes, provide transportation and other services to participants so that they do not incur any costs directly related to their participation. A State may also wish to provide for these costs with in-kind services. If this is the case, these services shall be matched as a routine administrative cost.

States may choose to provide program participants with worker's compensation or comparable protection. If a State provides such protection, the cost of providing the coverage shall be considered an administrative expense for purposes of Federal matching funds.

Sanctions and hearings. Should a person refuse to participate in CWEP, the penalties applied for failure to participate in WIN will apply. Regular AFDC hearing procedures shall be used.

Coordination. The Chief Executive Officer (CEO) of the State is required to coordinate CWEP and WIN and insure that job placement has priority over participation in CWEP.

The CEO shall insure that a person is not denied aid under the State plan, because of refusal to participate in either WIN or CWEP while satisfactorily participating in the other. However, a State may require that a person participate on a part-time basis in both programs.

Expenditures. The Federal Government will match State administrative expenditures necessary for the proper and efficient administration of the program. Such costs may not include the purchase of equipment or materials in connection with the work performed under the program. Federal funds are also not available to help pay the costs of supervision of work performed under CWEP.

Placement of CWEP participants in profit-making firms. The Act states that CWEP "shall be limited to projects which serve a useful public purpose* * *". Discussion was devoted to whether, and the extent to which, private for profit entities should be permitted to participate in CWEP. The alternatives that evolved from this discussion were to: (1) Restrict work to the public sector only; (2) restrict work to public sector and non-profit organizations; (3) permit work in public sector, non-profit organizations, and private for profit entities. The second option was selected.

Permitting participation of private for profit entities may have permitted creation of the greatest number of CWEP work possibilities, permitted maximum State flexibility, and may have promoted transition to the private sector of more CWEP participants. However, we believe that these benefits are outweighed by the higher risk that CWEP participants might displace regular employees because potentially less control could be exercised over private for profit entities. In addition, the use of a pool of free labor by profit making entities, even though it might further the independence of participants, has a high potential for damaging the overall CWEP effort (for example, by allowing one employer to obtain an unfair market advantage through the use of free labor). Restricting the CEWP program to public agencies and non-profit organizations will still create substantial employment opportunities, while minimizing the above-described risks.

Worker's compensation for CWEP participants. The new statute requires a State which chooses to operate CWEP programs to provide appropriate standards for health, safety, and other conditions applicable to the performance of work. This consideration gives rise to two issues: (1) Whether to allow, or require, States to provide worker's compensation or similar coverage; and (2) whether to permit Federal reimbursement of such expenses. The decision is to permit States to provide worker's compensation or similar coverage and to reimburse these expenditures as a valid administrative expense.

The estimated cost of this coverage if all States elected this option is approximately $27 million (combined Federal and State share) over the FY 1982–86 period. This decision is not necessarily the most expensive option in that the potential for injuries to CWEP participants will have to be dealt with in some fashion, and other alternatives could prove to be more expensive. This group is very vulnerable because they lack existing protections. To allow that worker's compensation is a valid administrative expenditure suggests that its cost should be shared by the Federal and State governments.

Comment: Five commenters took issue with the $25 limit on participation costs stating it was inadequate and would not cover actual costs.

Response: Considerable weight in developing this limit was given to the experience of the Utah WEAT project and related workfare type demonstration programs. Specifically, the Utah WEAT program arrived at the $25 limit after averaging years of data on participant expenses. Experience in the Food Stamp workfare projects has shown work related project costs to be even substantially lower. The cap is intended to be reasonable but not result in inflated costs that might negate savings. However, a State may pay more than $25 using State funds. States also have flexibility in designing their CWEP projects and can limit the participant target group and the number of days a participant is required to participate in the program. Since CWEP is a new program, we intend to monitor it closely to determine if any future revisions to the $25 limit are required.

Comment: Five commenters expressed concern that the regulations do not provide adequate protection for participants with respect to employment status, work standards, and improving employability.

Response: We do not agree. The regulations permit the States to provide worker's compensation (§ 238.18) for participants. Section 238.52 provides that the CWEP project cannot violate applicable Federal, State, or local health and safety standards. However, failure to include the statutory reference to "reasonable work conditions" in the interim regulations was an oversight and we are now including this reference in § 238.52 of the final rule.

Comment: Another commenter stated that "employment status" should be included as a protection in the CWEP regulations.

Response: This would be inappropriate as section 409(a)(2) of the Act and § 238.20(d) preclude authorizing payment of aid as compensation for work performed, and at no time can a participant be entitled to a salary as a result of participation in a CWEP.

Comment: Five commenters questioned allowing a State to require each eligible family member to work an amount equal to the family's benefit. They point out that this has the effect of each participant in a family working for less than the minimum wage.

Response: We agree and have revised § 238.20 accordingly.

Comment: Two commenters noted that, while participants "may not displace persons currently employed," they may be permitted to perform similar functions and displacement could result.

Response: Displacement is a statutory prohibition which will be monitored closely.

Comment: One commenter noted that the regulation at § 238.16(a) provides

that participants may not be required to use their assistance or other income to pay participation costs. Because this is not specified in the statute, the commenter recommends that it be deleted, as it would permit participants to claim inability to participate because of "on-the-job meals costs" or "costs of wear on shoes and clothes."

Response: We believe Congress did not intend to have CWEP participation result in financial hardship to the participants. However, reimbursement for participation costs does not include expenses which would exist whether the individual participates in CWEP or not.

Comment: One commenter recommends that the regulation at § 238.52(e) be withdrawn. This section requires that no CWEP projects can be developed in response to a strike, lockout, or other bona fide labor dispute. Because CWEP projects are restricted to public or not-for-profit agencies which do not permit strikes, there is no need for this section.

Response: The fact that strikes in most public agencies are unlawful does not preclude a group from engaging in a walkout. Additionally, strikes do occur in private, not-for-profit operations. Therefore, we believe this section has relevance and should remain.

Comment: Eight commenters assert that the current regulations do not adequately provide for appropriate protections for day care services for CWEP participants.

Response: The regulations are developed to provide States with the greatest flexibility in designing and implementing CWEP. However, implicit in the regulations are requirements that any existing Federal, State, and local laws which impact on CWEP must be recognized. For example, § 238.52 requires that a State plan authorizing CWEP must provide that CWEP projects "are not in violation of applicable Federal, State, or local health and safety standards." Therefore, if a State chooses to operate a day care center as a CWEP project, it follows that all existing State and local statutes and regulations relating to that operation must be met.

Earned Income Credit (Section 233.20(a)(6)(ix) of Final Regulations)

The earned income credit (EIC) supplements the earnings of low income workers. Eligible employees may file an Earned Income Advance Payment Certificate (Form W–5) with their employers and receive the credit in advance payments which will be added to their pay checks. Under current law, any individual applying for or receiving AFDC who receives the earned income tax credit has that amount counted as earned income when it is received, whether received as a lump sum or in advance payments.

Pub. L. 97–35 requires States to count as earned income the amount of the earned income credit advance payments an individual is entitled to receive, whether or not the individual actually receives them. Therefore, the amount of these advance payments will be counted whether or not they elect to receive them. However, if the family makes every effort to file for and receive the advance EIC but cannot receive it for some documented reasons, e.g., the employer refuses to process it, the State may determine that it is not available and not deem it as income.

In order for an employee to receive the earned income credit in advance amounts, the employee must file the proper certificate with his employer and thereby certify that he reasonably expects to be eligible to receive the earned income credit. The regulation requires, therefore, that when a State agency includes as earned income the amount of the advance payments not actually received, the State agency must be reasonably certain that the individual will be eligible to receive the credit. This requires the State agency to determine in advance whether an individual will be eligible to claim the earned income credit on his Federal income tax form for the current taxable year. The State agency must make that determination by applying the rules of the Internal Revenue Code which deal with the earned income credit and advance payments of the credit. These appear at 26 U.S.C. sections 43 and 3507, and under the corresponding regulations at 26 CFR 1.43–1, 1.43–2, and 31.3507–2.

In applying the rules of the Internal Revenue Code which deal with the support and maintenance of household tests, the State agency must not count AFDC benefits as support provided by the parent. These are support or maintenance provided by the State, not by the AFDC applicant or recipient.

The State agency shall determine the amount of the advance payments an employee is eligible to receive by consulting the tables prescribed by the Secretary of the Treasury.

If the State agency counts the amount of the advance payments an individual is eligible to receive but which are not actually received, the State agency may not also count the amount of the earned income credit which the individual does receive later as a lump sum. This is to avoid double counting of the same income.

Where the State agency determines that the individual is eligible to receive the earned income credit in advance payments and counts an amount as earned income each month, the State must make later adjustments if the individual was not, in fact, eligible for the advance payments. The State agency must also make adjustments where it assumed the individual was eligible to receive more or less than the actual amount of the credit. These adjustments shall be made according to the rules the State has established for payments of underpayments and recovery of overpayments. Adjustment will also be required where the amount of the advance payments an employee actually receives are more or less than the actual amount he was entitled to receive.

Flexibility analysis of earned income credit. Based on a sample survey of recipients and after the estimated effects of the recent amendments, we estimate that an average of 230,000 families have earnings each month. We have no descriptive information about the employers of AFDC recipients and therefore cannot estimate how many are small businesses.

In addition to the fact that many of the 230,000 recipients do not work for small employers, many of these recipients will not meet the EIC dependency test and thus will not be eligible to receive the EIC. On the other hand, some recipients may work for several employers and the 230,000 estimate is based on a point in time not an annual total. If these opposite factors cancel each other, a maximum of 230,000 small businesses would be potentially affected.

No new reporting or recordkeeping requirements are being imposed by the new rules concerning EIC. The existing requirements associated with the EIC under IRS regulations are not being augmented; AFDC recipients are already entitled to file for and receive an advance EIC payment.

Currently, receipt of the EIC as an advanced payment is very infrequent. Since receipt of advanced EIC will be deemed even if not requested, an increased number of AFDC recipients should file for an advanced EIC. Thus, the effect of the regulation could be to increase the workload burden under existing IRS regulations if the advance payment option is exercised more frequently. This could result in additional work for the individual employer, since the EIC amount must be computed, added to the paycheck, and deducted from the withholding amount. We do not believe that this will be a significant impact.

There are no alternatives to the regulation which would lessen the effect

on small entities. It would be inconsistent with the law not to deem the advanced EIC to recipients whose employers are small businesses. Beyond this possibile impact the regulation affects only AFDC eligibility and payment procedures.

Comment: Some commenters suggested that we detail the eligibility requirements specified in the Internal Revenue Code and regulations thereunder.

Response: The Department of Treasury is responsible for writing the regulations under the Internal Revenue Code. It is their regulations that should serve to interpret the Code. The Office of Family Assistance will provide, in an Action Transmittal, copies of the law and regulations governing the earned income credit and advance payments of the credit and the tables which show the advance amounts for which individuals are eligible. In light of this fact, one section of the interim regulations has been deleted from the final regulations. That section dealt with the IRS rule that AFDC payments are not to be considered as support provided by a parent. They are support provided by the State. This rule remains in effect; however, since we are providing State agencies with the law and rules governing the EIC a restatement is unnecessary. We did, however, want to highlight this particular rule in the preamble.

Comment: Two commenters suggested that before a State agency counts the amount of the advance payments as income, the State agency should be required to allow some time during which the individual can apply for the advance payments and the employer can process the request. Several commenters were concerned that many individuals are not aware of the earned income credit and would not know that the State agency will count the advance amounts which the individual does not actually receive.

Response: The final regulation at § 233.20(a)(6)(ix)(A)(*1*) permits State agencies at their option to not count the amount of the advance payments as income until the applicant or recipient has a chance to file for and receive it; however, in no case shall the State agency wait more than 14 days from the date of notification to the applicant or recipient. The State shall inform individuals that after that time the State agency will count the amount of the advance payments for which the individual is eligible whether or not they are actually received. Where an applicant or recipient is actually receiving the advance payments, the State agency must, begin counting them immediately. Also, where the individual begins to receive them prior to the end of the time allowed by the State agency, they must be counted whenever received. Once the time allowed by the State agency has passed, it must begin to count the amount of the advance payments for which the individual is eligible whether or not they are actually received unless the individual has made every possible effort to obtain the advance payments but cannot receive them for some documented reason, e.g., the employer refuses to process the request. At that point, the State is not required to count the advance amounts as income. (This exception was stated clearly in the preamble to the interim regulations but was not included in the regulation itself. To avoid confusion, the exception is incorporated into the regulation at § 233.20(a)(6)(ix)(A)(*2*).)

Comment: Several commenters pointed out the difficulty State agencies will have determining with certainty whether or not an individual will be eligible to receive the EIC and the probability of high error rates.

Response: Section 233.20 (a)(6)(ix)(B)(*1*) of the final regulation provides that the State agency must determine that an individual is eligible to receive advance payments of the earned income credit only where the State agency reasonably expects that the individual will be eligible to receive the earned income credit for the current taxable year. This language appears in the preamble to the interim regulation but does not appear in the interim regulation itself. The interim regulaton was interpreted by several commenters to require that the State must determine in every case that, in fact, the individual will be eligible to receive the credit. Since the Internal Revenue Code requires that an individual applying to his or her employer for advance payments of the earned income credit must certify only that he or she reasonably expects to be eligible for the credit, to require that the State agency determine with certainty whether an individual will be eligible is inconsistent and unnecessarily burdensome. Therefore, the final regulation makes clear that the State agency, in determining whether to consider an individual as eligible to receive advance payments, must only establish that it can reasonably expect the individual to be eligible for the credit. If the State agency makes the proper detrermination based upon its reasonable exceptation, it is not in error when it turns out at the end of the individual's taxable year that the individual was or was not, in fact, eligible. This lessens the administrative burden upon the State agencies and protects State agencies and individuals applying for or receiving assistance from the consequence of high error rates.

Comment: Numerous States and organizations commented that the administrative burden involved in reconciling all cases at the end of the tax year would be tremendous.

Response: Section 233.20(a)(6)(ix)(C) of the final regulations has been completely rewritten and now requires reconciliation only in cases where the State agency counted the advance payments an individual actually received or was eligible to receive and that amount exceeds the actual allowable credit determined at the end of the individual's taxable year. At that time, the State agency is required to adjust the benefits of current recipients in order to repay the amount of AFDC benefits lost, The State agency is not required to repay former recipients.

Since April of 1980, the Social Security Act has required State agencies to count earned income credit advance payments actually received as earned income to the individual. Pub. L. 97–35 expands this requirement to count such payments if the individual could receive them. The Act has also required since 1980 that whenever the amount of the advance payments actually paid to an individual by his or her empolyer exceeds the earned income credit allowable, the State must adjust the individual's AFDC benefit amount to provide payment to the individual of the amount of benefits lost. Pub. L. 97–35 did not amend this rule and the law still requires reconciliation only where the case involves actually paid advance payments which exceed the allowable credit.

We are also requiring State agencies to repay benefits lost where it counted advance payments not actually received and the amount counted exceeds the credit for which the individual is eligible. In both situations, the individual lost AFDC benefits because an amount attributed to the tax credit was included as income and the individual is not entitled to the amount. These two reconciliation requirements should not create difficulty for the State agency as they apply only to current recipients.

Where the State agency counted the amount of the advance payments an individual actually received or was eligible to receive and that amount is less than the amount of the allowable credit determined at the end of the taxable year, the State agency is required to count the amount of any earned income credit the individual receives after subtracting the amount

that the State agency already counted. This avoids double counting of the same income. The amount that is counted shall be treated as earned income in the month received. Section 233.20(a)(6)(ix)(C) has been revised to reflect the above changes.

Work Incentive Demonstration Program (Section 205.80 of Final Regulations)

The amendments provide that, as an alternative to the Work Incentive (WIN) program otherwise provided for in title IV–C of the Act, any State may elect to operate a work incentive demonstration program for the purpose of demonstrating single agency administration of the work-related objectives of the Act. Since these are demonstration programs of limited duration, they will operate only within guidelines established by the Department and without implementing regulations. However, the regulation requires a State to report data which the Secretary has determined is necessary to carry out his responsibility to evaluate these programs.

Comment: Four commenters asked that we establish standards by which these programs will be evaluated.

Response: Specific evaluation standards for individual States will be developed after their respective WIN demonstration programs have been designed.

Income, Resources, and Disregards (Section 233.20(a)(3) of Final Regulations)

These final regulations reflect the new statutory changes which prohibit States from excluding the following in determining need:

(1) Income set aside for the future identifiable needs of the child;

(2) $5 of income from any source;

(3) Income received or deemed to be received as an earned income credit.

States are also now permitted to consider as income the value of housing subsidies and food stamps which is duplicated in an assistance unit's AFDC payment. (See the preamble discussion on the treatment of housing and Food Stamp subsidies.)

Changes in the earned income disregards. Besides changing what States can exclude from income, Pub. L. 97–35 also significantly changes both the order of application of the disregards from earned income and the disregards themselves.

States are required to disregard the following amounts from the earned income of each individual with earnings for eligibility determination in the following order:

(1) The first $75 of monthly earnings for full-time employees (or such lower amount as the State may establish for part-time work); plus

(2) The actual cost of care for a child or incapacitated adult, up to $160 per child or incapacitated adult per month (or such lower amount as the State may establish for part-time work).

The statute also requires States to apply income disregards in the following manner for benefit calculation of each individual in the assistance unit: Student income; the first $75 of the monthly earnings for other full-time employees (or such lower amount as the State may require for part-time work); child care expense; and $30 plus one-third of the earnings not already disregarded.

$30 plus one-third of the remainder. The $30 and one-third can not be used in establishing initial eligibility of an assistance unit (unless the unit received AFDC in one of the prior 4 months), but, after it has been applied to an individual for 4 consecutive months, is unavailable to that individual until the expiration of a 12-month period during which the individual has not been an AFDC recipient.

In addition, none of the disregards (the first $75, the $160 dependent care costs, the $30 and one-third) will be applied to any earned income of any individual receiving assistance who, without good cause, as specified in the State plan, terminated employment, reduced earnings, refused an offer of employment, or failed to make a timely report.

The regulations as written embody both changes clearly required by Pub. L. 97–35 and decisions made on issues arising from the legislation. Issues regarding each disregard and a full explanation of the change are outlined in the discussion that follows.

The work expense disregard. The new regulations standardize the work expense disregard at $75 per month for full-time employees. Formerly, States were required to disregard actual reasonable work expenses. The new regulations require that each full-time employee in the assistance unit receive a $75 disregard for his or her work expenses. The new legislation also gives the Secretary of HHS the authority to adjust the $75 disregard for part-time employees or those working less than a full month. In keeping with the President's commitment to assure State's adequate flexibility in developing their own programs, and because States, based on their prevailing individual circumstances, are in the best position to determine at what lower level it should be set and what process should be used, the Secretary has decided to require States to adjust the $75 work expense deduction for those working less than full-time or not working throughout the month. In this way, the Secretary will be carrying out his responsibility under the law in a way which best ensures that all individuals covered in these regulations will be treated fairly and equitably under State AFDC plans.

With respect to self-employed individuals, States must specify in their State plans, and exclude from gross income, work expenses related to producing the goods or services and without which the good or service could not be produced. Specifically not excluded are items such as depreciation, personal business and entertainment expense, personal transportation, purchases of capital equipment, and payments on the principal of loans.

Child care disregards and incapacitated adult care disregards. The legislation requires that after the work expense disregard is applied to the earned income of the assistance unit, a State must disregard the actual cost of care for a child or incapacitated adult up to $160 per month per child or incapacitated adult if the individual is employed full-time. The legislation gave the Secretary the authority to set a cap lower than $160 in the case of an individual employed less than full-time. As for work expenses, States can set limits below $160 for part-time workers.

Issues regarding the $30 and one-third disregard. Pub. L. 97–35 clearly specifies that the $30 and one-third disregard is the final disregard applied, but it did not clearly specify to whose income and under what circumstances it is permitted.

In the final regulation, the approach taken is to apply the $30 and one-third disregard to the earned income of each individual in the assistance unit rather than to the total earnings of the unit. Each individual receives his own $30 and one-third disregard for four consecutive months. The individual may then not receive the disregard until he has been off AFDC assistance for twelve consecutive months.

A second issue was whether States start counting the four consecutive months as soon as the legislation becomes effective or whether recipients who have received the disregard for four consecutive months prior to October 1 would not be eligible for the disregard on October 1. The decision was made to permit current recipients (i.e., receiving assistance in September) to receive the $30 and one-third disregard for consecutive months from October 1981 through January 1982.

A third issue was whether recipients who did not receive the $30 and one-third disregard for four consecutive months because they, without good cause, terminated employment, reduced earnings, refused an offer of employment, or failed to make a timely report of earnings could be considered to have received the disregard for purposes of the four-month period of eligibility for the disregard. After careful review, we decide that it was the intent of the provision to not extend the $30 and one-third disregard for four additional months under these circumstances. In addition, if an assistance unit asks to have its case closed, we decided to count the months the $30 and one-third disregard was withheld toward the individual's four-month eligibility if the State finds that such action was taken solely to avoid the running of the four consecutive month period.

WIN—Public Service Employment (PSE) disregards. The new legislation and regulations do not change the requirement that the State must disregard the $30 monthly incentive payment and the reimbursement for training-related expenses made by the manpower agency (pursuant to section 432(b)(2) of the Act). Also unchanged is the requirement that the $30 and one-third disregard not be applied to the earned income of public service employees.

Comments: Comments were received objecting to considering money previously excluded and allowed to be set aside for future educational use as a resource. On a related issue, some commenters questioned the regulation requiring the counting of student income of the assistance unit towards the 150 percent of need eligibility test.

Response: We are unable to make any change in response to these comments because the statute clearly requires that all income of every member of the assistance unit be included in determining the unit's gross income as applied to the 150 percent of the standard of need limit. Furthermore, the statute no longer permits any money set-aside for education.

Comment: Several comments were also received regarding a perceived inconsistency between references to students who attend a college or university, in § 233.20(a)(11)(ii)(A), and changes in the age requirements for child recipients at §§ 233.90(b)(3) and 233.29(b)(1)(ii).

Response: We have carefully reviewed the language of these sections and believe no inconsistency exists between the two provisions. It is still possible, although admittedly rare for an eligible 16 or 17 year old to be enrolled in a college or university and be a full-time or part-time student with earnings that would be disregarded. Therefore, no changes were made in language between the interim regulation and the final version.

Comment: Several commenters called attention to the interim regulations at § 233.20(a)(11)(i)(B)(1) which discussed how States were to treat self-employment income. They pointed out that there was conflict between the interim regulation at § 233.20(a)(11)(i)(B)(1) and existing regulations at § 233.20(a)(6) (iii), (iv) and (v). In § 233.20(a)(11) of the interim rules, self-employment exclusions were limited to work expenses directly related to providing the goods and services and without which the goods or services could not be produced. However, regulations at § 233.20(a)(6)(v) continued to permit a comparison of total self-employment expenses with gross receipts in determining the amount of self-employment income to be considered.

Response: We believe discussion of self-employment income is better placed at § 233.20(a)(6) which relates to methods of considering earned income. Therefore, we have moved discussion of self-employment income from § 233.20(a)(11) and amended § 233.20(a)(6). This method of determining self-employment income is to be used for all purposes of the AFDC program.

For consistency with the new statutory requirements, the definition of earned income at § 233.20(a)(6)(iii) has been revised for AFDC. The option of reporting farm income under the OASDI method has been deleted. Determination of earned income from self-employment, including farm income, is defined under § 233.20(a)(6)(v)(B) for AFDC.

Comment: Questions were also raised on how stock and inventory accumulated by self-employed individuals are to be considered.

Response: We believe that stock and inventory are not resources, but goods necessary in the production of goods or services and, therefore, are exempt from consideration as either income or resources. Accordingly, § 233.20(a)(6)(v) is amended.

Comment: Several letters suggested that the amount of work expense disregards applicable to part-time employment and to stepparents whose income is to be counted should be prescribed by the Secretary rather than be left to State decision making.

Response: By law, the Secretary has been given the prerogative to set an amount less than $75 and $160 for part-time employees and stepparents. However, in keeping with the goal of enhancing and expanding State decision making in the AFDC program, and in recognition that State administrators can set these amounts with more precision based on State and local conditions, the Secretary grants this discretion to the States.

Comment: One comment asked how the $30 incentive pay from CETA is to be treated.

Response: The $30 incentive payment available to CETA participants continues to be totally disregarded as income or resources.

Comment: States with approved waivers for later implementation dates for one or more provisions have questioned when to begin counting the four consecutive months limit for receiving the $30 and one-third disregard for current recipients. It was suggested by a commenter that the approved effective date granted under the waiver, rather than October 1, 1981 should be the point to begin counting the four months.

Response: Current recipients can receive the $30 and one-third disregard through the months before the month of the effective date of the waiver or January 1982, whichever is later. We believe this decision has support in the statute and maximizes savings.

Comment: A question was raised about how suspended cases are to be treated for purposes of counting four consecutive months of the application of the $30 and one-third disregard.

Response: Where cases are suspended or terminated because of periodic extra paychecks resulting from an extra regular payday falling within a month which makes the individual ineligible for one month, there is no break in the counting of the four month period. Receipt of an extra pay check periodically is a usual occurrence for people who remain employed throughout the year. To permit a majority of employed individuals to continuously receive the $30 and one-third disregard would circumvent the intent of Congress to limit the $30 and one-third disregard to four months. However, it should be made clear that in these cases the month in which the $30 and one-third disregard is not applied is not counted as a month of receipt of the disregard. For example, if a person is employed, received the $30 and one-third disregard for two consecutive months, and then in the third month received an additional pay check and is ineligible for aid that month, the $30 and one-third disregard is not applied to that month since no aid is given. In the fourth

month, when the person is once again eligible for aid, this fourth calendar month represents the third consecutive month of the application of the $30 and one-third disregard.

Finally, an editorial change was made at § 233.20(a)(11)(ii)(A) to make clear that a person must not be a recipient of AFDC for at least twelve consecutive months before he can be eligible for the $30 and one-third disregard should he or she once again become a recipient of AFDC.

Comment: Several commenters suggested that it would be extremely difficult to prove that a person terminated assistance for the "sole" purpose of avoiding receipt of the $30 and one-third disregard for four consecutive months. They suggested that the regulation should say "primary" instead of "sole" reason.

Response: We agree. Thus, we replaced the word "sole" with "primary" in § 233.20(a)(11)(iii)(D) of the final regulation.

Additional Clarifications of Disregards Based on Our Own Review

Under former law and regulations, States were permitted to provide for the cost of child care for AFDC recipients as a special need. New statutory language on child care disregards considerably tighten this option. States can no longer pay for child care expenses related to employment as a special need. Provision for treatment of these expenses only as an earned income disregard is clearly stipulated by the new statutory change at section 402(a)(8). This does not, however, prohibit a State from providing child care as a special need item in the IV–A State plan as long as it is for purposes other than employment.

We have revised sections in the former regulations that pertain to consideration of actual work expenses and self-employment business expenses that are inconsistent with the new statute.

Retrospective Budgeting and Monthly Reporting (Sections 233.31–233.37 of Final Regulations)

Retrospective budgeting. Consistent with Pub. L. 97–35, these rules amend final rules published (at 44 26075–26084) on May 4, 1979, which specified the budgeting methods States may use in determining eligibility for and the amount of the assistance payments.

These new rules specify that a State must determine eligibility using prospective budgeting and the amount of the payment using retrospective budgeting. Prospective budgeting means that the agency shall determine eligibility for any payment month based on its best estimate of income and circumstances which will exist in that month. States must determine the amount of the grant for the month of application prospectively and at the State's option the following month.

Retrospective budgeting means that the agency shall compute the amount of the payment based on income and circumstances which existed in a previous month, called the budget month. States have the option of making the budget month the first or second month preceding the payment month. However, if a State chooses the budget month to be the second preceding month, it must also pay the second month after application prospectively. Otherwise, in the second month after application when the State changes to retrospective budgeting, the month would be the month prior to application.

Determining eligibility prospectively. The rules require that a State must consider all factors of eligibility prospectively. This means that the State agency shall establish eligibility based on its best estimate of imcome and circumstances which will exist in the month for which the assistance payment is made. For example, a State would determine eligibility for the month of June by considering income and circumstances which are reasonably expected to exist during the month of June. If the agency becomes aware of a change in income or circumstances through information provided on the monthly report, or through direct contact with the client, and the change will make the recipient ineligible for June, the agency would not make the payment for the month. They will not issue a payment even though the recipient had no income in the prior budget month.

Computing the assistance payment in the initial one or two months. States must determine the amount of the payment for at least the first month prospectively, i.e., using its best estimate of income and circumstances which will exist in that month. The statute provides that the State could only determine the amount of the payment for the second month prospectively where the Secretary determined it to be appropriate.

The rules provide that States must determine the amount of the assistance payment retrospectively for the first and second month in certain situations. This rule requires States to compute the amount of the payment retrospectively if the applicant received assistance or would have, except for the restriction on making monthly payments of less than $10, for the immediately preceding payment month.

A second exception is that the State must compute the payment retrospectively for the first and second months if assistance had been suspended (due to an extra pay day) instead of closing the case. Experience with prior regulations on retrospective budgeting shows that when recipients have stable incomes and become ineligible for one month solely because there were five paydays in the budget month, rather than the usual four, the requirement to determine the amount of the payment prospectively serves no useful purpose. In fact, the continuous switching back and forth between propspective and retrospective budgeting is confusing to both agency workers and recipients and is error prone. These rules correct this situation by providing that States shall suspend assistance for one payment month and continue to compute the amount of the assistance payment retrospectively for the following payment months whenever the agency has knowledge of, or reason to believe, that suspension would be only for one payment month, suspension for that payment month was caused by a regular and periodic extra paycheck from a recurring income source, and no significant change in the family's circumstances occurred. (See § 233.34(d) for other circumstances.)

Computing the assistance payment after the initial one or two months. The statute did not change previous regulations which provide that after the initial one or two months of assistance, the amount of each subsequent month's payment shall be computed retrospectively, i.e., on the basis of income received and other relevant circumstances which occurred in the corresponding budget month. There is, however, one situation regarding treatment of income received for a period greater than the budget month. Current Federal regulations at 45 CFR 233.20(a)(3)(iii), which provide that States may average income received by individuals paid on a contractual basis (i.e., school teachers), farmers, self-employed individuals, remain applicable. If a State elects this option, the income must be averaged over the number of months covered under the contract, regardless of whether the employee chooses to receive the income in fewer months than the contract covers or whether it is paid in fewer months at the convenience of the employer. This does not conflict with the requirement that only "income available for current use and currently available resources shall be considered" (45 CFR 233.20(a)(3)(ii)(D)). That regulation is directed against assuming

income not actually received. Income received, for example, in a 10- or a 12-month contract, may be considered as periodic payments of an annual salary and, therefore, may be considered as available for all months regardless of when it is received.

That rationale also supports our decision to permit States to average intermittent income received quarterly, semi-annually, or yearly, such as farm income, over the period covered by the income if it is reasonably expected to continue in the future. In addition, when an eligible individual is added to an existing assistance unit, the rules require a State to reflect that individual's needs in the assistance unit promptly. This means that if a recipient advises the agency that her child was born in June, the agency shall reflect the child's needs in the July 1 payment, even though the child was not born during May, the corresponding budget month.

Computing the payment for the first month in which retrospective budgeting is used. This rule requires States to compute the amount of the payment for the first month in which retrospective budgeting begins by counting all income received during the corresponding budget month (usually the month of application) which is of a continuous nature. Alternatively, it requires that States disregard all income received during the corresponding budget month when there is evidence that the income will not continue.

Monthly reporting. Consistent with Pub. L. 97–35, the rules provide that States require all recipients to submit monthly report forms to the agency. The rules further state that with prior approval of the Secretary the State may exempt certain categories of recipients from reporting monthly. Approval of exceptions will be based on State criteria for assuring that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or payment amount and that the administrative costs of processing monthly reports would be unwarranted. Quality control data findings and error prone profiling systems should represent good sources of information upon which to base justifications.

Families required to file reports each month must do so as a condition of eligibility for receipt of AFDC as well as for continuation of benefits associated with receipt of AFDC, e.g., Medicaid, when recipients do not receive a payment due to the prohibition on payments of less than $10 or the application of the recoupment provision.

Content of the monthly report. Previous regulations contained in 45 CFR 233.28, which address monthly reporting, are deleted for AFDC. The new rules for AFDC reporting under § 233.36 require that the States collect information on the budget month's income, family composition, and other circumstances relevant to the amount of the assistance payment. The rules also specify that recipients must report changes in income or other circumstances which the assistance unit expects to occur in future months which affect continued eligibility. We have deleted the previous detailed requirements relating to the content of the form in order to ensure that State agencies have maximum flexibility in designing the report forms to meet their own program requirements. We no longer require States to provide a stamped, self-addressed envelope for return of the monthly report, but will match such costs if the State opts to do so.

In addition to requiring that recipients submit a monthly report form to the agency, States must direct recipients to contact the agency, rather than waiting to submit the report form, when they become aware of expected changes which will affect their eligibility. For example, States should tell recipients to call their caseworker as soon as they know they will be employed.

Timely reporting. The new statute specifies that none of the earned income disregards in section 402(a)(8)(A)(ii–iv) of the Social Security Act will be applied if the monthly report, required under these regulations, is not filed "timely."

States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes in earnings which impact eligibility. States must inform recipients what constitutes timeliness and that no disregard of earnings as described in § 233.20(a)(11)(i)(B) as well as (a)(11)(ii) ($30 and one-third, child care, and work expenses) will be applied to any earnings which are not reported in a timely manner.

Because of the substantive changes to the statute on the timely reporting requirement and due to the mandatory retrospective budgeting, we will not be publishing proposed rulemaking on the prior statutory language enacted in June 1980 in section 302 of Pub. L. 96–272.

What happens if a completed monthly report is received on time. If a completed monthly report is received on time, the rules require States to process the payment and notify the recipient if there are changes from the prior payment and the basis for those changes. The agency must mail the notice at the same time as the resulting payment or in lieu of the payment if assistance has been terminated or suspended. A recipient whose benefit is reduced or terminated is protected because he or she may have his or her previous month's level of assistance reinstated by requesting a fair hearing within 10 days of the date of the notice.

What happens if a completed monthly report is received by the agency. Section 233.37(b) of the interim regulations addresses situations in which recipients either fail to return monthly reporting forms prior to the State's due date or return incomplete forms. When this occurs, these rules provide that States are required to notify recipients not later than the expected payment date that the report was not received or that it was incomplete and, accordingly, no check is being issued and assistance is being terminated.

If recipients notify the agency and file a completed report within 10 days of learning their assistance has been terminated, the rules require States to accept the replacement form. The States must reinstate assistance if the information on the replacement form indicates that the recipient is still eligible. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his right to a fair hearing and his right to have assistance reinstated at the prior month's level, if he files for a hearing within 10 days of the date of the notice.

Supplemental payments. Previous regulations at 45 CFR 233.23 are deleted because supplemental payments are prohibited. In its place under § 233.32 the States are required to specify the time period covered by the payment (payment month) and the period used to determine the amount of that payment (budget month). This is necessary for quality control purposes.

Comment: Many commenters at the conferences in Philadelphia and Phoenix asked for clarification of policy regarding the prospective determination of eligibility. They were particularly concerned that it would require recoupment of a payment issued on the first of the payment month because a State would be unable to predict that the recipient's income circumstances would change during that month.

Response: The requirement to determine eligibility prospectively means that a State shall not make a payment to any family for any payment month when there is a reasonable expectation that the family will not meet all factors of eligibility for that month.

For example, when a recipient starts working in June, and advises the agency promptly, the agency must determine whether the new income which the recipient expects to receive will render the assistance unit ineligible for any month and, if so, when the period of ineligibility begins. If still eligible for both June and July, no change is made. Any increase in countable income in the budget month will result in a lower payment in the corresponding payment month. If the unit will be ineligible for June and July, the State must terminate the unit and recover any money issued for either month.

Note.—To the extent the previously issued payments were based on accurate, timely reports and were computed correctly, no Quality Control (QC) error exists even though the amount paid is an overpayment and must be recovered.

If the unit will be ineligible in June but not in July—if, for example, one unit member gets a relatively high paying but short-term job—the State may either terminate for June and recover any payment issued for June or later, or the State may suspend for the payment month which corresponds to the June budget month. If the unit will be eligible for June but not for July, then the State must determine whether the ineligibility is expected to continue through August. If not, the State may either terminate for July or handle the case through a suspension during the payment month corresponding to the July budget month. If the ineligibility is expected to continue through August, the State must terminate effective with the July payment month and, if a July payment has been issued, recover it.

Comment: Several commenters asked how to apply the striker provision at 45 CFR 233.106(b) under retrospective budgeting.

Response: The striker provision is a factor of eligibility for the month of payment. If a recipient participates in a strike on the last day of a payment month, any payment issued for that month is an overpayment. Under certain conditions, payment may be withheld the same as for other changes in circumstances under retrospective budgeting. (See § 233.20(a)(13)).

Comment: One commenter asked whether the 150 percent eligibility test is ever applied retrospectively based on a monthly report.

Response: The statute is clear that there is no assistance payment payable for any month in which the assistance unit is not eligible. Factors of eligibility must be applied both prospectively and retrospectively whenever the State learns of a change in circumstances which results in ineligibility. It is not material when the State is made aware of the change. Similarly if a prospective ineligibility decision were made and, later, circumstances changed which, viewed retrospectively, allowed the unit to actually be eligible for that same period, the unit is eligible and assistance must be reinstated.

Comment: Several commenters oppose § 233.34(c) which requires a State to compute the amount of the payment for the initial month of assistance retrospectively if assistance had been suspended. They contended that the statute requires that a prospective determination be used if the month follows a one-month period of ineligibility. Furthermore, they are concerned that families who were denied assistance prospectively because of anticipated income will later be denied assistance based on that same income.

Response: The Congress recognized that many families apply for assistance following a loss of income. In order to avoid a waiting period which might result if the payment at application were based on prior earnings, the statute requires that the payment for the first month in a period of consecutive months shall be computed prospectively. Suspension is consistent with this concept. Suspended cases can only be reinstated retrospectively if the family's circumstances have not changed significantly from those reported in the budget month. This avoids a delay in payment that would result if the family was required to reapply. Furthermore, it facilitates the administration of retrospective budgeting.

Comment: Several commenters requested that States be permitted to suspend cases for any reason, e.g., when there is ineligibility for one month because of a lump sum payment. Others asked whether suspension is an option.

Response: The optional suspension provision was purposefully very narrowly drawn to permit suspension only when there is an extra paycheck in a month based on the calendar but the individual's actual earnings have not increased. However, there are convincing administrative reasons for suspending recipients whenever ineligibility for only one month occurs and § 233.34(d) is revised to authorize such actions. However, all other situations which result in loss of eligibility for more than one month represent ongoing changes in circumstance which must be treated as terminating events.

Comment: Several commenters stated that the regulations were not clear as to when the agency must reflect the needs of an individual who is prospectively added to an assistance unit.

Another commenter asked whether the agency must count the individual's income prospectively. Other commenters asked whether this provision conflicts with Section 403(a)(5) of the Act which prohibits supplemental payments.

Response: The rule at § 233.35(a) has been revised to require States to meet the needs of eligible individuals added to an existing assistance unit as if such individuals were applicants for assistance. For example, a mother reports to the agency on June 15 that her baby was born on June 10 or that her 16 year old child moved back home. If the State pays back to the date of application, it must issue a payment to meet the needs of the newborn or the 16 year old back to June 15. If the individual has income, the income should be counted prospectively in determining the individual's need.

The requirement to reflect the needs of an individual added to an existing unit prospectively does not conflict with section 403(a)(5) of the Act. That section of the statute prohibits supplemental payments required by 45 CFR 233.27 in effect for AFDC prior to the Omnibus Budget Reconciliation Act and is still in effect for Titles X, XIV, and XVI. Those supplemental payments were required under AFDC to reflect a significant reduction is income under retrospective budgeting systems.

Comment: Commenters suggested that the problem, which § 233.35(b) corrects also occurs in the second month of retrospective budgeting if a State computes the amount of the payment prospectively for the initial two months. That is, income which is not of a continuous nature is counted twice, once to determine the second month's payment and again in the second retrospective budgeting month. They proposed that § 233.35(b) be expanded to include the second month of retrospective budgeting.

Response: We have revised the rule at § 233.35(b) to require that for the first and the second month in which retrospective budgeting is used, States may not count income reported for the budget month if that income is not of a continuous nature.

Comment: Several commenters were opposed to the granting of State flexibility in the composition of the monthly report. They suggested that the final rule should incorporate the monthly reporting requirements in § 233.28 which were retained for Titles X, XIV, and XVI.

Response: We believe States require greater flexibility to design their own monthly reporting forms and to establish time frames and procedures for mailing and receiving of the forms which are more consistent with their own needs.

Comment: Many commenters suggested that 6-month eligibility redeterminations be eliminated if a State requires a recipient to complete a comprehensive report each month which addresses all factors of eligibility.

Response: The requirement for monthly reports by recipients and the requirement that States make 6-month redeterminations are separate and independent requirements. Monthly reports cannot substitute for scheduled redeterminations. However, consideration is being given to possible rulemaking which would permit error prone profiles to be used as the basis for redetermining low risk cases at intervals greater than every 6 months but not less frequently than every 12 months.

Comment: Several commenters were opposed to requiring agencies to direct recipients to report changes as soon as they become aware of them in addition to submitting a monthly report form. They said that this imposes a substantial burden on recipients and is not permitted under the statute.

Response: Section 233.36(c) is consistent with the statutory language and is necessary to meet the requirement that eligibility be determined prospectively. Section 420(a)(14)(A) of the Act requires that recipients complete a monthly report on their income and circumstances and references "other reports or information received by the State agency." Under prospective eligibility, agencies are required to discontinue payments to ineligible recipients immediately. They must know promptly about changes which impact eligibility. Both States and recipients benefit from the early reporting of changes because it avoids overpayments, underpayments and subsequent corrections. States may want to reduce the number of contacts by clearly defining the changes which they want recipients to report to the agencies in addition to the monthly report.

Comment: Many commenters asked whether a State must provide timely notice when assistance is terminated based on information received through a method other than the monthly report.

Response: Sections 233.37 (a) and (b) permit States to dispense with timely notice (as defined at 45 CFR 205.10(a)(4)(i)(A)) when they reduce or terminate payments based on information provided in a monthly report or if the agency terminates assistance because it did not receive a completed monthly report. However, under § 205.10(a)(4)(i)(A) if an agency takes action to reduce, suspend, or terminate assistance through a method other than the monthly report or other exceptions already listed in § 205.10(a)(4)(ii), (iii), (iv), it must provide that requirements for timely notice are met.

Comment: One commenter raised the question as to whether the timely reporting penalty can be invoked if a recipient does not report a change, or whether it can only apply when a monthly report is filed late, or when pertinent data is omitted from the monthly report. A second comment asked whether the earned income disregards can be disallowed solely for failure to complete sections of the report which are unrelated to the earned income.

Response: The regulations at § 233.37(c) provide that States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes which impact on eligibility. This rule is consistent with the statutory language of Section 402(a)(8)(B) which ties the timely reporting requirement to Section 402(a)(14), which speaks to other reports or information received by the agency in addition to the monthly report. Therefore, the timely reporting penalty can be invoked if a recipient does not report a change timely and there is not good cause for reporting the change late. In response to the second comment, the earned income disregards under this provision can only be disallowed if the recipient fails to make a timely or accurate report of earned income. We have modified § 233.37 (b) and (c) to emphasize this.

Comment: Several commenters expressed concern about how Title IV–D requirements mesh with retrospective budgeting.

Response: Under 45 CFR 232.20, the IV–A agency must use collections on a monthly support obligation to redetermine eligibility for assistance not later than the second month after the month in which the report was received from the IV–D agency. This reported amount, in addition to any other sums or changes in circumstance given in a monthly report, will be used to determine eligibility for the payment month. If the reported support collection does not cause ineligibility (either alone or in combination with other income), the reported support collection is not used in the computation of the assistance payment.

Comment: One commenter stated that averaging seasonal and self-employment income over the actual months of employment conflicts with the statutory provisions for retrospective budgeting which provide that payments for a month are to be based on income received in a prior month.

Response: After careful review we do not agree that the statutory language for retrospective budgeting compels a change in the long-standing policy which allows States to prorate income when individual case circumstances warrant it. To do otherwise would result in eligibility for AFDC by some with high annual incomes who can manipulate the receipt of that income. This would fly in the face of the congressional concern that benefits go only to those most in need.

Comment: Several commenters were concerned that the Secretary did not limit the circumstances under which a State may use a two month retrospective budgeting system. They believe that the Congress meant to impose an obligation on the Secretary to define the circumstances under which States may use a two month retrospective budgeting system.

Response: The Secretary has the authority to permit States to have a two month retrospective system with a payment date as late as the last day of the second month. States need flexibility to establish time frames in recognition of their processing capabilities.

Eligible Aliens (Sections 233.50–233.52 of Final Regulations)

Pub. L. 97–35 requires States to provide under the AFDC program only for the needs of U.S. citizens and aliens who are lawfully admitted for permanent residence or otherwise lawfully residing in the United States on a permanent basis under the color of law.

The regulations at § 233.50 on citizenship and alienage are now revised to add new references made in the 1980 amendments to the Immigration and Nationality Act (Pub. L. 96–212). These changes recognize the elimination of certain restrictions on conditional entrant refugees in Section 203(a)(7) in effect prior to April 1, 1980 and expansion of the definition of these refugees within a new Section 207(c) effective after March 31, 1980. Section 203(a)(7) still however, applies to aliens who were granted legal resident status prior to April 1, 1980. The revision also recognizes the eligibility status of aliens who are admitted under the new political asylum procedures of Section 208 of that Act. The eligibility status of

aliens temporarily paroled as refugees into the U.S. at the discretion of the Attorney General under Section 212(d)(5) of that Act also continues unchanged in this regulation.

Attribution of a sponsor's income and resources to an alien. State Agencies now have to consider the income and resources of a sponsor when determining the financial eligibility of certain aliens applying for AFDC.

This requirement applies to legally admitted aliens, unless specifically exempted, who apply for AFDC for the first time after September 30, 1981 for 3 years after their entry into the United States. We define an alien's "date of admission or date of entry" to be the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

Aliens who are exempted from this provision are aliens who were:

- Paroled into the U.S. as refugees;
- Granted political asylum by the Attorney General;
- Admitted as Cuban or Haitian entrants;
- Admitted under Section 203(a)(7) of the Immigration and Nationality Act prior to April 1, 1980;
- Admitted under Section 207(c) of the Act after March 31, 1980.

Alien children of sponsors (or such sponsors' spouses) are also exempted.

The alien is responsible for obtaining the cooperation of his or her sponsor and supplying the information and documentation which the agency requests to determine the alien's eligibility. This will include material provided in support of the alien's immigration application.

Aliens who do not obtain this cooperation or supply this information will not be eligible for assistance.

The agency will determine if the alien has a sponsor and if that sponsor signed an agreement to guarantee the alien's support.

Under the approach taken in the interim final regulations, a sponsor is a person who signed an affidavit or other statement accepted by INS as an agreement to support an alien as a condition of the alien's admission for permanent residence in the United States.

Under the law, the Department of Justice and the Department of State are to inform sponsors that information they supply will be given to HHS and that they may be asked for additional information if the aliens apply for AFDC benefits.

- When the State evaluates whether to deem income and resources, the income and resources of a sponsor who is receiving AFDC or SSI will not be counted in determining deemable income or resources. We believe that, while the statute attempts to reinforce the obligation of the sponsor to support, when a sponsor has been determined as financially needy under one of these benefit programs, his or her income and resources have been considered in determining the amount of his or her payment. The individual's income and resources should not be deemed available for the support of others.
- A portion of the earned and unearned income and resources of the sponsor and the sponsor's spouse (if they are living together) will be counted as available to the alien. The spouse's income and resources will be counted even if the sponsor and spouse have married since the signing of the agreement. Amounts specified in the statute will be set aside for work expenses, living expenses, and payments of alimony or child support.
- We disregard actual payments to dependents outside the home. We define "dependent" as used in the Internal Revenue Code for personal income tax purposes. We were concerned that a sponsor might arrange to pay large amounts to a dependent in an attempt to avoid the deeming procedure. We considered placing a ceiling on the amount that a sponsor could claim as payment to a dependent outside the home. However, we have concluded that we will allow actual payments as a deduction in deeming.

The agency will assess the sponsor's *current* ability to support. The agency may require the alien to provide this information. INS reports that sponsors frequently revoke their sponsorship agreement. Although there is no INS requirement for the alien to obtain a new sponsor, our deeming requirements are not waived. Agencies will, therefore, consider the income and resources of the individual who executed the support agreement even if the person claims to have given up sponsorship responsibilities. Deeming of income and resources occurs for purposes of determining eligibility whether or not the income and resources are actually available to the alien.

There are individuals who agree to sponsor a number of alien families. The statute is clear that when a person sponsors multiple alien families living together, the income of the sponsor will be divided equally among the aliens. The statute does not address the distribution of deemed income and resources from a sponsor to multiple aliens when the aliens are not living together. The agency will consider the total deemable income and resources from a sponsor in determining the needs of eligible aliens. Therefore, if a person sponsors four alien families and only one applies for assistance, the sponsor's total deemable income and resources would be applied to the needs of the one family. If three of the alien families applied for AFDC, then the sponsor's total deemable income and resources would be divided in proportion to the number of sponsored aliens in each unit. If the sponsor actually gives the alien more than is needed to meet his or her need, the excess will be counted in determining the needs of unsponsored children in the same assistance unit.

Overpayments to aliens where sponsors provided income information. Where the sponsor fails to provide correct information, the sponsor and alien are liable for any overpayment except where such sponsor was without fault or where good cause existed. Recovery will be made by the State through its regular recoupment procedures. Any overpayment under this section not repaid or recovered must be withheld from subsequent payments to which the alien or sponsor is or becomes entitled under any Social Security Act program. The State must define its procedures for determining "good cause" or "without fault" in its approved State plan. The State may then declare that the sponsor was without fault or had good cause for failure to provide correct information in accord with its approved State plan procedure and the sponsor would not be liable for the overpayment. (The preamble to the interim regulations stated that neither the sponsor nor the alien would be liable for overpayments where the sponsor was without fault or had good cause; however, we have revised this position in response to a comment addressed below.)

Comment: One commenter asked to what extent an alien has an obligation to submit monthly reports on the income of his or her sponsor and the effect on unsponsored family members of failure to provide such information.

Response: The final regulation states that a sponsored alien's eligibility is contingent both on providing necessary information with respect to the sponsor and on obtaining any cooperation necessary from the sponsor. The information submitted by the alien in the monthly report must be sufficient to permit a determination of the sponsor's income and resources deemed available to the alien for that month. A sponsored

alien is ineligible in any month in which adequate information concerning the sponsor's income and resources is not provided, regardless of the reason the alien failed to provide the information. Unsponsored family members are not ineligible if a sponsored alien fails to provide information concerning the sponsor; however, any income the unsponsored family members actually receive from the sponsor must be reported and considered in determining their eligibility. Accordingly, § 233.51 has been revised.

Comment: One commenter suggested that we clarify in the regulations that the income and resources of a sponsor's spouse must be considered for purposes of deeming.

Response: We have revised the language at § 233.51 to reflect this comment.

Comment: The Act now requires that the Secretary enter into agreements with the Attorney General and the Secretary of State to obtain information necessary to implement the new alien eligibility provisions. One commenter requested that the regulations describe the type of information that will be exchanged and specify the procedures States should follow to obtain this information.

Response: We are working with the Department of Justice and the Department of State to develop these procedures.

Comment: One commenter requested that the provision at § 233.51(c) concerning dividing a sponsor's deemable income and resources when he or she sponsors more than one alien be amended so that all sponsor's income and resources would be deemed to each alien unless sponsored aliens reside in the same home.

Response: The statute does not address deeming from one sponsor to two or more aliens living separately. However, we did not accept this comment because we do not believe that Congress intended an unreasonable result. To do otherwise would result in determinations that more than 100 percent of the sponsor's income and resources is available to meet the sponsor's need and the need of the sponsored aliens.

Comment: The interim regulation (at § 233.51(b)(2)) requires that if the alien and the sponsor reside in different States, the monthly resources deemed available to the alien are determined as if the sponsor were applying for assistance in his or her State of residence, less $1500. One commenter believed that if the alien and sponsor reside in different States, the resource rules of the alien's State of residence, rather than the sponsor's State of residence, should be used.

Response: We agree with the commenter that this change would eliminate the administrative inconvenience and potential for error that would exist when one State is required to obtain and apply the resource rules of another State. We have accepted this comment and have revised § 233.51(b)(ii)(A) of the regulations accordingly.

Comment: One commenter requested that we require deeming of the income and resources of organizations and institutions that sponsor aliens.

Response: Under the new statute, the nature of the income disregards for the sponsor (e.g., the appropriate cash needs standards, child support and alimony payments) indicates that they were intended to apply only to individuals who sponsor aliens. Accordingly, we do not believe there is current authority under the Social Security Act to deem income to aliens from sponsoring organizations or institutions.

Comment: One commenter questioned the effective date of the provision (at § 233.50(b)(1)) concerning the eligibility of refugees admitted under section 207(c) of the Immigration and Nationality Act.

Response: The effective date of section 207(c), which appeared incorrectly in the interim regulation, has been corrected in the final regulation.

Comment: We received an inquiry regarding the provision for calculating the monthly income deemed available to an alien from a sponsor. There was concern that the regulation could be interpreted to require that the full amount of costs associated with self-employment income be disregarded twice.

Response: This was not the intent of the deeming provision, and the language at § 233.51(b)(1)(i) has been clarified.

Comment: Section 415(d) of the Act now requires that any overpayments to an alien which are not recovered must be withheld from future benefits to which the alien or the sponsor (for overpayments for which the sponsor is held liable) otherwise would be entitled under the Social Security Act. Two commenters requested that we include in the regulation the procedures that States should follow to implement this provision.

Response: A similar provision was enacted with respect to overpayments to aliens under the suppplemental security income program. Due to the complexity of the requirement, we have not yet developed implementing procedures; however, we will develop procedures which can be used to accommodate the requirement for both programs. After we develop procedures, we will determine whether it would be appropriate for those procedures to be published as regulations.

Comment: We also received an inquiry about aliens' liability for overpayments. Section 233.52(b) of the interim regulation states that if a sponsored alien receives an overpayment due to the sponsor's failure to provide correct information, the sponsor and the alien are jointly and severally liable, except that where the sponsor was without fault or where good cause existed, the sponsor will not be held liable and recovery will not be made.

Response: The preamble to the regulation incorrectly stated that the alien would also be exempt from liability when the sponsor was without fault or had good cause. We do not believe that Congress intended to single out one category of AFDC recipients from whom recovery of overpayments is not made. Therefore, we have amended the regulation (at § 233.52 (b) and (c)) to clarify that in the case of any overpayment to an alien, only the sponsor is exempt from liability when he or she was without fault or had good cause.

Strikers (Section 233.106 of Final Regulations)

The statute contains a new provision which requires States to deny AFDC benefits to persons participating in a strike. Previously, the program did not specifically prohibit AFDC benefits to those who were engaged in a strike. Regulations, however, did give States the option of prohibiting payment to AFDC–UP families if the qualifying parent's unemployment resulted from participation in a labor dispute.

The new regulation requires that the State plan must provide for the denial of AFDC benefits to strikers. The statute provides for this denial of benefits to any family for any month in which any caretaker relative is participating in a strike on the last day of that month. For the interim final we interpret this portion of the regulation to apply to any caretaker relative, regardless of whether that relative is legally or non-legally liable for the support of the dependent child and regardless of whether that relative is needy or non-needy. The regulation also provides that the State must deny AFDC benefits to any individual (other than the caretaker relative) for any month in which that individual is participating in a strike on the last day of the month. If the individual is the only dependent child in

the family, the State will deny assistance for the family. If the individual is one of several children or other individuals in the family, the State will deny assistance for that individual and will not take into account that individual's needs in determining the need for assistance.

The regulations require States to define a "strike" according to the National Labor Relations Board (NLRB) definition (29 U.S.C. 142) or any other definition of the term that is currently in State law. We considered several alternatives, including allowing the States to define the term, requiring the States to use a Federal definition or another definition of the term in State law or rules which the State already uses for any other State purpose, or requiring a Federal definition of a strike. We decided to permit States to use the NLRB statute or a definition already in State law. The regulations require States to define "participating in a strike" in their State plan. The State must deny assistance for any month in which the caretaker relative or other individual participates in a strike on the last day of the month.

If the caretaker relative or individual is participating in a strike on the last day of the month and if the payment for that month has been made, the State must recoup that payment and take action to stop future payments where it is anticipated that the strike will continue. States must use regular recoupment procedures in these instances.

Comment: One commenter questioned whether the denial of AFDC to a family should occur when the caretaker relative is not a parent and another commenter also questioned the denial if the caretaker relative is not included in the assistance unit and is not legally responsible for the children in the assistance unit.

Response: After careful review of the legislative history, we agree that Congress did not intend for strikers who are not natural or adoptive parents of AFDC children to result in denial of aid to the assistance unit. On the other hand we find no support for the concept that the family could continue to receive AFDC if the natural or adoptive parent who strikes is not a member of the assistance unit. We have included a definition in §233.106(b) to define "caretaker relative" for purposes of this provision as a natural or adoptive parent. Any other caretaker relative in the assistance unit will, by striking, only have his or her needs not included in the grant.

Comment: One commenter suggested that the requirement that ineligibility for a month based on being on strike on the last day of that month be instead based on the monthly report following that month and apply to the corresponding payment month.

Response: We agree, but point out that it may only be used if the ineligibility is expected to be for only one month. If the individual is on strike on the last day or two or more consecutive months and no payment is due, as a result, any payment issued in those months must be recovered.

Comment: One commenter suggested that Federal definitions of "strike" and "participating in a strike" should be used exclusively or that States be strictly scrutinized to ensure that their definitions, if other than Federal, conform with Congressional intent.

Response: While we do not agree that a single, Federal definition is required by the statute—nor is such a single definition supported by the legislative history—we will, of course, through our process of approval of State plans and our compliance process, ensure that Congressional intent is not subverted.

Age Limit of Dependent Child (Section 233.90 of Final Regulations)

The provision limits AFDC eligibility to children under age 18, or at State option, children under age 19 who are full-time students reasonably expected to complete a program of secondary school (or the equivalent level of vocational or technical training) before reaching age 19. For example, an 18 year old who will complete high school before reaching age 19 is eligible. However, an individual who will become 19 before completing high school is ineligible once he or she reaches 18. Also an 18 year old who has completed high school and who is in a vocational training program that will be completed before he or she reaches 19 is ineligible. This is the case because after a child reaches 18, eligibility for AFDC may continue only until the secondary education or equivalent training is completed.

The major issue considered in developing the regulation was whether we should provide Federal definitions for "full-time student" and other terms used in the statute. The decision was that it shall be left to each State to define full-time student in accordance with State law, to determine which vocational or technical training courses are equivalent to the level of secondary school, and to decide which factors the State agency will consider in deciding whether an individual may reasonably be expected to complete the program of study or training before reaching age 19. Leaving these definitions to each State permits States maximum flexibility to develop definitions that are consistent with their own State laws and Board of Education policies.

Comment: We received one comment requesting that we include in the final regulation the definition of "full-time student."

Response: In developing the interim regulation, we considered a Federal definition but decided it should be left to each State to define "full-time student" in accordance with State law. The Act (at Section 406(a)(2)) was amended to delete the requirement that the Secretary issue standards with respect to school attendance and we believe that leaving these definitions to the States allows flexibility to develop definitions that are based on and are consistent with individual State laws and Board of Education policies. Accordingly, we have not changed this in the final rule.

Comment: We also received one comment requesting that we define "secondary school" and provide guidelines for determining "the equivalent level of vocational or technical training."

Response: In the past, we have allowed States to use definitions that were consistent with State laws and policies. In the absence of a statutory requirement or other compelling reason to regulate in this area, we have decided to continue to allow States to develop their own definitions.

In developing definitions to implement this provision, States should consider the intent to limit assistance to 18 year old children. Congress intended that AFDC be available to an 18 year old child only if he or she is enrolled in a program below the college level and may reasonably be expected to complete the program before he or she reaches age 19.

Adjustment of Incorrect Payments (Section 233.20(a)(13) of Final Regulations)

Under prior regulations States were allowed, but not required, to collect overpayments. If they collected overpayments they had to also make underpayments. In cases where the overpayment was caused by a recipient's willful withholding of information, recovery could be made from any income and resources and the assistance payment. However, the State had to determine that the monthly amount to be recovered would not cause undue hardship. In cases where the recipient did not willfully withhold information the State could recover only

from any available income and resources.

States could waive overpayments and underpayments where administrative cost exceeded the amount to be recovered or paid. Corrective underpayments were not considered as income or resources for purposes of determining the recipient's continuing eligibility and amount of assistance.

Based on the new legislative provision, these regulations require that each State must attempt to recover all overpayments. The State must also pay all underpayments to current recipients. There is no distinction between willful and non-willful withholding of information by the recipient. States must promptly take all reasonable and practical steps to correct and collect any overpayment that is known to the State. A State may recover each month from any income, liquid resources and assistance payments as long as the assistance unit retains from its combined income, liquid resources, and assistance payment an amount equal to 90% of the amount payable under the State's plan to an assistance unit of the same composition with no other income.

In cases where the assistance unit which received the overpayment is no longer eligible, or the person responsible for the overpayment has left the household, a State under its appropriate laws, can recover from the individual who caused the overpayment or from any other individual who was a member of an overpaid assistance unit.

Any underpayment must be promptly corrected if the affected assistance unit is currently eligible—or would have been currently eligible if the error had not occurred. However, no underpayments to other former recipients can be matched because they are no longer in current need. Corrective payments cannot be considered as income or as a resource either in the month the payment is made or in the following month.

The statutory language does not address the issue of waivers for cost effectiveness. The Act requires correction of "any" overpayment or underpayment. We believe that it is cost effective to attempt to recover all overpayments. If an attempt is not made, it cannot be determined that the overpayment could not be recovered. Furthermore, we believe there is a deterrent effect. Also, other unrelated overpayments are often discovered. In all situations in which the overpayment is made to a current recipient, recovery must be accomplished either through direct reimbursement and/or from the grant.

If an assistance unit has both an outstanding overpayment and an underpayment, the State may offset one against the other before adjusting the incorrect payment.

Where a former recipient with an outstanding overpayment reapplies and is found to be eligible the State must recover the overpayment considering the current income, resources, and assistance payment of the recipient in determining the monthly recovery amount. Similarly, the State must make corrective payments to a former recipient who has an outstanding underpayment, who reapplies and is found to be eligible.

Comment: Three commenters wrote that States should be prohibited from recovering overpayments that occurred prior to October 1, 1981. Conversely, two commenters wrote that the interim rules should be applied to any overpayment prior to October 1, 1981.

Response: The statute requires that *any* overpayment be recovered. Therefore, any overpayment identified after the effective date of the statute October 1, 1981 must be recovered whether or not the overpayment actually occurred prior to or after October 1, 1981. Underpayments identified after October 1, 1981 must be treated in the same manner. We have added § 233.20(a)(13)(iii) to make this clarification.

Comment: Four commenters wrote that there should be some time limit or statute of limitations in adjusting incorrect payments. Two of the commenters wanted to treat underpayments differently than overpayments with respect to time frames and who caused the underpayment.

Response: There is no basis in the statute or legislative history for treating overpayments and underpayments differently. Also, the statute requires the correction of all overpayments or underpayments. We do not believe that the statute allows the flexibility to establish time limits. Also we believe that it is cost effective to attempt to recover all overpayments. If at least an attempt is not made to recover an old overpayment, it cannot be determined that the overpayment is not recoverable.

Comment: Three commenters wrote that the rules should address cases where a correct payment is made in the payment month and circumstances during the month subsequently change.

Response: We agree, and § 233.20(a)(13)(i) has been revised to permit the State to adjust for the change in circumstances in the corresponding payment month, as long as no more than one such payment month is used consecutively, rather than recover against the budget month. We believe that this allows States the flexibility needed to utilize their retrospective budgeting systems to avoid unnecessary recovery activity and at the same time adjust for this type of overpayment.

Comment: Three commenters requested that in defining whether in determining the amount available monthly for recovery, we indicate whether the State should use the income, resources, and aid in the payment month or the budget month. One of the commenters recommended the budget month, citing that the income and resources would have to be estimated for the payment/recovery month and that recipients would have an incentive to dispose of resources so that they would not be included in the calculation.

Response: While we understand these problems, the statute stipulates that the aid payable for any month cannot be less than 90% of the payment standard for that month for an assistance unit with no other income. In addition, serious inequities could result in cases where in the payment month the income assumed available in the budget month was in fact no longer available. Therefore, we believe that the statute and equity require that the payment month should be used in calculating the monthly recovery amount.

Comment: Four commenters suggested that recovery should be limited to the individual causing the overpayment or to the caretaker relative, particularly where the responsible party moves from the unit which received the overpayment to a new unit. Also, three commenters recommended that States have the option of choosing which recovery source to utilize.

Response: Because all individuals in the assistance unit receive the benefit of the overpayment, each member has a responsibility for the overpayment. The statute provides that aid to a family that has a recipient who has an outstanding overpayment shall be reduced or the individual may repay. Any individual who has been a member of a unit which has received an overpayment and moves to a new unit carries to the new unit a responsibility to repay the overpayment. The State can choose to recover from any or all available recovery sources; the current unit, a unit to which a member of the original unit has moved, or any individual from the overpaid unit whether or not currently eligible.

Comment: Two commenters suggested that underpayments should be made to former recipients. One of the commenters

wrote that it was inequitable to require reconciliation of the EIC, and recovery with respect to overpayments to former recipients, and not require States to make EIC related underpayments to former recipients.

Response: Payments under title IV–A are intended for individuals who have current need. Accordingly, it is not appropriate to make payments to former recipients who are no longer in need.

Comment: Two commenters expressed concern that the rules do not allow States to cease attempts to recover overpayments unless court action is initiated and that this often would not be cost effective.

Response: We do not intend that each overpayment case be pursued through litigation. However, the State should make an attempt to recover each overpayment and all reasonable steps should be taken in accordance with State law. In determining how to collect the overpayment the State generally has the flexibility to decide whether court action is appropriate.

Comment: One commenter was concerned that the formula for determining the monthly recovery amount was too severe and could be punitive.

Response: The statute and regulations explicitly define the maximum that a State may recover each month. States are free to establish varying recovery rates less than the maximum rate as long as the recovery is prompt. If more than one rate is established the State must define the criteria for applying the rates and assure that they are applied equitably and on a statewide basis.

Comment: One commenter suggested that in cases where there is an outstanding overpayment and no monthly payment is made because the payment amount is less than $10, that the amount not paid be used to offset the outstanding overpayment.

Response: Under the statute no payment of aid can be made when an assistance unit is eligible for less than $10. Since payment cannot be made, we do not agree that a subsequent outstanding overpayment should be offset because to do so would, in effect, treat the amount under $10 the same as if it were a payment and, thereby, be contrary to the statute.

Comment: One commenter suggested that we should not require States to recover overpayments that result from administrative errors.

Response: We do not believe that the statute permits exceptions to recovery nor does it differentiate based on the source of error. This includes overpayments that result from so-called technical errors related to IV–D, IV–C and enumeration. These technical requirements are conditions of eligibility under the law. If not met and a payment to an ineligible individual has occurred, it must be recovered.

Comment: One commenter suggested that an agreement by a recipient to reimburse should be recognized as payment.

Response: There is no support in the statute or legislative history to suggest that an intent to repay constitutes payment.

Comment: One commenter recommended that the rules stipulate that any underpayment resulting from an inaccurate report by a recipient should not have to be corrected.

Response: We do not agree. The statute requires that any underpayment be corrected just as any overpayment must be corrected. It is only equitable that we treat both types of incorrect payments in the same manner.

Comment: One commenter requested that we define overpayment and address the point at which an overpayment occurs.

Response: We have amended the rule at § 233.20(a)(13)(i) in response to these requests to define both overpayment and underpayment. We have also taken the opportunity to clarify "prompt" recovery of an overpayment at § 233.20(a)(13)(i)(F). Prompt recovery of an overpayment means that a State must take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified: (1) Recover the overpayment, (2) initiate action to locate and/or recover the overpayment from a former recipient, or (3) execute a monthly recovery agreement from a current recipient's grant or income/resources.

Comment: One commenter suggested that refusal to cooperate in repayment of an overpayment from an assistance unit's income and resources, where the State is entitled to repayment from those sources, should constitute a condition of eligibility allowing the State to terminate assistance to the caretaker relative.

Response: Neither the statute nor the legislative history support making refusal by a recipient to repay an overpayment from his/her income and resources a condition of eligibility. There is explicit statutory authority for all conditions of eligibility, including child support assignment, registration for WIN and securing a social security number. We have therefore added language to § 233.20(a)(13)(i)(B) that clarifies that States should pursue repayment in these situations by taking appropriate action under State law.

Comment: One commenter wrote that we should specify that States maintain records ralating to identifying and recovering overpayments to current and former recipients.

Response: We agree. Currently there is little data available in States and no report is required by the Federal government. We believe that necessary records should be maintained so that State and the Federal government can assess the success of this activity and make any necessary adjustments. We have, therefore, established minimum State recordkeeping requirements in the regulation and also required that States report the data under a schedule that will be established. (These recordkeeping and reporting requirements are not effective until OMB clearance is obtained.)

Comment: One commenter questioned how overpayments will be computed when caused by excess resources. Is the overpayment computed on the basis of the amount of assistance payments incorrectly paid, or the amount by which the excess resource exceeds the allowable resource limit? For example, the State discovers a recipient with $1500 in resources, who has been overpaid 5 months of assistance totaling $2000. Is the overpayment $500 or $2000?

Response: There is no provision in the statute for considering the cause of the overpayment. Therefore, the overpayment is $2000, computed on the incorrectly paid assistance payments.

Other Issues

In the course of consulting with States over these implementing regulations, there is a related issue which merits brief discussion—the extent to which timely notice must be given and recipients can file for hearings and request that aid be paid pending the hearing decision based on individual case changes.

The current regulations at 45 CFR 205.10 are unchanged and still apply. When changes in either State or Federal law require automatic grant adjustment for classes of recipients, timely notice must be given at least 10 days prior to the action which includes a statement of the intended action, the reason, a reference to the specific change in law requiring such action and a statement of the circumstances under which a hearing may be obtained and assistance continued.

A hearing need not be granted in these instances unless the reason for an individual appeal is an incorrect grant computation. For example, if the recipient wishes to appeal his or her termination because he or she is age 19

and in high school, a hearing need not be granted. However, if the recipient disagrees with his or her termination of assistance because he or she has only received the $30 and one-third for 3 months and not 4, a hearing must be granted. Where a hearing is held and it is determined that the sole issue is one of State or Federal law or policy, aid paid pending the hearing decision is not required.

Assigned Support Payments for Spouses, as Well as for Children, Must Be Treated as Income (Section 232.20 of Final Regulations)

Under section 2332 of Pub. L. 97–35, child support agencies may elect to collect assigned support payments for a child's parent with whom the child is living if a support obligation has been established for the parent. This provision eliminates the confusion previously caused when a court ordered a single amount for both the parent and the child without specifying the amount payable on behalf of each. This change was inadvertently omitted from the interim rules published on September 21, 1981.

In States where the IV–D agency implements this optional provision under the Title IV–D State plan, IV–A agencies will receive monthly reports of amounts collected on a current month's support obligation for both parent and child(ren). These reported amounts will be treated as if they were income under § 232.20 which has been amended in these rules to allow for the treatment of both child and spousal support and to correct several technical errors.

Referral to the IV–D Agency—(Section 235.70 of Final Regulations)

The statute contains three provisions which affect current IV–A agency procedures in relation to child support enforcement. These are (1) that an individual who is denied aid solely because his assistance payment would be less than $10 is deemed a recipient for all other purposes except CWEP, (2) that, at State option, assistance may be provided for the pregnant woman, and (3) under Title IV–D, at State option, support may be collected for a child's parent with whom the child is living if a support obligation has been established for the parent.

Those individuals who are deemed to be recipients though not actually receiving a money payment have completed an assignment of rights to support and still are expected to cooperate in establishing paternity and securing support. They are entitled to all of the services of the IV–D agency as AFDC recipients. Any support collected for these recipients is distributed under § 302.51, as for all other support collections.

The eligibility requirements for a pregnant woman include the assignment of rights to support on her own behalf. Her eligibility for assistance is determined the same as if the child were born and living with her, i.e. the deprivation factor must be met. The case must be referred to the IV–D agency. Eligibility must be established for the child when it is born. Assignment of rights to child support must be taken if rights are not automatically assigned by operation of State law and the case must be referred to the IV–D agency. This change was inadvertently omitted from the interim rules published on September 21, 1981.

The asterisks used throughout the regulatory text represent material within a codified paragraph or section that is not being amended by these final regulations.

These regulations are issued under the authority of Section 1102 of the Social Security Act, as amended, 49 Stat. 647, as amended; 42 U.S.C. 1302 and Part XXIII of Pub. L. 97–35, 95 Stat. 843.

(Catalog of Federal Domestic Assistance Programs No. 13.808 Public Assistance Maintenance Assistance (State Aid))

Dated: January 5, 1982.

John A. Svahn,

Commissioner of Social Security.

Approved: January 8, 1982.

Richard S. Schweiker,

Secretary of Health and Human Services.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAMS

Part 205 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

1. Section 205.10 is amended by adding a new paragraph (a)(4)(ii)(H) and by revising paragraph (a)(5) to read as follows:

§ 205.10 Hearings.

(a) *State plan requirements.* * * *

(4) * * *

(ii) * * *

(H) For AFDC, the agency takes action because of information the recipient furnished in a monthly report or because the recipient has failed to submit a complete or a timely monthly report without good cause. (See § 233.37);

* * * * *

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance (including a request for supplemental payments under §§ 233.23 and 233.27) is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance, or determination that a protective, vendor, or two-party payment should be made or continued. A hearing need not be granted when either State or Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is incorrect grant computation.

* * * * *

2. A new § 205.80 is adopted and revised to read as follows:

§ 205.80 Evaluation of the Work Incentive Demonstration Program.

(a) If a State plan for AFDC under title IV–A of the Social Security Act provides for single State agency operation of a Work Incentive Demonstration program under the provisions of section 445 of title IV of the Social Security Act, the State is required to report data which the Secretary determines to be necessary to carry out his responsibility to evaluate the demonstration program. The report shall include, but not be limited to, such data as—

(1) Number of registrants;

(2) Number of registrants who enter full-time employment;

(3) Number of registrants who entered employment who are still employed 30 days later;

(4) Number of registrants whose AFDC grants are reduced or terminated because of participation in a work incentive demonstration program; and

(5) Amount of reduction in AFDC grants due to participation in a work incentive demonstration program.

(b) Such data are to be reported at a schedule to be determined by the Secretary, but not more frequently than quarterly.

(c) The State agency shall cooperate with the Department in the required evaluation of the work incentive demonstration program.

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

Part 206 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

3. Section 206.10 is amended by adding paragraph (a)(1)(vi) and by revising paragraph (a)(4) to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(1) * * *

(vi) Every recipient in a State which provides a supplemental payment under § 233.27 of this chapter shall have an opportunity to request that payment without delay.

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing

* * * * *

PART 232—SPECIAL PROVISIONS APPLICABLE TO TITLE IV-A OF THE SOCIAL SECURITY ACT

Part 232 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

4. Section 232.1 is revised to read as follows:

§ 232.1 Scope.

This part implements provisions of titles IV–A and IV–D of the Social Security Act that are applicable only to the AFDC program and establishes other administrative and fiscal requirements.

5. Section 232.20 is revised to read as follows:

§ 232.20 Treatment of child support collections made in the Child Support Enforcement Program as income and resources in the Title IV-A Program.

(a) The State plan must provide that in any case in which support payments are collected for a recipient of AFDC with respect to whom an assignment under § 232.11 is effective:

(1) Upon notification to the IV–A agency by the IV–D agency of the amount of a support collection, such amount will be used to redetermine eligibility for an assistance payment under § 206.10(a)(9). This use of these amounts so collected shall not be later than the second month after the month in which the IV–A agency received a report of the monthly collections from the IV–D agency. In determining whether a support collection made by the State's IV–D agency, which represents support amounts for a month as determined pursuant to § 302.51(a) of this title, is sufficient to make the family ineligible for an assistance payment for the month to which the redetermination applies, the State will determine if such collection, when treated as if it were income, makes the family ineligible for an assistance payment. If such treatment makes the family ineligible, the support for the month will be considered to be income and the IV–A agency will notify the family and will inform the IV–D agency to pay such collection to the family in the month for which the family was determined to be ineligible. If such treatment does not make the family ineligible for an assistance payment, such collection will not be considered to be income and will be retained by the State's IV–D agency for distribution pursuant to § 302.51 of Chapter III of this title and the assistance payment will be calculated without regard to such collection.

(2) Any payment received pursuant to § 302.51(b) (3) or (5) shall be treated as income in the month following the month to which the redetermination in paragraph (a)(1) of this section applies.

(b) From any amounts of assistance payments which are reimbursed by support collections made by the IV–D agency, the IV–A agency shall pay the Federal government its share of the collections made, after the incentive payments, if any, have been made pursuant to § 302.52 of Chapter III of this title.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

Part 233 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

6. Section 233.10 is amended by revising paragraph (b)(2)(ii)(*a*)(*1*) to read as follows:

§ 233.10 General provisions regarding coverage and eligibility.

* * * * *

(b) *Federal financial participation.*

* * *

(2) * * *

(ii) AFDC—for:

(*a*) * * *

(*1*) Under the age of 18, or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19;

* * * * *

7. Section 233.20 is amended by revising paragraphs (a)(2) (iii) and (v) to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State plans.*

* * *

(2) *Standards of assistance.* * * *

* * * * *

(iii) Provide that the standard will be uniformly applied throughout the State except as provided under § 239.54.

* * * * *

(v) If the State agency includes special need items in its standard, (A) describe those that will be recognized and the circumstances under which they will be included, and (B) provide that they will be considered for all applicants and recipients requiring them. Except that under AFDC, work expenses and child care (or care of incapacitated adults living in the same home and receiving AFDC) resulting from employment or participation in CWEP cannot be special needs.

8. Section 233.20 is further amended by revising the heading of paragraph (a)(3), revising paragraphs (a)(3)(i), (a)(3)(ii) (B), (D), and (E) and the flush paragraph that follows (E), paragraphs (a)(3)(iii), (a)(3)(iv)(*a*), (a)(3)(viii), (a)(4)(i), (a)(4)(ii)(*a*), (a)(6)(i), (iii), and (v), the portion of paragraph (a)(7)(i) preceding the colon; paragraph (a)(7)(ii) and (a)(11), and the heading of paragraph (a)(12); removing paragraph (a)(4)(ii)(*f*); and adding paragraphs (a)(3) (xi)–(xv), (a)(6)(ix), and (a)(13); to read as follows:

§ 233.20 Need and amount of assistance.

(a) *Requirements for State plans.* * * *

(3) *Income and resources.* (i) *OAA, AB, APTD, AABD.* (A) Specify the amount and types of real and personal property, including liquid assets, that may be reserved, i.e., retained to meet the current and future needs while assistance is received on a continuing basis. In addition to the home, personal effects, automobile and income producing property allowed by the agency, the amount of real and personal property, including liquid assets, that can be reserved for each individual recipient shall not be in excess of two thousand dollars. Policies may allow reasonable proportions of income from businesses or farms to be used to increase capital assets, so that income may be increased; and (B) in AFDC—The amount of real and personal property that can be reserved for each assistance unit shall not be in excess of one thousand dollars equity value (or such lesser amount as the State specifies in its State plan) excluding only—

(*1*) The home which is the usual residence of the assistance unit;

(*2*) One automobile, up to $1,500 of equity value or such lower limit as the State may specify in the State plan; (any excess equity value must be applied towards the general resource limit specified in the State plan); and

(3) At State option, basic maintenance items essential to day-to-day living such as clothes, furniture and other similarly essential items of limited value.

(ii) * * *

(B) In determining financial eligibility and the amount of the assistance payment all remaining income (except unemployment compensation received by an unemployed principal earner) and, except for AFDC, all resources may be considered in relation to either the State's need standard or the State's payment standard. Unemployment compensation received by an unemployed principal earner shall be considered only by subtracting it from the amount of the assistance payment after the payment has been determined under the State's payment method;

* * * * *

(D) Net income, except as provided in paragraph (a)(3)(xii) of this section, and resources available for current use shall be considered; income and resources are considered available both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make such sum available for support and maintenance. When the AFDC assistance unit's income, after applying applicable disregards, exceeds the State need standard for the family because of receipt of nonrecurring lump sum income, the family will be ineligible for aid for the full number of months derived by dividing the sum of the lump sum income and other income by the monthly need standard for a family of that size. Any income remaining from this calculation is income in the first month following the period of ineligibility. The period of ineligibility shall begin with the month of receipt of the nonrecurring income or, at State option, as late as the corresponding payment month. For purposes of applying the lump sum provision, family includes the AFDC assistance unit and any other individual whose lump sum income is counted in determining the period of ineligibility. A State may shorten the period of ineligibility where it finds that a life-threatening circumstance exists, and the non-recurring income causing the period of ineligibility has been or will be expended in connection with the life-threatening circumstance. Further, until that time the non-recurring income must have been used to meet essential needs and currently the assistance unit must have no other income or resources sufficient to meet the life-threatening circumstance.

(E) Income and resources will be reasonably evaluated. Resources will be evaluated according to their equity value.

For purposes of this paragraph (a)(3): Automobile means a passenger car or other motor vehicle used to provide transportation of persons or goods (In AFDC, in appropriate geographic areas, one alternate primary mode of transportation may be substituted for the automobile); Equity value means fair market value minus encumbrances (legal debts); Fair market value means the price an item of a particular make, model, size, material or condition will sell for on the open market in the geographic area involved (If a motor vehicle is especially equipped with apparatus for the handicapped, the apparatus shall not increase the value of the vehicle); Liquid assets are those properties in the form of cash or other financial instruments which are convertible to cash and include savings accounts, checking accounts, stocks, bonds, mutual fund shares, promissory notes, mortgages, cash value of insurance policies, and similar properties; Need standard means the money value assigned by the State to the basic and special needs it recognizes as essential for applicants and recipients; Payment standard means the amount from which non-exempt income is subtracted;

(iii) States may prorate income received by individuals employed on a contractual basis over the period of the contract or may prorate intermittent income received quarterly, semiannually, or yearly over the period covered by the income. In OAA, AB, APTD and AABD, they may use the prorated amount to determine need under § 233.23 and the amount of the assistance payment under §§ 233.24 and 233.25. In AFDC, they may use the prorated amount to determine need under § 233.33 and the amount of the assistance payment under §§ 233.34 and 233.35.

(iv) * * * (a) Except for AFDC, income equal to expenses reasonably attributable to the earning of income (including earnings from public service employment); * * *

* * * * *

(viii) Provide that: (A) payment will be based on the determination of the amount of assistance needed: (B) if full individual payments are precluded by maximums or insufficient funds, adjustments will be made by methods applied uniformly statewide; (C) in the case of AFDC no payment of aid shall be made to an assistance unit in any month in which the amount of aid prior to any adjustments is determined to be less than $10; and (D) an individual who is denied aid solely because of the limitation specified in (C) of this paragraph shall be deemed a recipient of aid for all other purposes except participation in the Community Work Experience Program.

* * * * *

(xi) In the case of AFDC if the State chooses to count the value of the food stamp coupons as income, provide that the State plan shall (A) Identify the amount for food included in its need and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate the amount based on historical data or some other justifiable procedure.); and (B) Specify the amount of such food stamp coupons that it will count as income. Under this requirement, the amount of food stamp coupons which a State may count as income may not exceed the amount for food established in its payment standard for an assistance unit of the same size and composition.

(xii) In the case of AFDC if the State chooses to count the value of the governmental rent or housing subsidies as income, provide that the State plan shall: (A) Identify the amount for shelter included in its need and payment standards for an assistance unit of the same size and composition. (States which have a flat grant system must estimate this amount based on historical data or some other justifiable procedure.); and (B) Specify the amount of such housing assistance that it will count as income. Under this requirement, the amount of such rent or housing subsidies which a State may count as income may not exceed the amount for shelter established in its payment standard for assistance unit of the same size and composition.

(xiii) Under the AFDC plan, provide that no assistance unit is eligible for aid in any month in which the unit's income (other than the assistance payment) exceeds 150 percent of the State's need standard (including special needs) for a family of the same composition (including special needs), without application of the disregards in paragraph (a)(11) (i) and (ii) of this section, except in States that do not have a law of general applicability, the stepparents disregards in paragraph (a)(3)(xiv) of this section and the alien sponsors disregards in 45 CFR 233.51 must be applied in making this determination.

(xiv) For AFDC, in States that do not have laws of general applicability holding the stepparent legally responsible to the same extent as the natural or adoptive parent, the State

agency shall count as income to the assistance unit the income of the stepparent of an AFDC child who is living in the household with the child after applying the following disregards (exception: if the stepparent is included in the assistance unit, the disregard under paragraph (a)(11) (i) and (ii) of this section apply instead):

(A) The first $75 of the gross earned income of the stepparent if he or she is employed full-time. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75 for stepparents who are not employed on a full-time basis or not employed throughout the month;

(B) An additional amount for the support of the stepparent and any other individuals who are living in the home, but whose needs are not taken into account in making the AFDC eligibility determinations and are or could be claimed by the stepparent as dependents for purposes of determining his or her Federal personal income tax liability. This disregarded amount shall equal the State's need standard amount for a family group of the same composition as the stepparent and those other individuals described in the preceding sentence;

(C) Amounts actually paid by the stepparent to individuals not living in the home but who are or could be claimed by him or her as dependents for purposes of determining his or her Federal personal income tax liability; and

(D) Payments by such stepparent of alimony or child support with respect to individuals not living in the household.

(xv) For AFDC, provide for the consideration of the income of an alien's sponsor, as provided in § 233.51.

(4) *Disregard of income in OAA, AFDC, AB, APTD, OR AABD.* (i) For all programs except AFDC. If the State chooses to disregard income from all sources before applying other provisions for disregarding or setting aside income, specify the amount that is first to be disregarded, but not more than $7.50 per month, of any income of an individual, child or relative claiming assistance. All income must be included such as social security or other benefits, earnings, contributions from relatives, or other income the individual may have.

(ii) * * *

(*a*) In OAA, AB, APTD, and AABD, the value of the coupon allotment under the Food Stamp Act of 1964 in excess of the amount paid for the coupons;

* * * * *

(*f*) [Reserved]

* * * * *

(6) * * *

(i) A definition of "earned income" in accordance with the provisions of paragraphs (a)(6) (iii) through (ix) of this section; and

* * * * *

(iii) The term "earned income" encompasses income in cash or in kind earned by an individual through the receipt of wages, salary, commissions, or profit from activities in which he is engaged as a self-employed individual or as an employee. Such earned income may be derived from his own employment, such as a business enterprise, or farming; or derived from wages or salary received as an employee. It includes earnings over a period of time for which settlement is made at one given time, as in the instance of sale of farm crops, livestock, or poultry. For OAA, AB, APTD and AABD only, in considering income from farm operation, the option available for reporting under OASDI, namely the "cash receipts and disbursements" method, i.e., a record of actual gross, of expenses, and of net, is an individual determination and is acceptable also for these assistance programs.

* * * * *

(v) (A) For OAA, AB, APTD, and AABD, with respect to self-employment, the term "earned income" means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross income received with the "business expenses," i.e., total cost of the production of the income. Personal expenses, such as income-tax payments, lunches, and transportation to and from work, are not classified as business expenses.

(B) For AFDC, with respect to self-employment the term "earned income" means the total profit from business enterprise, farming, etc., resulting from a comparison of the gross receipts with the "business expenses," i.e., expenses directly related to producing the goods or services and without which the goods or services could not be produced. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment and payments on the principal of loans for capital assets or durable goods are not business expenses

* * * * *

(ix) In the case of an applicant or recipient of AFDC, "earned income" for any month shall include the amount of the advance payments of the earned income credit which the individual receives or is eligible to receive in that month.

(A)(*1*) When the State agency determines that an individual applying for or receiving AFDC is eligible to receive advance payments of the earned income credit, the State agency may allow a reasonable amount of time (up to a maximum of 14 days) before counting the amount of the advance payments to permit the recipient to file for and receive the advance earned income credit.

(*2*) Where an individual who is eligible to receive advance payments of the earned income credit has made all possible efforts to receive the advance payments but does not receive them because of the refusal of the employer to issue them, the State agency shall not count the amount as earned income.

(B)(*1*) The State agency shall determine that an individual is eligible to receive advance payments of the earned income credit only where the State agency reasonably expects that the individual will be eligible to receive the earned income credit for the current taxable year. The State agency shall make the determination based upon the requirements specified in the Internal Revenue Code under 26 U.S.C. 43 and 3507, and under the corresponding regulations at 26 CFR 1.43–1, 1.43–2, 31.3507–1 and 31.3507–2, which establish eligibility criteria for receipt of the earned income credit and advance payments of the credit.

(*2*) In order to determine the amount of the advance payments an individual is eligible to receive, the State agency shall consult the tables provided by the Secretary of the Treasury.

(C) In any case where the amount of the advance payments counted by the State agency exceeds the amount of the allowable credit, the State agency shall adjust the benefits of an individual who is a current recipient to provide payment of the amount equal to the amount of the benefits lost. Such adjustments shall be made with reasonable promptness. In any case where the amount of the advance payments counted by the State agency is less than the allowable credit, the State agency shall count as earned income in the month received any earned income credit payment received by the individual at the end of the taxable year to the extent it exceeds the amount counted as advance payments.

(7) *Disregard of earned income; method.* (i) Provide that for other than AFDC, the following method will be used for disregarding earned income:

(ii) In applying the disregard of income under paragraph (a)(11)(ii)(B) of this section to an applicant for AFDC, there will be a preliminary step to determine whether the assistance unit in

which he or she is a member is eligible without the application of any AFDC provisions for the disregard in (a)(11)(ii)(B) by applying the unit's earnings (less the disregards in (a)(11)(i) and (a)(11)(iv)) and all other income to the State's standard of need. This preliminary step does not apply if the assistance unit received assistance in one of the four months prior to the month of application.

* * * * *

(11) *Disregard of income applicable only to AFDC.* (i) For purposes of eligibility determination, the State must disregard from the monthly earned income of each individual whose needs are included in the eligibility determination:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Comprehensive Employment and Training Act of 1973 (CETA).

(B) The first $75 (or a lesser amount in the case of an individual not engaged in full-time employment or not employed throughout the month). The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $75.

(C) An amount equal to the actual cost, but not to exceed $160 (or a lesser amount in the case of an individual not engaged in full-time employment or not employed throughout the month), for the care of each dependent child or incapacitated adult living in the same home and receiving AFDC. The State agency shall have in place a procedure under which it determines and applies a disregarded amount less than $160.

(D) Where appropriate, an amount equal to $30 plus one-third of the earned income not already disregarded of an individual who received assistance in one of the four prior months.

(ii) For purposes of benefit calculation for individuals found eligible under paragraph (a)(11)(i) of this section, the following disregards must be made by the State:

(A) Disregard all of the monthly earned income of each child receiving AFDC if the child is a full-time student or is a part-time student who is not a full-time employee. A student is one who is attending a school, college, or university or a course of vocational or technical training designed to fit him or her for gainful employment and includes a participant in the Job Corps program under the Comprehensive Employment and Training Act of 1973 (CETA).

(B) Disregard from any other individual's earned income the amounts specified in paragraphs (a)(11)(i) (B) and (C) of this section, and $30 plus one-third of his earned income not already disregarded. However, the State may not provide the disregard to an individual after the fourth consecutive month (any month for which the unit loses the $30 plus one-third disregard because of a provision in subparagraph (iii) of this section, shall be considered as one of these months) it has been applied to his earned income until after an additional twelve consecutive months during which he is not a recipient of AFDC. If income from a recurring source resulted in suspension or termination due to an extra paycheck, the month of ineligibility does not interrupt the accumulation of consecutive months of the $30 and ⅓ disregard, nor does it count as one of the consecutive months.

(iii) The applicable earned income disregards in subparagraphs (i) (B) and (C) and (ii)(B) of this paragraph do not apply to the earned income of the individual for the month in which one of the following conditions apply to him:

(A) An individual terminated his employment or reduced his earned income without good cause (as specified in the State plan) within the period of 30 days preceding such month;

(B) An individual refused without good cause (as specified in the State plan) within the period of 30 days preceding such month to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide offer of employment;

(C) An individual failed without good cause (as specified in the State plan) to make a timely report (as defined in § 233.37(c)) of that income; or

(D) The individual voluntarily requests assistance to be terminated for the primary purpose of avoiding receiving the $30 and one-third disregard for four consecutive months.

(iv) The treatment of earned income and expenses under WIN is as follows:

(A) For earned income from regular employment or on-the-job training, pursuant to section 432(b)(1) of the Act the disregards in subdivisions (i) and (ii)(B) of this subparagraph shall apply.

(B) For institutional and work experience training, pursuant to section 432(b)(2) of the Act, the $30 monthly incentive payment and the reimbursement for training related expenses made by the manpower agency are totally disregarded; and

(C) For public service employment, pursuant to section 432(b)(3) of the Act, work related expenses (the disregards in subdivision (i) (B) and (C)) are deducted, but the $30 plus one-third disregard of subdivision (i)(D) or (ii)(B) does not apply.

(12) *Recoupment of overpayments and correction of underpayments for programs other than AFDC.* * * *

(13) *Recovery of overpayments and correction of underpayments for AFDC.*

(i) Specify uniform Statewide policies for recovery of overpayments of assistance, including overpayments resulting from assistance paid pending hearing decisions. Overpayment means a financial assistance payment received by or for an assistance unit for the payment month which exceeds the amount for which that unit was eligible. (The agency may deny assistance for the corresponding payment month rather than recover if the assistance unit was ineligible for the budget month, the State becomes aware of the ineligibility when the monthly report is submitted, the recipient accurately reported the budget month's income, and other circumstances, and the assistance unit will be eligible for the following payment month.

(A) The State must take all reasonable steps necessary to promptly correct any overpayment.

(*1*) Any recovery of an overpayment to a current assistance unit must be recovered through repayment (in part or in full) by the individual responsible for the overpayment or recovering the overpayment by reducing the amount of any aid payable to the assistance unit of which he or she is a member, or both.

(*2*) If recovery is made from the grant, such recovery shall result in the assistance unit retaining, for any payment month, from the combined aid (family income and liquid resources), (without application of section 402(a)(8) of the Act) not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recover at a rate less than the maximum, it must recover promptly.

(B) The State shall recover an overpayment from (*1*) the assistance unit which was overpaid, or (*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or (*3*) any individual members of the overpaid assistance unit whether or not currently

a recipient. If the State recovers from individuals who are no longer recipients, or from recipients who refuse to repay the overpayment from their income and resources, recovery shall be made by appropriate action under State law against the income or resources of those individuals.

(C) If through recovery, the amount payable to the assistance unit is reduced to zero, members of the assistance unit are still considered recipients of AFDC.

(D) In cases which have both an underpayment and an overpayment, the State may offset one against the other in correcting the payment.

(E) Prompt recovery of an overpayment: A State must take one of the following three actions by the end of the quarter following the quarter in which the overpayment is first identified: (*1*) recover the overpayment, (*2*) initiate action to locate and/or recover the overpayment from a former recipient, or (*3*) execute a monthly recovery agreement from a current recipient's grant or income/resources.

(ii) Specify uniform Statewide policies for prompt correction of any underpayments to current recipients and those who would be a current recipient if the error causing the underpayment had not occurred. Underpayment means a financial assistance payment received by or for an assistance unit for the payment month which is less than the amount for which the assistance unit was eligible, or failure by the State to issue a financial assistance payment for the payment month to an eligible assistance unit if such payment should have been issued. Under this requirement, for purposes of determining continued eligibility and amount of assistance, such retroactive corrective payments shall not be considered as income, or as a resource in the month paid nor in the next following month.

(iii) Paragraph (a)(13) of this section is effective for incorrect payments which are identified subsequent to September 30, 1981.

(iv) In locating former recipients who have outstanding overpayments the State should use appropriate data sources such as State unemployment insurance files, State Department of Revenue information from tax returns, State automobile registration, Bendex, and other files relating to current or former recipients.

(v) The State must maintain information on the individual and total number and amount of overpayments identified and their disposition for current and former recipients.

9. Section 233.20 is amended by revising paragraphs (b)(2) and (b)(4) to read as follows:

§ 233.20 Need and amount of assistance.

* * * * *

(b) *Federal financial participation; General.* * * *

(2) Federal participation is available within the maximums specified in the Federal law, when the payments do not exceed the amount determined to be needed under the statewide standard, and are made in accordance with the State method for determining the amount of the payments, as specified in 45 CFR 233.34 and 233.35 for AFDC and in §§ 233.24 and 233.25 for OAA, AB, APTD, and AABD.

* * * * *

(4) For all assistance programs except AFDC, Federal participation is available for supplemental payments in the retrospective budgeting system.

10. Section 233.21 is amended by revising the heading and by revising paragraph (a) to read as follows:

§ 233.21 Budgeting methods for OAA, AB, APTD, and AABD.

(a) *Requirements for State plans.* A State plan for OAA, AB, APTD, and AABD shall specify if assistance payments shall be computed using a prospective budgeting system or a retrospective budgeting system. A State electing retrospective budgeting shall specify which options it selects and the State plan shall state that it shall meet the requirements in §§ 233.21 through 233.29. Budgeting methods for AFDC are described in §§ 233.31–233.37.

* * * * *

11. Section 233.30 is redesignated as § 233.39 and is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 233.39 Age.

* * * * *

(b) *Federal financial participation.*

(1) * * *

(ii) In AFDC, under 18 years of age; or age 18 if a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and reasonably expected to complete the program before reaching age 19.

* * * * *

12. A new § 233.31 is added to read as follows:

§ 233.31 Budgeting methods for AFDC.

(a) *Requirements for State plans.* A State plan for AFDC shall specify that all factors of eligibility shall be determined prospectively and the amount of the assistance payment shall be determined using retrospective budgeting as provided in §§ 233.31–233.37 except as provided in § 233.34. Budgeting methods for OAA, AB, APTD, and AABD are described in §§ 233.21–233.29.

(b) *Definitions.* The following definitions apply to §§ 233.31 through 233.37:

(1) "Prospective budgeting" means that the agency shall determine eligibility (and compute the amount of assistance for the first one or two months) based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) "Retrospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the "budget month."

(3) "Budget month" means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) "Payment month" means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month.

13. A new § 233.32 is added to read as follows:

§ 233.32 Payment and budget months (AFDC).

A State shall specify in its plan for AFDC the time period covered by the payment (payment month) and the time period used to determine that payment (budget month) and whether it adopts (a) a one-month or two-month retrospective system; and (b) a one-month or two-month prospective system for the initial payment months. If a State elects to have a two-month retrospective system it must also elect a two-month prospective system.

14. A new § 233.33 is added to read as follows:

§ 233.33 Determining eligibility prospectively for all payment months (AFDC).

(a) The State plan for AFDC shall provide that the State shall determine all factors of eligibility prospectively for all payment months. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

(b) When a IV–A agency receives an official report of a child support collection it shall consider that

information as provided in § 232.20(a) of this chapter. (§ 232.20(a) explains the treatment of child support collections.)

15. A new § 233.34 is added to read as follows:

§ 233.34 Computing the assistance payment in the initial one or two months (AFDC).

A State shall compute the amount of the AFDC payment for the initial month of eligibility—

(a) Prospectively (except as in paragraphs (b) and (c) of this section); or

(b) Retrospectively if the applicant received assistance (or would have except for the prohibition on payments of less than $10) for the immediately preceding payment month (except where the State pays the second month after application prospectively); or

(c) Retrospectively if:

(1) Assistance had been suspended as defined in paragraph (d) of this section; and

(2) The initial month follows the month of suspension; and

(3) The family's circumstances for the initial month had not changed significantly from those reported in the corresponding budget month, e.g., loss of job.

(d) A State may suspend, rather than terminate, assistance when—

(1) The agency has knowledge of, or reason to believe that ineligibility would be only for one payment month; and

(2) Ineligibility for that one payment month was caused by income or other circumstances in the corresponding budget month.

(e) If the initial month is computed prospectively as in paragraph (a) of this section, the second month shall be prospective if the State elects a 2-month retrospective budgeting system.

16. A new § 233.35 is added to read as follows:

§ 233.35 Computing the assistance payment after the initial one or two months (AFDC).

The State plan for AFDC shall provide:

(a) After the initial one or two payment months of assistance under § 233.34, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on income and other relevant circumstances in the corresponding budget month except as provided in § 233.20(a)(3)(iii). In any month for which an individual will be determined eligible prospectively and will be added to an existing AFDC assistance unit, the State must meet the individual's needs to the same extent it would if the individual were an applicant for AFDC.

(b) Except as provided in § 233.34(b), for the first and second payment month for which retrospective budgeting is used, the State shall not count income from the budget month already considered for any payment month determined prospectively which is not of a continuous nature.

17. A new § 233.36 is added to read as follows:

§ 233.36 Monthly reporting (AFDC).

(a) Except as provided in paragraph (b) of this section, a State plan for AFDC shall require each assistance unit to submit a report form to the agency monthly on—

(1) Budget month income, family composition, and other circumstances relevant to the amount of the assistance payment; and

(2) Any changes in income, resources, or other relevant circumstances affecting continued eligibility which the assistance unit expects to occur in the current month or in future months.

(3) Stepparent's income and alien sponsor's income and resources where appropriate.

(b) A State may exempt categories of recipients from reporting each month with prior approval by the Secretary. The plan shall include criteria for assuring (1) that exempted cases are unlikely to incur changes in circumstances from month to month which would impact their eligibility or amount of assistance and (2) that the administrative cost of requiring those categories to report monthly will be greater than the program savings which would accrue.

(c) States shall also direct recipients to report information as defined in paragraph (a)(2) of this section to the agency as they become aware of expected changes rather than waiting to inform the State on the monthly report.

18. A new § 233.37 is added to read as follows:

§ 233.37 How monthly reports are treated and what notices are required (AFDC).

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report as specified in § 233.36, and if all eligibility conditions are met, it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is terminated as a result of information provided in the monthly report. The notice must be mailed to arrive no later than the resulting payment or in lieu of the payment. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(b) *What happens if a completed monthly report is not received by the agency.* An agency may terminate assistance if it has received no report or has received only an incomplete report as defined by the State. In this case, the agency must send the recipient a notice meeting the requirements of § 205.10(a)(4)(i)(B) to arrive not later than the date it would have made payment if the agency had received a completed monthly report on time. If the recipient notifies the agency and files a completed report within 10 days of the date of this notice, the agency must accept the replacement form and make a payment based on the information on the form if the information indicates that the person is still eligible (without the applicable earned income disregards if the State agency determines no good cause exists for failing to file a timely report of earnings). If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a hearing in order to receive reinstatement.

(c) *What happens if a completed monthly report is received but is not timely.* States must specify in their plans a definition of timeliness related to the filing of a monthly report and the number of days an individual has to report changes in earnings which impact eligibility. States must inform recipients what constitutes timeliness and that no disregard of earnings as described in § 233.20(a)(11)(i) and (ii)(B) ($30 and one-third, child care, and work expenses) will be applied to any earnings which are not reported in a timely manner without good cause. The State must provide recipients an opportunity to show good cause for not filing a timely report of earnings. If the State finds good cause, then applicable earned income disregards will be applied in determining payment. If the State does not find good cause, then applicable earned income disregards will not be applied. If the recipient is found ineligible or eligible for an amount less than the prior month's payment, the State must promptly notify the recipient of his or her right to a fair hearing and his or her right to have assistance reinstated. A recipient has 10 days from the date of the notice to request a

hearing in order to receive reinstatement.

19. Section 233.50 is revised to read as follows:

§ 233.50 Citizenship and alienage.

A State plan under title I (OAA); title IV–A (AFDC); title X (AB); title XIV (APTD); and title XVI (AABD-disabled) of the Social Security Act shall provide that an otherwise eligible individual, dependent child, or a caretaker relative or any other person whose needs are considered in determining the need of the child or relative claiming aid, must be either:

(a) A citizen, or

(b) An alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, including certain aliens lawfully present in the United States as a result of the application of the following provisions of the Immigration and Nationality Act:

(1) Section 207(c), in effect after March 31, 1980—Aliens Admitted as Refugees.

(2) Section 203(a)(7), in effect prior to Aporil 1, 1980—Individuals who were Granted Status as Conditional Entrant Refugees.

(3) Section 208—Aliens Granted Political Asylum by the Attorney General.

(4) Section 212(d)(5)—Aliens Granted Temporary Parole Status by the Attorney General.

20. A new § 233.51 is added to read as follows:

§ 233.51 Deeming of sponsor's income and resources to the sponsored alien.

Definition: Sponsor is any person who executed an affidavit(s) of support or similar agreement on behalf of an alien (who is not the child of the sponsor or the sponsor's spouse) as a condition of the alien's entry into the United States. A State plan under title IV–A of the Social Security Act shall (with regard to an alien applying for AFDC for the first time after September 30, 1981, who is not exempted under paragraph (e) of this section and his or her sponsor) provide that:

(a) For a period of three years following entry for permanent residence into the United States, a sponsored alien shall provide the State agency with any information and documentation necessary to determine the income and resources of the sponsor and the sponsor's spouse (if application and if living with the sponsor) that can be deemed available to the alien, and obtain any cooperation necessary from the sponsor.

(b) For all sections under this part, the income and resources of a sponsor and the sponsor's spouse shall be deemed to be the unearned income and resources of an alien for three years following the alien's entry into the United States.

(1) Monthly income deemed available to the alien from the sponsor and the sponsor's spouse not receiving AFDC or SSI shall be:

(i) The total monthly unearned and earned income of the sponsor and sponsor's spouse reduced by 20 percent (not to exceed $175) of the total of any amounts received by them in the month as wages or salary or as net earnings from self-employment.

(ii) The amount described in paragraph (b)(1)(i) of this section reduced by:

(A) The cash needs standard under the plan in the alien's State of residence for a family of the same size and composition as the sponsor and those other people living in the same household as the sponsor who are or could be claimed by the sponsor as dependents to determine his or her Federal personal income tax liability but whose needs are not taken into account in making a determination under § 233.20 of this chapter;

(B) Any amounts actually paid by the sponsor or sponsor's spouse to people not living in the household who are or could be claimed by them as dependents to determine their Federal personal income tax liability; and

(C) Actual payments of alimony or child support, with respect to individuals not living in the household.

(2) Monthly resources deemed available to the alien from the sponsor and sponsor's spouse shall be the total amount of their resources determined as if they were applying for AFDC in the alien's State of residence, less $1500.

(c) In any case where a person is the sponsor of two or more aliens, the income and resources of the sponsor and sponsor's spouse, to the extent they would be deemed the income and resources of any one of the aliens under the provisions of this section, shall be divided equally among the sponsored aliens.

(d) Income and resources which are deemed to a sponsored alien shall not be considered in determining the need of other unsponsored members of the alien's family except to the extent the income or resources are actually available.

(e) The provisions of this section shall not apply to any alien who is:

(1) Admitted as a conditional entrant refugee to the United States as a result of the application, of the provisions of section 203(a)(7) (in effect prior to April 1, 1980) of the Immigration and Nationality Act;

(2) Admitted as a refugee to the United States as a result of the application of the provisions of section 207(c) (in effect after March 31, 1980) of the Immigration and Nationality Act;

(3) Paroled into the United States as a refugee under section 212(d)(5) of the Immigration and Nationality Act;

(4) Granted political asylum by the Attorney General under section 208 of the Immigration and Nationality Act; or

(5) A Cuban or Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96–422); or

(6) The dependent child of the sponsor or sponsor's spouse.

(f) The Secretary shall make information necessary to make a determination under this section and supplied under agreement with the Secretary of State and the Attorney General, available upon request to a concerned State Agency.

21. A new § 233.52 is added to read as follows:

§ 233.52 Overpayment to aliens.

A State Plan under Title IV–A of the Social Security Act, shall provide that:

(a) Any sponsor of an alien and the alien shall be jointly and severally liable for any overpayment of aid under the State plan made to the alien during the three years after the alien's entry into the United States due to the sponsor's failure to provide correct information under the provisions of § 233.51, except as provided in paragraph (b) of this section.

(b) When a sponsor is found to have good cause or to be without fault (as defined in the State plan) for not providing information to the agency, the sponsor will not be held liable for the overpayment and recovery will not be made from this sponsor.

(c) An overpayment for which the alien or the sponsor and the alien are liable (as described in paragraphs (a) and (b) of this section) shall be repaid to the State or recovered in accordance with § 233.20(a)(13). If the agency is unable to recover the overpayment through this method, funds to reimburse the agency for the overpayment shall be withheld from future payments to which the alien or the alien and the sponsor are entitled under:

(1) Any State administered or supervised program established by the Social Security Act, or

(2) Any federally administered cash benefit program established by the Social Security Act.

22. Section 233.90 is amended by revising paragraphs (a)(1) and (b)(3). Paragraph (c) of § 233.90 is revised by removing paragraph (c)(1)(vi), removing paragraph (c)(2)(ii), redesignating paragraphs (c)(2)(iii) and (c)(2)(iv) as paragraphs (c)(2)(ii) and (c)(2)(iii), and by adding a new paragraph (c)(2)(iv), to read as follows:

§ 233.90 Factors specific to AFDC.

(a) *State plan requirements.* * * *

(1) The determination whether a child has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, or (if the State plan includes such cases) the unemployment of his or her parent who is the principal earner will be made only in relation to the child's natural or adoptive parent, or in relation to the child's stepparent who is ceremonially married to the child's natural or adoptive parent and is legally obligated to support the child under State law of general applicability which requires stepparents to support stepchildren to the same extent that natural or adoptive parents are required to support their children. Under this requirement, the inclusion in the family, or the presence in the home, of a "substitute parent" or "man-in-the-house" or any individual other than one described in this paragraph is not an acceptable basis for a finding of ineligibility or for assuming the availability of income by the State; and

* * * * *

(b) *Conditions for plan approval.*

* * *

(3) A state may elect to include in its AFDC program children age 18 who are full-time students in a secondary school, or in the equivalent level of vocational or technical training, and who may reasonably be expected to complete the program before reaching age 19.

* * * * *

(c) *Federal financial participation.*

* * *

(2) * * *

(iv) At State option, (A) payments with respect to a pregnant woman with no other children receiving assistance, and additionally, at State option, (B) payments for the purpose of meeting special needs occasioned by or resulting from pregnancy both for the pregnant woman with no other children as well as for the pregnant woman receiving AFDC. However, for both (A) and (B) of this paragraph, it must be medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children. Federal financial participation is not available to meet the needs of the unborn child. (Refer to Medicaid regulations at 42 CFR 435.115 for Medicaid coverage of pregnant women.)

23. Section 233.100 is amended by revising the section heading and by revising the portion of paragraph (a) preceding (a)(1), the portion of paragraph (a)(1) preceding (a)(1)(i), paragraph (a)(i)(ii) and the flush paragraph that follows it, the portion of paragraph (a)(2) preceding the parenthetical phrase, paragraph (a)(3)(i), the portion of paragraph (a)(3)(ii) preceding (a)(3)(ii)(*a*), paragraphs (a)(3)(ii)(*b*) and (a)(3)(ii)(*c*), the portion of paragraph (a)(3)(iii) preceding (a)(3)(iii)(*a*), paragraphs (a)(3)(iv), (a)(5)(i), (a)(5)(ii), (a)(6), (a)(7), and (c)(1)(iii), the portion of paragraph (c)(1)(iv) preceding (c)(1)(iv)(*a*) paragraph (c)(1)(iv)(*a*), the portion of paragraph (c)(1)(v) preceding (c)(1)(v)(*a*), paragraph (c)(1)(v)(*a*), and paragraphs (c)(2)(i)–(iii); and adding paragraph (a)(3)(vi); to read as follows:

§ 233.100 Dependent children of unemployed parents.

(a) *Requirements for State Plans.* If a State wishes to provide AFDC for children of unemployed parents, the State plan under title IV–A of the Social Security Act must, except as specified in paragraph (b) of this section:

(1) Include a definition of an unemployed parent who is the principal earner which shall apply only to families determined to be needy in accordance with the provisions in § 233.20. Such definition must include any such parent who:

* * * * *

(ii) Exceeds that standard for a particular month, if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for the prior 2 months and is expected to be under the standard during the next month; except that at the option of the State, such definition need not include a principal earner who is unemployed because of participation in a labor dispute (other than a strike) or by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law.

(2) Include a definition of a dependent child which shall include any child of an unemployed parent * * *

(3) * * *

(i) His or her parent who is the principal earner has been unemployed for at least 30 days prior to the receipt of such aid.

(ii) Such parent has not without good cause, within such 30-day period prior to the receipt of such aid, refused a bona fide offer of employment or training for employment. Before it is determined that such parent has refused a bona fide offer of employment or training for employment without good cause, the agency must make a determination that such an offer was actually made. (In the case of offers of employment made through the public employment or manpower agencies, the determination as to whether the offer was bona fide, or whether there was good cause to refuse it, will be made by that office or agency.) The parent must be given an opportunity to explain why such offer was not accepted. Questions with respect to the following factors must be resolved:

* * * * *

(*b*) Any questions as to the parent's inability to engage in such employment for physical reasons or because he has no way to get to or from the particular job; and

(*c*) Any questions of working conditions, such as risks to health, safety, or lack of worker's compensation protection.

(iii) Such parent * * *

* * * * *

(iv) A "quarter of work" with respect to any individual means a period (of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which he or she received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2) of the Act), or in which he or she participated in a community work experience program under section 409 of the Act or the work incentive program established under title IV–C of the Act.

* * * * *

(vi)(A) The "parent who is the principal earner" means, in the case of any child, whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent. If the State cannot secure primary evidence of earnings for this period, the State shall designate the principal earner, using the best evidence available. The earnings of each parent are considered in determining the principal earner

regardless of when their relationship began. The principal earner so defined remains the principal earner for each consecutive month for which the family receives such aid on the basis of such application. This requirement applies to both new applicants and current AFDC unemployed parent families who were eligible and receiving aid prior to October 1, 1981.

(B) If both parents earned an identical amount of income (or earned no income) in such 24-month period, the State shall designate which parent shall be the principal earner.

* * * * *

(5) * * *

(i) If and for so long as such child's parent unless exempt under 45 CFR 224.20, is not currently registered for the work incentive program or if exempt under paragraph (b)(6) of § 224.20, is not currently registered with a public employment office in the State, and

(ii) With respect to any week for which such child's parent qualifies for unemployment compensation under an unemployment compensation law of the State or of the United States but refuses to apply for or accept such unemployment compensation.

(6) Provide that within 30 days after the receipt of aid with respect to such children, such unemployed principal earners will be certified for participation in the Work Incentive Program, as provided in section 402(a)(19) of the Act and the regulations relating thereto.

(7) Provide, where application for aid with respect to a dependent child (as defined by the State pursuant to paragraph (a)(2) of this section) is made within 6 months after the effective date of the modification of the State plan in accordance with the provisions in paragraphs(a)(1) through (6) of this section, that the parent of such child will be considered to have met the requirements of paragraph (a)(3)(iii) of this section if he or she met such requirements at any time after April 1961 and prior to the date of such application.

(8) * * *

(b) *Exception.* * * *

(c) *Federal financial participation.* (1) * * *

(iii) Who has been deprived of parental support or care by reason of the fact that his or her parent who is the principal earner is employed less than 100 hours a month; or exceeds that standard for a particular month if his or her work is intermittent and the excess is of a temporary nature as evidenced by the fact that he or she was under the 100-hour standard for 2 prior months and is expected to be under the standard during the next month.

(iv) Whose parent who is the principal earner (*a*) has six or more quarters of work (as defined in paragraph (a)(3)(iv) of this section within any 13-calendar-quarter period ending within 1 year prior to the application for such aid,

(v) Whose parent who is the principal earner (*a*) is currently registered with the public employment offices in the State, and

(2) * * *

(i) For any part of the 30-day period prior to the receipt of such payment, if during the period the parent who is the principal earner was not unemployed (as defined by the State pursuant to paragraph (a)(1) of this section);

(ii) For such 30-day period if during that period the parent refused without good cause a bona fide offer of employment or training for employment; and

(iii) For any period beginning with the 31st day after the receipt of aid, if and for as long as no action is taken during the period to certify the parent for participation in the Work Incentive Program as provided in section 402(a)(19) of the Act and the regulations relating thereto.

24. A new § 233.106 is added to read as follows:

§ 233.106 Denial of AFDC benefits to strikers.

(a) *Condition for plan approval.* A State plan under title IV–A of the Social Security Act must:

(1) Provide that participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept, employment.

(2)(i) Provide for the denial of AFDC benefits to any family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike; and

(ii) Provide that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike.

(b) *Definitions.* (1) The State must define "strike" by using the National Labor Relations Board definition (29 U.S.C. 142(2)) or another definition of the term that is currently in State law.

(2) The State must define the term "participating in a strike."

(3) For purposes of paragraph (a)(2)(i) of this section, "caretaker relative" means any natural or adoptive parent.

§ 233.140 [Removed]

25. Section 233.140 is removed.

PART 234—FINANCIAL ASSISTANCE TO INDIVIDUALS

Part 234 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

26. Section 234.60 is amended by revising paragraph (a)(1), and (a)(12) removing and reserving paragraph (a)(5), removing paragraph (a)(11)(iii), adding a new paragraph (a)(14), and amending paragraph (b)(1) by striking the (1) and removing all of paragraph (b)(2).

§ 234.60 Protective, vendor, and two-party payments for dependent children.

(a) *State plan requirements.* (1) If a State plan for AFDC under title IV–A of the Social Security Act provides for protective, vendor, and two-party payments for other than WIN and Community Work Experience Programs (CWEP) cases, and cases in which the caretaker relative fails to meet the eligibility requirements of §§ 232.11 or 232.12 of this chapter, it must meet the requirements in paragraphs (a)(2) through (11) of this section. In addition, the plan may provide for protective, vendor, and two-party payments at the request of the recipient as provided in paragraph (a)(14) of this section.

* * * * *

(12) For WIN and CWEP cases, the State plan must provide that, when protective or vendor payments are made pursuant to §§ 224.51(a)(1) and 238.22 of this chapter (because an individual has been found to have refused without good cause to participate in the WIN or CWEP program or to accept a bona fide offer of employment) * * *

(13) * * *

(14) If the plan provides for protective, vendor, or two-party payments:

(i) The State may use any combination of protective, vendor, or two-party payments (at the request of the recipient),

(ii) The request must be in writing from the recipient to whom payment would otherwise be made in an unrestricted manner and must be recorded or retained in the case file, and

(iii) The restriction will be discontinued promptly upon the written request of the recipient who initiated it.

* * * * *

PART 235—ADMINISTRATION OF FINANCIAL ASSISTANCE PROGRAMS

Part 235 of Chapter II, Title 45, Code of Federal Regulations is amended as set forth below:

27. Section 235.64 is amended by revising the introductory text to read as follows and by removing the footnote:

§ 235.64 FFP rates, and activities and costs matchable as training expenditures.

Under title I, X, XIV, or XVI (AABD) of the Act, FFP is available at the rate of 75 percent, and under title IV–A effective October 1, 1981, FFP is available at the rate of 50 percent for the following costs:

* * * * *

28. Section 235.70 is revised to read as follows:

§ 235.70 Prompt notice to child support agency.

(a) A State plan under title IV–A of the Social Security Act must provide for prompt notice to the State or local child support agency designated pursuant to section 454(3) of the Social Security Act whenever (1) aid is furnished to a child who has been deserted or abandoned by a parent, to the parent(s) with whom the child lives, or to a pregnant woman under § 233.90(c)(2)(iv), or

(2) any of the persons in paragraph (a)(1) of this section is deemed to be a recipient of aid under § 233.20(a)(3)(viii)(D).

(b) In this section—

(1) "Aid" means Aid to Families with Dependent Children, or AFDC Foster Care.

(2) "Prompt notice" means written notice including a copy of the AFDC case record, or all relevant information as prescribed by the child support agency. The prompt notice shall be provided within two working days of the furnishing of aid or the determination that an individual is a recipient under § 233.20(a)(3)(viii)(D). The title IV–A agency and the child support agency may agree to provide notice immediately upon the filing of an application for assistance.

(3) "Furnish" means the date on which cash is given to the family, a check or warrant is mailed to the family, a deposit is made in a bank for the family, or other similar circumstances in which an assistance payment is made to the family, or the date on which individuals are determined to be recipients under § 233.20(a)(3)(viii)(D).

(4) "A child who has been deserted or abandoned by a parent" means any child whose eligibility for AFDC is based on continued absence of a parent from the home, and includes a child born out of wedlock without regard to whether the paternity of such child has been established.

29. A new Part 238 is added to read as follows:

PART 238—COMMUNITY WORK EXPERIENCE PROGRAM

Subpart A—Introduction

Sec.

238.01 Scope of this part.

Subpart B—Administration and Program Requirements

238.10 Agency administering the program.
238.12 Statewideness.
238.14 Establishment of a mandatory participant group.
238.16 Participant reimbursement.
238.18 Participant protection.
238.20 Participation requirements.
238.22 Sanctions.
238.24 Hearings and notices.
238.26 Chief Executive Officer.

Subpart C—Sponsor and Project Requirements

238.50 Sponsor requirements.
238.52 Project requirements.
238.54 Project assignment criteria.

Subpart D—Federal Financial Participation

238.60 Allowable administrative costs.
238.62 Expenses not matchable.
238.64 Fiscal reporting requirements.

Authority: Sec. 2307, Pub. L. 97–35; 95 Stat. 846; (42 U.S.C. 609).

Subpart A—Introduction

§ 238.01 Scope of this part.

General. States may operate community work experience programs (CWEP) which serve a useful public purpose, and require AFDC recipients to participate in them as a condition of AFDC eligibility. The purpose of these CWEP programs is to provide work experience for AFDC recipients. CWEP projects must meet appropriate standards for health and safety and may not displace persons currently employed or fill established unfilled vacancies. Participants must be reimbursed for amounts not to exceed $25 for reasonable necessary expenses (as defined by the State) directly related to participation in the programs. Allowable costs to operate CWEP (see Subpart D) are matched by the Federal government at the AFDC administrative match level (50%).

Subpart B—Administration and Program Requirements

§ 238.10 Agency administering the program.

Each State with a plan approved under Title IV–A of the Social Security Act may establish and operate a CWEP program in accordance with the requirements in this part. If the State chooses to establish and operate CWEP, it must administer the program through the single State agency designated in its title IV–A State plan to administer or supervise the AFDC program.

§ 238.12 Statewideness.

The State plan shall specify the geographic areas for which the State will implement CWEP. These may include all areas of the State or only certain subareas at the Agency's discretion.

§ 238.14 Establishment of a mandatory participant group.

(a) The State plan must identify the groups or categories of AFDC recipients who will be required to participate in CWEP. Under this requirement, States may require that any AFDC recipient, as a condition of eligibility for AFDC, participate in CWEP unless the individual—

(1) Meets the WIN exemption criteria under 45 CFR 224.20, except as provided in paragraph (b) of this section;

(2) Is both currently employed for at least 80 hours per month and earning not less than the legally established or defined minimum wage for such employment (for jobs which do not have an established minimum wage, recipients currently employed 80 hours must be exempted from CWEP regardless of wage level.);

(3) Was denied AFDC solely because the amount of his or her entitlement would have been less than $10 per month;

(b) A recipient who is exempt from WIN may nevertheless be required to participate in CWEP if—

(1) He or she was exempt due to remoteness from a work incentive project under 45 CFR 224.20(b)(6); or

(2) He or she was exempt as a caretaker of a child at least three years old, under 45 CFR 224.20(b)(8), and appropriate child care can be secured to enable participation in the CWEP project.

(c) Applicants for aid to families with dependent children may not be required to participate in CWEP.

(d) A State plan may provide for voluntary participation in CWEP projects by all, or any subgroups, of AFDC recipients who desire to do so. If the plan provides for voluntary participation, it will identify the categories of voluntary participants to whom CWEP is available and any conditions which attach to their participation.

§ 238.16 Participant reimbursement.

The State plan shall specify the amount and types of participation costs the State will reimburse to recipients. Under this requirement—

(a) Participants may not be required to use their assistance or their income or resources to pay participation costs.

(b) States must provide reimbursement for transportation and other costs that the State determines are necessary and directly related to participation in CWEP incurred by the participant. For FFP purposes, this amount shall not exceed $25 per month, per participant. (See Subpart D for FFP requirements.)

§ 238.18 Participant protection.

States may provide worker's compensation or other comparable protection for their CWEP participants. The cost of this protection shall be considered an administrative expense and matched accordingly.

§ 238.20 Participation requirements.

(a) States determine CWEP participation within broad Federal requirements:

(1) Where more than one member of an assistance unit meets the criteria, under the State's plan for participation in CWEP, the State may require that each eligible individual participate in accordance with paragraph (b) of this section.

(2) Part-time participation in WIN and CWEP may be required where it is deemed appropriate by the State. The State plan shall specify whether part-time participation will be required and the circumstances under which it will be deemed "appropriate."

(b) The State plan must specify the maximum number of hours and the formula used to determine the mandatory hours of participation where the State specifies a lesser maximum. No assistance unit may be required monthly to participate in CWEP more than the number of hours which would result from dividing the family's grant amount by the greater of the Federal or the applicable State minimum wage.

(c) The State must have procedures under which there is coordination between CWEP and WIN to insure that job placement will have priority over CWEP participation.

(d) Nothing in Section 409 of the Act, nor in this part shall be construed as authorizing the payment of AFDC as compensation for work performed.

§ 238.22 Sanctions.

The State plan shall provide that where a mandatory CWEP participant has been determined to have failed or refused without good cause to participate in CWEP, the sanctions specified in 45 CFR 224.51 (and further described in § 234.60) shall apply. Under this requirement the State plan shall specify the criteria to be used in determining whether or not there was "good cause" in refusing or failing to participate in CWEP.

§ 238.24 Hearings and notices.

The State plan shall specify that the provisions of 45 CFR 205.10, which relate to hearing and notice procedures, apply to CWEP participants.

§ 238.26 Chief Executive Officer.

The Chief Executive Officer of the State—

(a) Shall provide coordination between a CWEP and the WIN program—

(1) To insure that job placement will have priority over participation in CWEP; and

(2) To insure that individuals who are required to participate in both WIN and CWEP may not be denied aid under the State plan on the grounds of "failure to participate" in one program if they are actively and satisfactorily participating in the other;

(b) May require that a participant who satisfactorily meets the requirements of CWEP may also be required to participate in a WIN program for the remainder of that month.

Subpart C—Sponsor and Project Requirements

§ 238.50 Sponsor requirements.

The State agency will designate a sponsor to operate each project or, at the agency's option, more than one project. Only public agencies and non-profit organizations may be sponsors.

§ 238.52 Project requirements.

The State plan must provide that CWEP projects—

(a) Serve a useful public purpose;

(b) Do not result in the displacement of persons currently employed or the filling of established, unfilled position vacancies. This means that CWEP participants may not perform tasks which would have been undertaken by employees or which have the effect of reducing the work of employees. However, CWEP participants may perform the same type of tasks as performed by employees;

(c) Are not in any way related to political, electoral, or partisan activities;

(d) Are not in violation of applicable Federal, State or local health and safety standards, and provide reasonable work conditions; and

(e) Have not been developed in response to, or in any way associated with, the existence of a strike, lockout or other bona fide labor dispute, or violate any existing labor agreement between employees and employers.

§ 238.54 Project assignment criteria.

The State plan must provide that—

(a) Assignments to CWEP projects will take into consideration to the extent possible, the prior training, proficiency, experience and skills of a participant;

(b) Participants will not be assigned to projects which require that they travel unreasonable distances from their homes or remain away from their homes overnight without their consent.

Subpart D—Federal Financial Participation

§ 238.60 Allowable administrative costs.

Federal financial participation is available for administrative costs of the AFDC program for Community Work Experience program expenditures, when CWEP has been approved as part of the State plan under Title IV–A of the Act. Such costs include amounts paid to participants which (as identified in the State plan) are reasonably necessary and directly related to participation in CWEP not in excess of $25 per month per participant.

§ 238.62 Expenses not matchable.

FFP is not available for:

(a) Capital expenditures, or depreciation or use allowances in connection with a CWEP;

(b) The cost of making or acquiring materials or equipment in connection with participation in a CWEP project;

(c) The cost of supervision of CWEP participants; and

(d) Costs associated with the use of any facilities of the State public employment offices used to find employment opportunities for participants.

§ 238.64 Fiscal recordkeeping requirements.

To support claims for FFP, States shall identify in their accounting records all CWEP costs which represent direct payments to participants in the program. States must also identify in their monthly assistance rolls those individuals to whom participant expenditures were made during any month. The identification in the accounting records and monthly assistance rolls shall be in such form as to permit verification of the monthly direct payments to each individual participant subject to FFP.

30. A new Part 239 is added to read as follows:

PART 239—WORK SUPPLEMENTATION PROGRAM

Subpart A—Introduction

Sec.
239.01 Scope of this part.

Subpart B—Program Description and Administration of the Work Supplementation Program

239.10 Agency administering the program and State plan requirements.
239.12 Eligibility.
239.14 Types of jobs.
239.16 Providing or subsidizing jobs.
239.18 Conditions of employment.
239.20 Wages.
239.24 Participation in other work programs.
239.26 Hearings and notices.

Subpart C—Standards of Need and Treatment of Earned Income

239.50 Adjustment of standard of need.
239.52 Differential need standards—geographical areas.
239.54 Differential need standards—categories of recipients.
239.56 Further adjustments in amount of aid paid.
239.58 Earned income disregard.

Subpart D—Federal Financial Participation

239.80 Wage subsidies.
239.82 Ceiling.
239.84 Claiming Federal Financial Participation.

Authority: Sec. 2308, Pub. L. 97–35, 95 Stat. 848; (42 U.S.C. 614).

Subpart A—Introduction

§ 239.01 Scope of this part.

Under the Work Supplementation Program States may use AFDC funds to develop and subsidize work for AFDC recipients as an alternative to aid provided to AFDC recipients. The Work Supplementation Program may be implemented notwithstanding the definitions contained in Section 406 of the Social Security Act or any other provision of law. Under this program AFDC recipients may choose, on a voluntary basis, to accept an offer of work to the extent such jobs are made available. In order to pay for the costs of developing and subsidizing these jobs, a State may reduce need standards in effect for selected categories of recipients on the basis of their ability to participate in the Work Supplementation Program. The reduction of needs standards may be made for either the entire State or for selected geographical areas. The total amount of Federal financial participation for operation of a State's Work Supplementation Program is limited as provided in Subpart D of this part.

Subpart B—Program Description and Administration of the Work Supplementation Program

§ 239.10 Agency administering the program and State plan requirements.

States which elect to have a Work Supplementation Program shall administer the program through either (a) the agency designated to administer or supervise the administration of the State plan under section 402(a)(3) of the Act; or (b) the agency (if any) designated to administer the Community Work Experience Program under section 409 of the Act. A State choosing to implement a Work Supplementation Program shall amend its State plan in accordance with the following provisions.

§ 239.12 Eligibility.

A State shall determine who is eligible to participate in a Work Supplementation Program from among the persons who would, at the time of their placement in such program, be eligible for assistance under the State plan as in effect in May 1981, or as modified thereafter as required by Federal law.

§ 239.14 Types of jobs.

Within certain limits described herein, a State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary. The job positions which may be provided for recipients of aid must be of the following general types:

(a) A job position provided to an eligible individual by the State or local agency administering the State plan under this part;

(b) A job position provided to an eligible individual by a public or non-profit entity for which all or part of the wages are paid by such State or local agency; or

(c) A job position provided to an eligible individual by a proprietary entity involving the provision of child day care services for which all or part of the wages are paid by such State and local agency, but only if such entity does not claim a credit for any part of the wages paid to such eligible individual under section 40 of the Internal Revenue Code of 1954 (relating to credit for expenses of the Work Incentive Program) or section 44B of the Code (relating to credit for employment of certain new employees).

§ 239.16 Providing or subsidizing jobs.

The State agency administering this program may use whatever means such State determines are appropriate in order to provide or to subsidize jobs for participants in the Work Supplementation Program. A State may make whatever arrangements it deems appropriate with regard to the type of work provided, the length of time the position is to be provided or subsidized, the amount of wages to be paid to the recipient receiving the work supplemented job, the amount of subsidy to be provided by the State or local agency and the conditions of participation.

§ 239.18 Conditions of employment.

(a) A State or local agency administering the State plan is not required to provide employee status to any eligible individual to whom it provides a job position under the Work Supplementation Program, or with respect to whom it provides all or part of the wages paid to such individual by another entity under this program.

(b) A State or local agency administering the program is not required to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks during which they fill such position.

§ 239.20 Wages.

Participants in the Work Supplementation Program will be paid wages which shall be considered to be earned income for purposes of any provision of law.

§ 239.24 Participation in other work programs.

No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a Work Supplementation Program, from any requirement of title IV–A or title IV–C relating to work requirements.

§ 239.26 Hearings and notices.

The State plan shall specify that the provisions of 45 CFR 205.10, which relate to hearing and notice procedures, apply for purposes of the Work Supplementation Program.

Subpart C—Standards of Need and Treatment of Earned Income

§ 239.50 Adjustment of standard of need.

A State operating a Work Supplementation Program under this part may adjust the standards of need under the State plan as the State determines to be necessary and appropriate for carrying out such program. Such changes in need standards may be made notwithstanding 45 CFR 233.20.

§ 239.52 Differential need standards—geographical areas.

A State operating a Work Supplementation Program under this part may provide that the needs standards in effect in those areas of the State in which such program is in operation may be different from the needs standards in effect in the areas in which such program is not in operation.

§ 239.54 Differential need standards—categories of recipients.

A State operating a Work Supplementation Program under this part may provide that the needs standards for categories of recipients of aid may vary among such categories as the State determines to be appropriate on the basis of ability to participate in the Work Supplementation Program.

§ 239.56 Further adjustments in amount of aid paid.

A State may make further adjustments in the amounts of aid paid under the plan to different categories of recipients in order to offset increases in benefits from other government-provided, needs-related programs as the State determines necessary and appropriate to further the purposes of the Work Supplementation Program.

§ 239.58 Earned income disregard.

A State operating a Work Supplementation Program under this part may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the Work Supplementation Program.

Subpart D—Federal Financial Participation

§ 239.80 Wage subsidies.

Payments by the State to individuals or to entities providing jobs for recipients under the program shall be expenditures incurred by the State for aid to families with dependent children except as limited by the ceiling for Federal financial participation described in this Subpart.

§ 239.82 Ceiling.

Federal funds may be paid to a State under this part with respect to expenditures incurred in operating a Work Supplementation Program. The amount subject to matching for any quarter for expenditures incurred in operating a Work Supplementation Program shall not exceed the amount of savings in FFP derived from reducing assistance payments (as specified in §§ 239.54, 239.56 and 239.58) to categories of recipients designated by the State as eligible to participate, reduced by costs of non-federally mandated changes to its State plan since May 1981. Expenditures which a State may claim for operating a Work Supplementation Program within the FFP ceiling include wage subsidies, necessary employment related services, and administrative overhead.

§ 239.84 Claiming Federal financial participation.

A State must calculate the amount subject to FFP for its Work Supplementation Program and maintain records to support its claim in accordance with procedures established by the Secretary.

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Friday
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Part IV

Department of Energy

Office of Environmental Protection, Safety, and Emergency Preparedness

Emergency Energy Conservation Plan

DEPARTMENT OF ENERGY

Office of Environmental Protection, Safety, and Emergency Preparedness

10 CFR Part 477

[CAS-RM-79-507 and CAS-RM-80-513-B]

Emergency Energy Conservation

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today amends the standby Federal emergency energy conservation plan (the Federal plan) by eliminating the following measures from the Federal plan: The odd-even motor fuel purchase restrictions, the employer-based commuter and travel measure, the speed limit enforcement and reduction measure, and the non-residential building temperature restrictions. These measures had originally been included in the Federal plan as interim final rules.

The Federal plan, which is required by the Emergency Energy Conservation Act of 1979 (EECA or the Act), now includes public information measures and a minimum automobile fuel purchase restrictions measure. Under limited circumstances specified by the Act, the President could activate these measures during a severe energy supply interruption.

DOE is eliminating the measures listed above because, according to most comments and DOE's own analysis, they would likely create social and economic disruptions that would outweigh any benefits during a supply interruption. This action was precipitated by the President's decontrol of crude oil and petroleum products in January 1981 and DOE's policy that the free market, unfettered by counterproductive government controls, can more effectively allocate scarce energy supplies in the event of an energy supply interruption. By encouraging production and reducing demand, the free market directly contributes to alleviating shortages.

EFFECTIVE DATE: March 8, 1982.

FOR FURTHER INFORMATION CONTACT:

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Christoper T. Smith, Office of the General Counsel, Department of Energy, 1000 Independence Avenue, S.W., Room 6B-144, Washington, D.C. 20585, telephone (202) 252-9510.

SUPPLEMENTARY INFORMATION:

I. Background

Section 213(a) of the Emergency Energy Conservation Act of 1979 (Pub. L. 96-102, 93 Stat. 757 *et seq.* (1979), 42 U.S.C. 8501 *et seq.)* (EECA or the Act) required the Department of Energy (DOE) to establish a standby Federal emergency energy conservation plan (the Federal plan) within 90 days after the date of enactment. As required by the Act, DOE established the Federal plan on February 4, 1980.

As published (45 FR 8462, February 7, 1980), the Federal plan contained seven interim final measures (10 CFR 477.41, 477.42, 477.43, 477.44(a)-(e), 477.45, 477.51, and 477.52), with four additional measures proposed for inclusion (10 CFR 477.44(f), 477.46, 477.47, and 477.48).[1] Comment was invited on both the interim and the proposed measures, and extensive comments were received. On May 16, 1980 (45 FR 34015, May 21, 1980), DOE withdrew the proposed section 477.48, the recreational watercraft restrictions measure, effective retroactively to April 23, 1980.

In both the written comments on the Federal plan and at public hearings held in eight cities across the country, many individuals and business representatives expressed their concern that several of the emergency energy conservation measures, if adopted and implemented, would interfere excessively in their lives and businesses, were unnecessary restrictions, and would impose costs far in excess of their benefits. In addition, comments often indicated that energy emergencies could be better addressed by an unregulated marketplace.

On January 28, 1981, the President removed all remaining Federal price and allocation controls on U.S. crude oil and petroleum products (46 FR 9909, January 30, 1981). The President's action was the first step in effectuating the Administration's policy that the free market, unfettered by counterproductive government controls, can more effectively allocate scarce energy supplies in the event of an energy supply interruption. Reliance on market mechanisms also is expected to stimulate increased levels of private petroleum stocks, increased domestic production, and more efficient energy use.

Against this background, on February 23, 1981, DOE published a notice which proposed a major revision to the Standby Federal Emergency Energy Conservation Plan (46 FR 13517). In this notice, DOE rescinded those measures previously proposed for inclusion in the Federal plan: the compressed workweek measure, the vehicle-use sticker measure, and that section of the employer-based commuter and travel measure dealing with work schedules and transit subsidies for employees. The notice also proposed the revocation of certain measures which had been published as interim final rules: the odd-even day motor fuel purchase restrictions, the balance of the employer-based commuter and travel measure, the speed limit enforcement and reduction measure, and the non-residential building temperature restrictions measure.

The notice outlined the Department's views favoring an energy program free of counterproductive constraints—a

[1] Section 477.41 provides for a State-based multimedia information and publicity program designed to inform the public about the availability and means of using fuel-efficient travel options, means of increasing vehicle fuel efficiency, and means by which the total amount of automobile travel could be reduced in an emergency.

Section 477.42 provides for restricting individual minimum motor fuel purchases to $7.00 (6.2 gallons at $1.13) for vehicles having an engine with 8 or more cylinders and to $5.00 (4.4 gallons at $1.13) for vehicles with fewer than 8 cylinders.

Section 477.43 sought to manage shortages by restricting purchases of motor fuel for use in motor vehicles whose license plate corresponds in the prescribed manner with odd-even calendar days.

Section 477.44(a)-(e) sought to conserve motor fuel use by requiring certain employers to take steps to reduce the amount of motor fuel used by employees in commuting through a variety of options, including: carpools, pre-paid transit systems, and preferential parking for high-occupancy vehicles.

Section 477.45 sought to conserve fuel by requiring that States take stricter measures to enforce the 55 MPH speed limit on all highways, reduce by 5 MPH current speed limits on all or selected portions of roads, or increase enforcement of the reduced speed limits—all of the above to achieve a minimum compliance rate of 70 percent.

Section 477.51 seeks to conserve middle distillates such as home heating oil by providing for the widest practicable and regular dissemination of conservation information to middle distillate consumers, including information about low-cost conservation measures.

Section 477.52 sought to conserve the use of middle distillates by restricting thermostat settings for heating, cooling, and hot water in certain non-residential buildings.

Section 477.44(f) sought to conserve motor fuel use by employees by requiring certain employers to introduce one or more measures such as staggered work hours, flexible work hours, subsidies for a portion of employee commuting costs, and emergency work-at-home programs.

Section 477.46 sought to conserve energy by requiring all government and private employees to reduce their workweek by one day (though compensation for the lost time might be effected by expanding work hours on the remaining work days).

Section 477.47 sought to conserve motor fuel by prohibiting the use of non-exempted vehicles for one, two, or three days a week, depending on the severity of the shortage.

Section 477.48 sought to conserve motor fuel by prohibiting the use of non-exempted watercraft for one or two days of a weekend, depending on the severity of the shortage.

program designed to promote domestic petroleum production and market-based pricing—and requested public comment on the actions discussed above and, more generally, on how best to respond to an energy supply interruption.

II. Summary of Public Comments and DOE Responses

In response to the Federal Register notice published February 23, 1981, 11 witnesses testified at the public hearing held in Washington, D.C., and 40 organizations and individuals submitted written comments. All of the comments are included in the public record of this rulemaking and are available for review through the DOE Freedom of Information Reading Room. A discussion of the comments follows.

Comments on Proposal to Withdraw Interim Final Measures

In the February 23 notice, DOE proposed to withdraw the following interim final rules: the odd-even day motor fuel purchase restrictions, the employer-based commuter and travel measure, the speed limit enforcement and reduction measure, and the non-residential building temperature restrictions. The commenters, including those who testified at the hearing and those who submitted written comments, overwhelmingly supported withdrawal of these measures. In addition, the commenters generally supported the view that an unregulated market for petroleum and petroleum products should provide an orderly adjustment to an energy supply interruption and that DOE should support a policy which promotes vigorous domestic production and conservation efforts driven to the maximum extent possible by marketplace forces.

Commenters from the private sector—businesses, associations, and individuals—generally supported DOE's proposal to withdraw the measures described above because they would interfere with the functioning of the marketplace and with decisions by State and local governments and individuals about how best to respond to an energy emergency. In elaborating on these points, some commenters stated that an unregulated market for energy sources should be the cornerstone of DOE's emergency response plans and that, by decontrolling crude oil and refined products, the President had taken an essential forward step to reduce our vulnerability to supply interruptions by stimulating domestic production and encouraging more efficient energy use.

Several commenters argued that these measures could be counterproductive for the following reasons. First, by interfering with unrestrained supply and demand patterns, the measures would result in more costly use of energy supplies because the market would be unable to direct energy supplies to their most highly valued uses. Second, implementation of some of the measures would impose greater costs and administrative inconvenience than would be justified by any energy saved and would thereby adversely affect productivity and profitability. Finally, one commenter said that mandatory government measures may lead people to believe that they do not need to prepare themselves for an emergency because the government would do so instead.

Commenters provided other reasons for supporting DOE's proposal to revise the Federal plan. One commenter wrote that government conservation programs should not be used to circumvent consumers' independent energy purchase and use decisions. Another commenter stated that the measures proposed for withdrawal may have been necessary if motor gasoline remained subject to price regulation. The President's decontrol order, however, eliminated the need for mandatory demand restraint measures. Finally, several commenters from the private sector also emphasized that the states are in the best position to develop and implement measures of this type and that eliminating the measures from a cumbersome Federal regulatory program does not preclude the states from including them in their own plans.

Several states and other governmental organizations provided the primary opposition to the generally stated belief that an unregulated market should be the cornerstone of an effective response to a supply interruption and to DOE's proposal to remove certain measures from the Federal plan. The opposing commenters indicated that the marketplace may not adequately protect the public welfare and allow for essential services. A few states also mentioned that during the oil embargo in 1973–1974 the public looked to the Federal Government to solve problems caused by energy shortages and that this is likely to recur. A final general comment made by several of these commenters was that the Federal Government, rather than the private sector, is responsible for preparing an energy emergency response plan which will help the country continue its economic activities during a supply interruption in case the unregulated market's response proves inadequate.

These opposing commenters also generally contended that DOE's proposal retreats from government responsibility to protect the health, safety, and welfare of the public; that withdrawing these measures eliminates a source of information, guidance, and possibly authority for states which could otherwise be available to them through the program; and that although any mandatory measure will interfere with individuals' lives and businesses, the interferences would be warranted and necessary during a supply interruption. Some States also indicated that they will continue to include mandatory measures in their emergency energy conservation plans.

Taking a different perspective, one state noted that in the absence of price controls, the market will balance demand with available supplies through increasing prices. Therefore, this state believed that in an unregulated marketplace demand restraint measures are less effective, and it indicated that it would include all of its conservation measures in a comprehensive public information program.

Concerning the specific measures, commenters opposing the odd-even day motor fuel purchase restrictions measure noted that it is inconsistent with a policy which relies on the marketplace to allocate motor fuels, that it would impose particular problems for highway travelers and businesses which require daily use of their vehicles, and that it would interfere with the duties of service station owners and operators. In the alternative, some commenters thought that this measure was effective as an easy way to maintain order during an emergency.

Regarding the employer-based commuter and travel measure, the majority of the commenters supported eliminating this measure because it would interfere with business activities, would impose significant administrative inconveniences on affected businesses, and would be very difficult to enforce. In addition, one commenter argued that this measure would have a disproportionate effect on businesses because of differences in business operations, geography, and so forth. A few commenters stated that this measure should be retained in the standby Federal plan primarily because employers should be compelled to maintain the mobility of their employees.

Most commenters addressing the speed limit enforcement and reduction measure supported its withdrawal. These commenters expressed their concerns that any speed limit reduction would interfere excessively with day-to-day business activity, might cause schedule disruptions and reductions in

business productivity, could lead to less efficient intermodal shifts, and that the measure would be expensive to enforce. Some states in particular emphasized the expanded resources which would be required to increase enforcement of this measure. Supporters of the measure argued that it was effective and easy to enforce.

Finally, concerning the non-residential building temperature restrictions measure, most commenters endorsed the proposal to eliminate this measure from the standby Federal plan. Several commenters mentioned that the restrictions were not uniformly enforced when the program was in effect and that an unregulated energy market would accomplish the ends sought by the measure without the regulatory burden. Those who supported the measure argued that it offered a cheap, effective way to conserve energy.

In addition to these comments, DOE has considered an extensive regulatory and economic analysis of the Federal plan, which was prepared for DOE by the Argonne National Laboratory, together with Resource Planning Associates and the Massachusetts Institute of Technology. That analysis, published only in draft form, is available in DOE's Freedom of Information Reading Room. Its findings tend to cast doubt on the benefits of several of the measures, to underscore the economic and social disruptions they might cause, to highlight the impracticalities and high costs of implementation and enforcement, and to substantiate the uncertain character of the savings which might be expected from these measures.

Based on the comments, DOE's own analysis, and the fact that price controls have been lifted on crude oil and petroleum products, DOE has concluded that the measures proposed for withdrawal from the standby Federal plan—odd-even day motor fuel purchase restrictions, the employer-based commuter and travel measure, the speed limit enforcement and reduction measure, and the non-residential building temperature restrictions—would, if implemented, impose unnecessary burdens and restrictions on the public and on businesses, would be inconsistent with DOE's commitment to an unregulated energy market, and may be counterproductive since the implementation costs would likely outweigh the benefits produced by these measures. Accordingly, by this rule, DOE removes these measures from the standby Federal plan.

At the same time, while withdrawing these measures from the plan, DOE recognizes the concerns expressed by several commenters, primarily states, regarding adequate protection of the public welfare during a severe energy supply interruption. The Federal Government intends to help facilitate the free market and, where appropriate, to minimize the harmful effects of any future oil import disruptions. Thus, in a severe shortage, the free market can be assisted by drawdown of the Strategic Petroleum Reserve (SPR). Due to DOE's acceleration of purchases for the Strategic Petroleum Reserve, the Reserve has grown substantially over the last 10 months. In addition, the following are some of the contingency planning activities now underway which DOE believes will protect the health, welfare, and national security of our country, without creating the distortions and dislocations caused by oil price and allocation controls and mandatory conservation measures:

- Identify and remove regulatory, environmental, technical, and economic barriers to efficient emergency energy use;
- Provide leadership for greater public understanding of the need for energy emergency preparedness and provide for effective public information and communication during crises;
- Work closely with the International Energy Agency to achieve the most efficient international production, transportation, and use of energy and the most effective response to major supply disruptions;
- Remove disincentives and assess the need for incentives for private sector self-help measures, including petroleum stockpiling, supply interconnections, and standby additions to existing facilities;
- Work with state regulatory agencies to develop practical standby procedures to permit prompt increases in oil and gas production during emergencies;
- Conduct studies of likely future energy emergencies, including the forms future oil disruptions might take and their impacts on the U.S. and other consuming nations;
- Identify essential energy requirements of the military and defense industries during emergencies, including mobilization for war;
- Study the feasibility of designing standby plans for emergency withholding tax reductions, increases in transfer payments, and other means of recycling selected tax revenues during major oil supply disruptions;
- Analyze data to provide accurate and timely assessments of energy markets and conditions;
- Reactivate and revamp the Executive Reserve Administrations (Emergency Petroleum and Gas Administration, Emergency Solid Fuels Administration, and the Emergency Electric Power Administration) to strengthen the partnership between the private sector and government in preparing for and managing future energy emergencies;
- Coordinate closely with State and local governments in energy emergency preparedness activities.

Finally, reliance on the free market does not preclude limited government involvement in the event of a major supply disruption. For example, in addition to the President's authority to draw down SPR oil, the President also has the authority to assure that national security needs are met by directing petroleum suppliers to furnish fuel for national defense needs; to impose quotas or fees on imports of crude oil and petroleum products to limit or discourage consumption; and to temporarily waive regulatory requirements affecting domestic energy production and use.

Comments on Measures Withdrawn

In the February 23, 1981, **Federal Register** notice discussed above, DOE withdrew from consideration for inclusion in the standby Federal plan the compressed workweek measure, the vehicle-use sticker measure, and that portion of the employer-based commuter and travel measure concerning transit subsidies and work schedules. Comments received on these measures overwhelmingly supported DOE's action. Commenters emphasized that these measures were most intrusive and burdensome; they might create legal, contractual, enforcement, or fiscal problems; they could not be implemented quickly enough to respond to an energy emergency; and that they would interfere excessively with the activities of both individuals and businesses. One commenter who supported the inclusion of these measures acknowledged that they would require significant adjustments and contended, nonetheless, that they may be necessary during an emergency.

Based on these comments and its own analyses, DOE has concluded that these measures should remain withdrawn from consideration for inclusion in the standby Federal Plan.

Comments on Measures Retained in the Standby Federal Plan

The commenters who addressed the public information measures and the minimum automobile fuel purchase restrictions measure, which remain in the standby Federal plan, unanimously supported them. These measures were generally viewed as being consistent

with an unregulated market and an appropriate governmental role which does not interfere excessively with the activities of individuals or businesses, or impose serious administrative burdens. Some commenters suggested, however, that DOE should expand its public information program to educate the public about the potential problems that can be expected during supply interruptions and the problems associated with direct governmental intervention in the market, and to provide accurate information during an emergency about the shortage and fuel availability. DOE concurs with this suggestion and is working to implement it. Finally, DOE concludes that these two measures will effectively complement the workings of an unregulated market and that this combination of measures and an unregulated market meets the Act's requirements.

III. Alternative Emergency Response Strategies

In the February 23, 1981, **Federal Register** notice, DOE also requested that commenters suggest alternative approaches for responding to any future energy emergency. A number of commenters did suggest alternatives, among them that: companies should be allowed to develop private reserves which are free from government seizure; industrial/utility fuel switching should be added to the plan; a surcharge on oil should be imposed as soon as a shortage occurs to provide market equilibrium in the short term; DOE should assure that interstate planning activities do not create unacceptable conflicts; State and local governments should immediately implement conservation measures such as reserved street or highway lanes and parking facilities for high occupancy vehicles, and develop plans to augment regular public transit services; and tax credits for car/van pools should be enacted.

As discussed above, DOE is committed to the principle that the free market, unfettered by counterproductive government controls, is by far the most efficient allocator of resources in a shortage. By encouraging production and reducing demand, the free market directly contributes to alleviating shortages. Consequently, DOE will evaluate the recommendations made in this proceeding in the light of this policy.

IV. Additional Matters

Environmental Matters

When the measures which are being withdrawn by this notice were first published as interim final rules, the Department of Energy determined (45 FR 8492, February 7, 1980) that they, along with the other measures proposed for the Federal plan, did not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). The measures have never been placed into effect. Withdrawing the measures will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA

Regulatory Flexibility Act Analysis

This notice partially withdraws a plan which is in a standby status and is not now, nor scheduled to be, in effect in any jurisdiction. Since it is not now affecting any small entities nor is it certain that it will ever affect any small entities, the withdrawal will have no effect on small entities. Therefore, pursuant to the Regulatory Flexibility Act (Pub. L. 96–354), this notice constitutes certification that, if promulgated, this regulation will not have a significant economic impact on a substantial number of small entities, and an analysis is not required under this Act. DOE received no comments related to the Regulatory Flexibility Act.

Regulatory Impact Analysis and Review

The Department of Energy determined that this revision to the EECA regulation is not a major rule as defined by Presidential Executive Order 12291 (46 FR 13193, February 19, 1981) because this action eliminates certain standby regulatory restrictions. Therefore, no regulatory impact analysis developed in accordance with Executive Order 12291 is required for the revised regulations. Copies of the previous draft regulatory analysis and other relevant supporting documentation will be made available for public review in the Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

For the reasons set forth above, Part 477, Chapter II, of Title 10 of the *Code of Federal Regulations*, is amended as set forth below.

Issued in Washington, D.C., January 25, 1982.

Guy W. Fiske,

Under Secretary.

PART 477—STANDBY FEDERAL EMERGENCY ENERGY CONSERVATION PLAN

§§ 477.43, 477.44, 477.45, 477.52 [Removed]

Sections 477.43, 477.44(a)–(e), 477.45, and 477.52 of Title 10 of the *Code of Federal Regulations*, which were published on February 7, 1980 (45 FR 8500–8504), are removed.

(Title II of the Emergency Energy Conservation Act of 1979, Pub. L. 96–102, 42 U.S.C. 8501 *et seq.*; Department of Energy Organization Act, Pub. L. 95–91, 42 U.S.C. 7101 *et seq*)

[FR Doc. 82–2997 Filed 2–4–82; 8:45 am]

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federal register

Friday
February 5, 1982

Part V

Department of the Interior

Minerals Management Service

Tract Evaluation Procedures to Assure Receipt of Fair Market Value for Outer Continental Shelf Oil and Gas Leases

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Tract Evaluation Procedures To Assure Receipt of Fair Market Value for Outer Continental Shelf Oil and Gas Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments.

SUMMARY: The Department seeks to identify the most efficient, practicable, and reliable method or methods of tract evaluation for purposes of assuring receipt of fair market value of lands it leases for oil and gas exploration and development on the Outer Continental Shelf (OCS) pursuant to the OCS Lands Act 43 U.S.C. 1801 et seq. This solicitation is necessary to obtain comments and recommendations from representatives of Federal, State, and local governmental agencies, industry, and the public. Current tract evaluation procedures and three options are presented for comment.

DATES: Comments must be submitted in writing and received in Room 6651, Main Interior Building by 12:00 noon, EST, March 8, 1982.

ADDRESSES: Comments may be mailed or delivered to Mr. William P. Pendley, Acting Director, Minerals Management Service, Room 6651, Main Interior Building, 18th and C Streets NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Rioux, (703) 860–7581, (FTS) 928–7581, or Mr. James N. Parrish, (703) 860–7835, (FTS) 928–7835.

Current Tract Evaluation Procedures

The Secretary of the Interior is required by law to assure that the Federal Government receives fair market value for the lands leased and the rights conveyed when leasing OCS resources. See 43 U.S.C. 1344(a)(4) (Supp. II 1978). Under past procedures all high bids received for OCS leases are examined to determine whether or not they constitute fair market value. The high bids submitted are compared with the presale estimate of value assigned to each tract by the Minerals Management Service (IMMS), (formerly the Conservation Division of the U.S. Geological Survey).

MMS utilizes a "Monte Carlo Analysis Method" to obtain a "range of values" to determine MMS' presale estimate of value for each tract. The Monte Carlo simulation method has been considered appropriate for the evaluation of oil and gas exploratory prospects because of the uncertainty of the data which must be used in the evaluations. The following is a description of the Monte Carlo method:

1. MMS estimates the range and distribution of possible values of each variable that will affect the ultimate outcome of the oil and gas venture.

2. One value from the estimated distribution of each variable is selected at random and the tract value is computed using this combination of variables. This computation determines one point in the final distribution of possible tract values. A second value from the distribution of each of the variables is then selected at random, and the resulting tract value is computed to determine the second point in the distribution of possible tract values.

3. This process is repeated, each time with a set of values selected from the estimated distribution of each variable.

The mean of these values and the dry hole costs are then subjected to a risk factor to determine the presale estimate of value for a tract. The risk factor reflects the quality and quantity of the data used in determining the characterists of the proposed, as well as the past successes and failures encountered in the geologic trend. Thus, while the quality and quantity of data available to evaluate offshore tracts are important, the Monte Carlo simulation method of evaluation provides a means for determining a reliable presale estimate of value even in the case of uncertainty regarding the precise measure of a particular variable.

The Department of the Interior (DOI) currently uses three major criteria for determining the adequacy of bids. The Monte Carlo simulation method provides two presale estimates of value for each tract—the mean range of values (MROV) and the discounted mean range of values (DMROV). The MROV represents the Government's presale estimate of value for a given tract. The DMROV represents a value estimate reflecting revenue delays to the Government if the bid is rejected, i.e., it represents the present value of leasing the tract at a later time. The third criterion, which is prepared by the Bureau of Land Management (BLM), is the average evaluation of tract (AEOT), which is the average of all bids received on a tract, including the Government's presale estimate of value. The AEOT is the mechanism whereby market prices and competition are implicitly considered. If a bid exceeds the MROV or the DMROV, the bid is almost always always accepted. If the bid is below both the MROV and DMROV, the bid is then compared to the AEOT. In determining whether the AEOT is a reliable criterion to assess the receipt of fair market value in a particular instance, MMS and BLM consider, among other things, (1) the number of bids on a tract, (2) the reliability of the evaluation data, and (3) the existence of an anomalously low bid on the tract.

The current procedure for tract evaluation is, in essence, an attempt to provide a separate, additional nonmarket, and hence artificial, estimate of the value of each tract offered. Tract value estimation involves geophysical and geological mapping and analysis coupled with an elaborate and complex, and by its nature arbitrary, computer program. An established procedure has been developed for the use of such tract value estimates in recommending bid acceptance or rejection. These procedures, in part, adjust for the information contained in other bids to reduce the chances that bids will be rejected, not because they are too low, but because the tract value estimate is too high. The inherent uncertainty in any nonmarket, and hence artificial, estimate of a tract's value raises serious questions about the wisdom and effectiveness of a strategy that incurs substantial costs for tract value estimates in an attempt to determine what specific high bids do not constitute fair market value.

Streamlined Evaluation Approaches

One of the proposals for streamlining and accelerating the OCS leasing process is to increase reliance on the marketplace and the presence of competitive bidding for offered tracts, rather than to rely on a Government established presale evaluation on every tract, as the primary means of assuring receipt of fair market value. There are clear gains in the internal efficiency of the Department's leasing activities if the costs of tract evaluation can be reduced. More importantly, the economic efficiency of exploration and development can be improved by relying more fully on the leasing market and less on Government decisionmaking to determine which tracts are leased. Greater reliance on the free market and competitive bidding for assurance of receipt of fair market value reduces the likelihood that exploration of a prospect will be unnecessarily delayed because of a bid rejection that was based on artificial and uncertain assumptions.

However, the tract evaluation system may have added an additional deterrent to discourage systematic underbidding and collusion by, in effect, introducing the Government as an additional bidder. This assurance while subject to the same deficiencies has been considered important on drainage, proven, or

development tracts on which one bidder has potentially superior information.

Although a strong case can be made that the lease market itself assures receipt of fair market value, there would appear to be a benefit from continuing an appropriately sized and designed effort to review at lease some of the bids received. Substantial changes in bidding patterns or the limited availability of information on resource prospects could provide opportunities for some bidders to gain from underbidding or collusion. An evaluation process is needed that will provide assurance that fair market value will be received for leases even if such opportunities should arise. A review procedure that provides a credible and cost-effective deterrent against underbidding and collusion would effectively meet this need.

In the OCS program, the market value of "the lands leased and rights conveyed" clearly depends on the oil and gas prospects of the tracts, the expected prices of oil and gas, the costs of OCS operations, the supply of leases and substitutes, and the financial, market, and technological characteristics of potential bidders. The market value of leases is not the market value of the oil and gas eventually discovered or produced, but the value of the right to explore, and, if there is a discovery, develop and produce, subject to a wide array of constraints. The market value of a lease is its value at the time it is offered, given conditions at that time. It is not necessarily the same as the value of the lease at a later time.

In summary, to assure receipt of fair market value for the rights conveyed by an OCS lease, the Secretary must determine that the payment received for the lease is the price that is, or would be, set by a market which is sufficiently competitive to yield fair transactions between buyers and sellers. We define fair market value as the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. We believe the following guidelines should be reflected in any procedure adopted:

1. In deciding how to assure receipt of fair market value, the Secretary should consider and weigh a variety of objectives and factors enumerated in the OCS Lands Act as amended, including costs, administrative burdens, and delays in exploration.

2. Bid rejection decisions should be based on evaluations so as to be defensible as not arbitrary and capricious.

3. Tract evaluations should be done postsale to avoid the excessive and unnecessary workload involved in evaluating tracts on which bids are not received.

4. Competition in the lease market should be used as a principal basis for accepting bids as fair market value.

5. Random selection of tracts for evaluation should be used in establishing a deterrent against underbidding and collusion.

The DOI is in the final stages of developing a procedure to conduct postsale evaluation of a portion rather than all tracts receiving bids. A consideration in designing this procedure will be the effect on Government revenues for a given evaluation technique.

In designing a system, the costs of tract evaluation and bid rejection must be weighed against the benefits. Two types of costs are being considered. The first is the cost of the evaluation procedure itself. The second is the cost of the delay in resource exploration and development that results when a high bid is rejected. The income expected to be generated by the development of the resources of a tract must be discounted to reflect the effects on the productivity of the economy of delaying the availability of valuable resources. The extent of the delay caused by rejection of a bid depends on the timing of the next sale, assuming of course that it will be bid on and leased at that time.

Options

The DOI is in the final stages of reviewing options with regard to evaluation practices for OCS lease sales. Three options are under active consideration which present a range of considerations. Option 1 reflects reliance upon competition at a three or more bid level for bid acceptance with perhaps no sampling; or a 5 percent random sample of these bids combined with a 30 to 60 percent sample of one and two bid tracts which could be random, or part random and part based on predetermined criteria. Analysis of tracts sampled could be based partially on comparative analysis.

Option 3 would place more reliance upon Monte Carlo quantitative evaluations for a sample of prospects sufficient to cover about 60 percent of the tracts receiving bids.

Option 2 would combine elements of Options 1 and 3 through a phased screening process. DOI analysis to date has focused on this option. An initial screen would provide for acceptance of all high bids on structures having tracts which receive three or more valid bids, unless they contain drainage, proven or development tracts, or are selected for further evaluation by MMS and BLM in a 25 percent sample using predetermined criteria or selected in an additional 5 percent random sample. Subsequently, an evaluation of sampled tracts may be made using comparative analyses. A final screen would employ Monte Carlo techniques.

A description of proposed procedures to implement each of these three options is presented in the following section. Respondents should consider the following problems in commenting on any of the three options:

Workload implications with resultant

(1) Government expense of proposed sample sizes.

(2) Difficulty in applying comparative analyses that are credible and yield consistent predictable results without simply adding an element of layering between use of competition and quantitative analysis.

(3) Most of the technical effort involved is employed in mapping to define the nature of the prospect or structure and in developing input for the Monte Carlo model. Increased reliance on competition avoids these two high workload ares. Comparative analyses are dependent on quantitative evaluations to identify possible candidates for rejection.

(4) Evaluations of one tract on a structure or prospect will require mapping of the entire structure or prospect. Sample size should therefore reflect all tracts on a structure or prospect basis.

Examples

The following are examples of proposed procedures for each of the three options under consideration. Various combinations are of course possible. Respondents may address each of the three options and/or any other evaluation procedures they choose to recommend.

Option I—Primary Reliance on Competition

This option focuses on evaluating few-bid tracts and relying on competition shown on many-bid tracts to give confidence of receipt of fair market value.

This option employs the following steps:

Step 1—Apply "noise bid" criteria to all bids received to discount for anomalously low, speculative, or random bids.

Step 2—Accept 100 percent of the high bids on tracts receiving three or more valid bids. Alternatively, subject all

tracts receiving three or more bids to a 5 percent random sample.

Step 3—All tracts on a structure or prospect containing a tract receiving three of more bids, unless randomly selected in Step 2, would be deemed to be competitively bid and accepted.

Step 4—Subject a sample of 30 to 60 percent of all tracts receiving one or two bids to a comparative (qualitative) evaluation. All tracts on a structure or prospect would be included in the sample.

Step 5—Accept bids on all structures not selected above for sampling. Accept bids where there is no identifiable structure or prospect associated with tracts receiving at least minimum bids.

Step 6—If the structure or prospect is evaluated, accept all high bids if the sum of all tract (or structure) evaluations done by MMS does not exceed the sum of the high bids for the structure or prospect value.

Questions

1. Should the Government rely on the market alone to assure receipt of fair market value (i.e., accept high bids on tracts without evaluation) or should it review (evaluate) a sample of tracts receiving bids?

2. Should tracts be selected for evaluation randomly or according to predetermined criteria (selective)? Should the sample be split between random and selective tracts? If so, how?

3. How large a sample should be selected for evaluation? Should it be between 25–60 percent of all tracts bid on? Is a 5 percent random sample sufficient to prevent and/or detect collusion and systematic underbidding?

4. If selectively sampled, what, if any, of the following or other criteria should be used?

a. The adequacy and availability of geological and geophysical data for further evaluation of certain tracts in a timely and cost-effective manner.

b. MMS interpretations of geological and geophysical data which are available may clearly indicate that certain tracts or groups of tracts can be judged to have no identifiable structure. These tracts would not be included in the sample.

c. Competition for certain tracts or competition for the sale in general mey be deemed sufficient to warrant that the structure(s) not be included in the joint sample. A greater reliance can be placed on the market especially if the number of bids is high, even if it is possible that an independent evaluation would generate a high value. Where possible, competition should be judged relative to available MMS data.

d. The history of a tract as evidenced by past offering, leasing, rejection, and exploration may be the basis for nonselection. Past high bids and past evaluations may be considered in conjunction with current high bids.

e. Unique bidding patterns specific to a sale may indicate that companies view geologic trends in a different manner than MMS, and therefore, MMS may wish to carefully review possible alternate interpretations. In addition, where specific bidders may differ substantially from other bidders further evaluations may be recommended. Structures containing a pattern of anomalously bid tracts would be selected for further evaluation.

f. Selection will focus a greater proportion of the evaluation on tracts receiving fewer bids. If systematic underbidding is to be deterred, percentage guidelines for each bid category would be flexible and permit sale specific considerations. Generally, unless predetermined departmental criteria indicate a necessity for further evaluation, structures containing tracts receiving three or more bids will be considered to represent adequate competition and will be deemed to be acceptable.

g. Present value delays in Government receipts associated with the time consumed by an evaluation will be considered. Structures containing tracts receiving high front-end bonuses will be more carefully compared to other selection criteria than lower bid tracts, if all other factors are equal.

5. Should all tracts selected be evaluated on a structure or prospect basis?

6. At what level should the bid cutoff point indicating adequate competition be? At three bids? Higher? Lower?

7. Would one or two bids be adequate competition for assuring receipt of fair market value if there is a particular number of bidders in a sale? For example, if there were 20 active bidders in a sale and only one bid is received on a tract or structure, does this represent a zero bid by all other participants? If year, how many bidders would constitute a competitive sale? What combination of number of bids received on a tract with the number of bidders in a sale assures receipt of fair market value? Should the number change from frontier areas to developed areas, or not?

8. If a comparative evaluation process is used to recommend acceptance or rejection of bids on tracts selected for evaluation, what methods could be employed? The use and efficacy of such methods should be discussed.

9. Would a comparative evaluation process be sufficient as a basis for bid rejection or should a comprehensive economic, resource (quantitative) evaluation be done?

10. Should the high bids on the tracts on a structure or prospect be accepted if the sum of the high bids received exceeds the Government's value for the entire structure or prospect?

11. On which basis should the Government attempt to assure receipt of fair market value—(1) on each tract leased, (2) each structure leased, or (3) for the entire sale area taken as a whole?

12. What is the value of and the potential problem associated with having the high bidder(s) on one tract, in effect, subsidize the high bid(s) on other tracts, as would happen when all the high bids on a structure are accepted if the sum of the high bids exceeds the sum of the tract values on the structure?

13. If at least one tract on a structure is determined to be competitively bid, should the high bid on all other tracts on the structure or prospect be accepted?

14. How should a "structure" or "prospect" be defined? Closing contour? Reasonable development and operating unit? Other?

Option 2—Intermediate Option Using a Phased Screening Process

Preliminary Evaluation

Step 1. Apply noise bid criteria to bids received in sale to discount speculative or random bids.

Step 2. Accept all high bids on structures having tracts which received three or more bids unless the structures contain drainage, proven, or development tracts or are selected for further evaluation by MMS and BLM in a 25 percent sample of all tracts receiving bids selected on the basis of predetermined criteria (see Option I, question 4) or selected in an additional 5 percent random sample. The selection of tracts for further evaluation will be made on a structure or prospect basis, i.e., all tracts on a sample structure or prospect will be further evaluated.

The following definitions apply to these tracts:

Drainage Tract—A tract which has a nearby well which is capable of producing oil or gas, and the tract could suffer if and when such a well is placed on production. The reservoir is interpreted to extend under the drainage tract to some extent.

Proven Tract—A previously leased tract which is now expired but contains known oil and/or gas reserves. Volume of reserves may or may not be known.

Development Tract—A tract which has nearby wells with indicated hydrocarbons and which is not indicated to have a productive reservoir extending under the tract. There should be some indication that some part of the tract is on the same general structure as the proven productive well or wells.

Comparative Evaluation

Step 1. All tracts not recommended for acceptance in the initial phase may be considered for a comparative evaluation. These will include all tracts receiving bids on (1) structures containing tracts identified as drainage, proven, or development; (2) structures having no tracts receiving three or more bids; and (3) structures selected on the basis of predetermined criteria or as part of a random sample. The comparative screening process is designed to expeditiously and efficiently identify tracts for which bid acceptance recommendations are appropriate without the need for a detailed engineering and economic discounted cash flow evaluation. This testing process involves comparison of the high bid value with acceptable bids on tracts on comparable structures and/or resource economic values calculated presale for hypothetical tracts with similar geologic and other physical characteristics such as resource potential, a real extent of potential reservoirs, depth to potential reservoirs, probable producing characteristics, water depth, and distance from shore.

If, based upon this comparison, the high bid for a tract is favorable, it will be recommended for acceptance. Failure of a high bid to meet comparative evaluation criteria will not result in a bid rejection recommendation, but in a further quantitative evaluation.

Step 2. All high bids on a structure or prospect will be accepted if they exceed the value or value judgment placed upon the structure or prospect as determined by this comparative evaluation.

Quantitative Evaluation

All tracts not previously recommended for acceptance will undergo a detailed Monte Carlo type discounted cash flow analysis. Bid acceptance rejection decisions will be based upon the MROV, DMROV, and AEOT.

Questions

1. (a) What are the appropriate techniques for sampling tracts or structures to be evaluated?

(b) Advantages and disadvantages of selective vs. random sampling?

(c) What are appropriate selection criteria?

(d) What is a sufficient sample size to deter and/or detect collusion and systematic underbidding?

2. Should all bid acceptance/rejection decisions on a structure or prospect be based upon the same criteria, such as sufficient competition, a comparative analysis, or a quantitative evaluation?

3. How should a "structure" or "prospect" be defined? Closing contour? Reasonable development and operating unit? Other?

4. On which basis should the Government attempt to assure receipt of fair market value—(1) on each tract leased, (2) each structure leased, or (3) for the entire sale area taken as a whole?

5. What is the value of and the potential problems associated with having the high bidder(s) on one tract, in effect, subsidize the high bid(s) on other tracts, as would happen when all the high bids on a structure are accepted if the sum of the high bids exceeds the sum of the tract values on the structure?

6. If at least one tract on a structure is determined to be competitively bid, should the high bid on all other tracts on the structure or prospect be accepted?

Option 3—Reliance on Quantitative Evaluation Employing Monte Carlo Techniques on Tracts Covering a Sample of Prospects

This option would employ two steps:

Step 1. A sample of tracts would be selected to be evaluated utilizing predetermined criteria developed by MMS and BLM (see Option 1, question 4). All tracts on a prospect or structure would be included in the sample to be evaluated. The sample would equal about 60 percent of the tracts receiving bids. The sample would be drawn in a manner that includes a substantial portion of tracts receiving three or four bids, even if that means a slight reduction in the sample of tracts receiving one bid.

Step 2. Complete a Monte Carlo type quantitative evaluation of each tract included in the sample.

Questions

1. (a) What are the appropriate techniques for sampling tracts or structures to be evaluated?

(b) Advantages and disadvantages of selective vs. random sampling?

(c) What are appropriate selection criteria?

(d) What is a sufficient sample size to deter and/or detect collusion and systematic underbidding?

2. Should the percentage be varied with bid level? If so, how should it vary?

3. Should the sample be entirely selective? Part selective and random, or totally random?

Alternative Bid Acceptance Criteria for Frontier Areas: Applicable to all of the above options is the consideration of special bid acceptance criteria for frontier areas in the OCS.

Three of the purposes of the OCS Lands Act are: (1) To make OCS resources available to meet the Nation's energy needs as rapidly as possible, (2) to balance orderly development with environmental protection, and (3) to insure that the extent of oil and natural gas resources is assessed at the earliest practical time. Since as much as one-third of the Nation's undiscovered oil and gas resources are estimated to underlie the OCS and much of the OCS is in frontier areas where little detailed geological information exists because it is available only through the drilling of boreholes, it is critical that new frontier areas be quickly explored. A principal return obtained by leasing these tracts expeditiously is the information gained from increased exploration and the resultant reduction in risks in subsequent offerings. In addition, decisionmaking is enhanced due to improved data. Finally, orderly development will be enhanced in the OCS which increases efficiency and Government receipts. The following potential alternative methods for incorporating the goals relating to expeditious and orderly exploration and development into our fair market value criteria are offered for comment.

1. *Reduce the reservation price by an estimate of the value of information.* Since this value is greater in frontier areas, these tracts are more likely to be accepted. This reduction would be based on accepted, nonarbitrary methods of estimating the decrease in risk of subsequent offerings and the alternative costs of obtaining such information.

2. *Reduce the reservation price by the efficiency benefits due to orderly development.* The rejection of a bid may have a negative impact on the efficient development of adjacent tracts. Production may not be feasible unless a large group of tracts are leased. Government revenues may be reduced if efficient development is impaired. Delays in development of entire units may be attributable to individual tracts. These types of costs would be subtracted from our MROV's.

3. *Incorporate the uncertainty of MMS information in frontier areas into the criteria.* A distinguishing feature of frontier areas is the greater range of the estimated resources values and

exploration and development costs for a given tract compared to the more developed regions. This is largely due to the greater uncertainty for many of the parameters. At present, a reliability rating is provided for each tract but this rating has not been used as a bid acceptance or rejection criterion since it is based on subjective interpretations of the MMS definitions for each rating. An explicit method of incorporating this uncertainty into our criteria could be developed and evaluations in frontier areas where information is tenuous would receive less weight. One technique would be to assign an uncertainty based on the standard deviations of the MMS values and use this to weight the MROV within the AEOT. This would provide a greater weight to the market in frontier areas. Other techniques include use of the median range of values or use of specific statistical intervals around the MROV.

General Questions

To assist in the determination of policy direction regarding OCS tract evaluation procedures, each respondent is requested to offer comments with regard to each of the three options presented, any additional options that may be offered, and alternative frontier area bid acceptance criteria. Respondents may wish to recommend options beyond those described as currently under consideration by the Department in this notice. In describing or recommending options other than those presented in this notice, respondents are requested to provide sufficient details so that distinction can be made between the options involved, and so that all the options can be fully evaluated. Repondents are specifically requested to address the following general questions with regard to each option:

1. What bid level is an adequate indicator of competition?

2. What sample size should be employed for evaluation purposes?

3. What credible comparative or qualitative analyses could be employed for use under each option?

4. What affect would adoption of each option have on:

(a) Bidding strategies or patterns?
(b) Bid amounts?
(c) Competition?
(d) Exploration?
(e) Development and Production?
(f) Governmental Revenues?
(g) Administrative burdens?
(h) Detection of systematic underbidding and collusion?

5. Contingency payments represent a related problem in determining tract values, especially where comparative methods are employed. How should such contingent payments be taken into account in determining fair market value?

6. What is an appropriate minimum submissible per acre bid for OCS lease tracts? Should that bid vary by region, by evaluation approach, by contingency payment, or by any other factor?

Dated: February 4, 1982.

William P. Pendley,

Acting Director.

[FR Doc. 82-3351 Filed 2-4-82; 11:38 am]

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Reader Aids

Federal Register

Vol. 47, No. 25

Friday, February 5, 1982

INFORMATION AND ASSISTANCE

PUBLICATIONS

Code of Federal Regulations

CFR Unit	202-523-3419 523-3517
General information, index, and finding aids	523-5227
Incorporation by reference	523-4534
Printing schedules and pricing information	523-3419

Federal Register

Corrections	523-5237
Daily Issue Unit	523-5237
General information, index, and finding aids	523-5227
Privacy Act	523-5237
Public Inspection Desk	523-5215
Scheduling of documents	523-3187

Laws

Indexes	523-5282
Law numbers and dates	523-5282 523-5266
Slip law orders (GPO)	275-3030

Presidential Documents

Executive orders and proclamations	523-5233
Public Papers of the President	523-5235
Weekly Compilation of Presidential Documents	523-5235
United States Government Manual	523-5230

SERVICES

Agency services	523-4534
Automation	523-3408
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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

4489-4672 1
4673-4978 2
4979-5188 3
5189-5400 4
5401-5698 5

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
February 26, 1852 (Revoked in part by PLO 6120) 5423
March 15, 1872 Revoked by PLO 6125) 5425
July 14, 1884 (Revoked in part by PLO 6118) 5422
October 12, 1912 (Revoked in part by PLO 6111) 5419
January 16, 1913 (Revoked in part by PLO 6108) 5418
October 13, 1916 (Revoked in part by PLO 6115) 5421
April 30, 1919 (Revoked in part by PLO 6122) 5424
March 8, 1920 (Revoked in part by PLO 6110) 5419
March 10, 1924 (Revoked by PLO 6105) 5417
February 23, 1928 (Revoked by PLO 6105) 5417
2029, as amended by EO 3140 (Revoked by PLO 6125) 5425
7471 (Revoked by PLO 6109) 5419
8124 (Revoked by PLO 6117) 5422
10830 (See EO 12345 5189
11562 (Revoked by EO 12345 5189
12344 4979
12345 5189

Proclamations:
4893 4673
4894 5401

7 CFR

301 ..... 4675, 5191
718 5403
905 5192
907 5403
910 5404
987 4489
1004 5193

Proposed Rules:
319 4693
1093 5124

9 CFR

113 5194
354 5196

Proposed Rules:
201 4668
203 4668

10 CFR

11 5197
Ch. I 5010
2 4490
9 4676
50 ..... 4497, 5010
477 5688
516 4493

12 CFR

265 4981
545 4498

13 CFR

101 ..... 4676, 4981

14 CFR

39 ..... 4498-4501, 5197, 5199
71 ..... 4502, 5200
73 ..... 4503, 4504
97 5201
205 4982
300 5202
302 5203
305 5203
380 5204
385 ..... 5204, 5205

Proposed Rules:
Ch. I 4523
39 ..... 4523, 5231
71 ..... 4527, 4528, 5231
73 4529
254 5232

15 CFR

370 5206
372 5206
373 5206
374 5206
376 5206
377 5206
378 5206
379 5206
386 5206
935 5211
936 5211

Proposed Rules:
371 4677
806 4530

16 CFR

Proposed Rules:
13 4532

17 CFR

200 ... 4982
211 ... 5215
230 ... 5215
240 ... 5215, 5404
250 ... 5215, 5216
260 ... 5215
270 ... 5215
275 ... 5215

Proposed Rules:

270 ... 5428

18 CFR

271 ... 4504, 5224

Proposed Rules:

271 ... 4535, 5237
273 ... 4535
274 ... 4535
290 ... 5437

19 CFR

4 ... 5225
101 ... 4985, 5406

Proposed Rules:

4 ... 4535

21 CFR

81 ... 4677
404 ... 4985
416 ... 4985
510 ... 5407
520 ... 5407
522 ... 4678, 5408, 5409
524 ... 5410
546 ... 4678

Proposed Rules:

862 ... 4802

22 CFR

Proposed Rules:

203 ... 4535

23 CFR

Proposed Rules:

230 ... 4536
625 ... 5238
655 ... 5238
1205 ... 5254

24 CFR

81 ... 5410
207 ... 4507
300 ... 5226

26 CFR

1 ... 4508
5e ... 4680
7 ... 4681

27 CFR

Proposed Rules:

1 ... 4694
9 ... 5011

28 CFR

0 ... 4989
2 ... 5411

30 CFR

916 ... 4513

Proposed Rules:

906 ... 4694
946 ... 5013

32 CFR

706 ... 4989
1602 ... 4640
1605 ... 4640
1609 ... 4640
1618 ... 4640
1621 ... 4640
1624 ... 4640
1627 ... 4640
1630 ... 4640
1633 ... 4640
1636 ... 4640
1642 ... 4640
1645 ... 4640
1648 ... 4640
1651 ... 4640
1653 ... 4640
1659 ... 4640

33 CFR

100 ... 4515
117 ... 4516, 4517
165 ... 4515
204 ... 4990

34 CFR

Proposed Rules:

369 ... 5439
370 ... 5439
371 ... 5439
372 ... 5439
373 ... 5439
374 ... 5439
375 ... 5439
378 ... 5439
379 ... 5439

37 CFR

Proposed Rules:

202 ... 5259

40 CFR

52 ... 4991, 5411
122 ... 4992
123 ... 5412, 5413
146 ... 4992
180 ... 5001, 5002
403 ... 5413

Proposed Rules:

35 ... 4704
52 ... 4704, 5014, 5015, 5439
81 ... 5440
122 ... 4706, 5262
123 ... 5262
124 ... 5262
146 ... 5262
260 ... 4706
264 ... 4706
265 ... 4706
266 ... 4706
403 ... 4518

41 CFR

3-1 ... 5413
101-26 ... 4681
101-47 ... 4521
105-62 ... 5416

Proposed Rules:

101-41 ... 4707, 4709

42 CFR

Proposed Rules:

405 ... 5263

43 CFR

3200 ... 5004

Public Land Orders:

329 (Revoked by PLO 6114) ... 5421
1835 (Revoked by PLO 6121) ... 5423
1935 (Revoked by PLO 6121) ... 5423
2101 (Revoked by PLO 6116) ... 5422
2656 (Revoked by PLO 6107) ... 5418
3500 (Revoked by PLO 6103) ... 5416
4248 (Revoked by PLO 6124) ... 5424
5109 (Revoked by PLO 6123) ... 5424
5952 (Revoked by PLO 6126) ... 5003
6025 (Corrected by PLO 6106) ... 5418
6102 ... 5416
6103 ... 5416
6104 ... 5003
6105 ... 5417
6106 ... 5418
6107 ... 5418
6108 ... 5418
6109 ... 5419
6110 ... 5419
6111 ... 5419
6112 ... 5420
6113 ... 5421
6114 ... 5421
6115 ... 5421
6116 ... 5422
6117 ... 5422
6118 ... 5422
6119 ... 5423
6120 ... 5423
6121 ... 5423
6122 ... 5424
6123 ... 5424
6124 ... 5424
6125 ... 5425
6126 ... 5003

44 CFR

Proposed Rules:

67 ... 4709-4712, 5016
70 ... 4682, 4683

45 CFR

205 ... 5648
206 ... 5648
232 ... 5648
233 ... 5648
234 ... 5648
235 ... 5648
238 ... 5648
239 ... 5648

Proposed Rules:

302 ... 4713
1321 ... 5440

46 CFR

Proposed Rules:

42 ... 5266

47 CFR

87 ... 4684
90 ... 5226

Proposed Rules:

Ch. I ... 5270
15 ... 5442
73 ... 4537, 4538, 5271

48 CFR

Proposed Rules:

49 ... 4713

49 CFR

670 ... 5227
1033 ... 5006
1125 ... 5006
Ch. X ... 4689
1033 ... 4690, 4691
1100 ... 4691

Proposed Rules:

171 ... 4538
172 ... 4538
173 ... 4538
390 ... 5273
391 ... 5273
392 ... 5273
393 ... 5273
394 ... 5273
395 ... 5273
396 ... 5273
397 ... 5273
398 ... 5273
399 ... 5273
571 ... 4541

50 CFR

17 ... 5425

Proposed Rules:

638 ... 5442
671 ... 5008

PUBLIC LAWS

This is the final cumulative list of public laws for the first session of the 97th Congress. The continuing list of public laws published after enactment in the "Reader Aids" section of the **Federal Register** will be maintained on a current basis. Any comments may be addressed to the Director, Office of the Federal Register, Washington, D.C. 20408. The text of laws may be ordered in individual pamphlet form from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

Approval Date	Bill No.	Public Law No.	U.S. Statutes at Large	Subject Matter	Price
Jan. 26	S.J. Res. 16	97-1	95:3	Designating January 29, 1981, as "A Day of Thanksgiving To Honor Our Safely Returned Hostages".	1.50
Feb. 7	H.R. 1553	97-2	95:4	To provide for a temporary increase in the public debt limit.	1.50
Feb. 10	S. 253	97-3	95:5	To increase the number of members of the Commission on Wartime Relocation and Internment of Civilians.	1.50
Feb. 17	S. 272	97-4	95:6	To increase the membership of the Joint Committee on Printing.	1.50
Mar. 13	H.R. 2166	97-5	95:7	To amend the Energy Policy and Conservation Act to extend certain authorities relating to the international energy program.	1.50
Mar. 31	S. 509	97-6	95:8	To amend section 201 of the Agricultural Act of 1949, as amended, to delete the requirement that the support price of milk be adjusted semiannually.	1.50
Apr. 9	S. 840	97-7	95:9	To continue in effect any authority provided under the Department of Justice Appropriation Authorization Act, Fiscal Year 1980, for a certain period.	1.50
	S.J. Res. 61	97-8	95:10	To authorize and request the President to issue a proclamation designating April 9, 1981, as "African Refugee Relief Day".	1.50
Apr. 14	H.J. Res. 182	97-9	95:11	To designate April 26, 1981, as "National Recognition Day for Veterans of the Vietnam Era".	1.50
May 1	H.J. Res. 155	97-10	95:12	To authorize and request the President to issue a proclamation designating May 3 through May 10, 1981, as "Jewish Heritage Week".	1.50
May 22	S. 730	97-11	95:13	To ensure necessary funds for the implementation of the Federal Crop Insurance Act of 1980.	1.50
June 5	H.R. 3512	97-12	95:14	Supplemental Appropriations and Rescission Act, 1981.	3.75
June 12	S.J. Res. 50	97-13	95:97	Designating July 17, 1981, as "National P.O.W.-M.I.A. Recognition Day".	1.50
June 16	S. 1070	97-14	95:98	Youth Employment Demonstration Amendments of 1981.	1.50
June 17	H.R. 2156	97-15	95:99	To amend title 38, United States Code, to extend by twelve months the period during which funds appropriated for grants by the Veterans Administration for the establishment and support of new State medical schools may be expended.	1.50
June 23	S. 1213	97-16	95:100	To amend title I of the Marine Protection, Research, and Sanctuaries Act, as amended.	1.50
June 29	H.J. Res. 288	97-17	95:101	To correct Public Law 97-12 due to an error in the enrollment of H.R. 3512.	1.50
June 30	H.R. 3991	97-18	95:102	To amend the Food Stamp Act of 1977 to increase the authorization for appropriations for fiscal year 1981, and to amend Public Law 93-233 to continue through August 1, 1981, the cash-out of food stamp program benefits of certain recipients of Supplemental Security Income.	1.50
July 6	S. 1123	97-19	95:103	To permit certain funds allocated for official expenses of Senators to be utilized to procure additional office equipment.	1.50
	S. 1124	97-20	95:104	To authorize the Sergeant at Arms and Doorkeeper of the Senate, subject to the approval of the Committee on Rules and Administration, to enter into contracts which provide for the making of advance payments for computer programing services.	1.50
July 9	H.J. Res. 238	97-21	95:105	To approve a Constitution for the United States Virgin Islands.	2.00

Approval Date	Bill No.	Public Law No.	U.S. Statutes at Large	Subject Matter	Price
July 10	H.R. 3807	97-22	95:124	Defense Officer Personnel Management Act Technical Corrections Act.	1.75
July 17	H.R. 3520	97-23	95:139	Steel Industry Compliance Extension Act of 1981.	1.50
July 23	S. 1395	97-24	95:143	To extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1982, and to eliminate the requirement that the Secretary of Agriculture waive interest on loans made on 1980 and 1981 crops of wheat and feed grains placed in the farmer-held grain reserve.	1.50
July 27	H.R. 31	97-25	95:144	Cash Discount Act.	1.50
July 29	H.J. Res. 308	97-26	95:146	Making an urgent supplemental appropriation for the Department of Health and Human Services for the fiscal year ending September 30, 1981.	1.50
Aug. 4	H.J. Res. 84	97-27	95:147	Designating the week of October 4 through October 10, 1981, as "National Diabetes Week".	1.50
	S.J. Res. 28	97-28	95:148	Designating the week beginning March 7, 1982, as "Women's History Week".	1.50
Aug. 6	H.J. Res. 191	97-29	95:149	Designating August 8, 1982, as "National Children's Day".	1.50
	S. 1040	97-30	95:150	To amend the District of Columbia Self-Government and Governmental Reorganization Act to increase the amount authorized to be appropriated as the annual Federal payment to the District of Columbia.	1.50
	H.R. 4074	97-31	95:151	Maritime Act of 1981.	2.00
	S.J. Res. 64	97-32	95:169	Designating August 13, 1981, as "National Blinded Veterans Recognition Day".	1.50
Aug. 7	S. 1104	97-33	95:170	To amend the International Investment Survey Act of 1976 to provide an authorization for further appropriations, to avoid unnecessary duplication of certain surveys, and for other purposes.	1.50
Aug. 13	H.R. 4242	97-34	95:172	Economic Recovery Tax Act of 1981.	4.50
	H.R. 3982	97-35	95:357	Omnibus Budget Reconciliation Act of 1981.	7.50
Aug. 14	H.J. Res. 141	97-36	95:934	Authorizing and requesting the President to issue a proclamation designating the period from October 4, 1981, through October 10, 1981, as "National Schoolbus Safety Week".	1.50
	H.R. 1100	97-37	95:935	Former Prisoner of War Benefits Act of 1981.	1.50
	S. 547	97-38	95:938	To enable the Secretary of the Interior to erect permanent improvements on land acquired for the Confederated Tribes of Siletz Indians of Oregon.	1.50
	S. 694	97-39	95:939	Department of Defense Supplemental Authorization Act, 1981.	1.50
	S. 640	97-40	95:944	To amend the District of Columbia Self-Government and Governmental Reorganization Act to extend the authority of the Mayor to accept certain interim loans from the United States and to extend the authority of the Secretary of the Treasury to make such loans.	1.50
	S. 875	97-41	95:945	To authorize the generation of electrical power at Palo Verde Irrigation District Diversion Dam, California.	1.50
	S. 1278	97-42	95:946	Saccharin Study and Labeling Act Amendment of 1981.	1.50
Aug. 20	S.J. Res. 87	97-43	95:947	To authorize and request the President to designate September 13, 1981, as "Commodore John Barry Day".	1.50
Sept. 17	S.J. Res. 62	97-44	95:948	To authorize and request the President to designate the week of September 20 through 26, 1981, as "National Cystic Fibrosis Week".	1.50
Sept. 25	H.R. 2120	97-45	95:949	Product Liability Risk Retention Act of 1981.	1.50
	H.R. 4416	97-46	95:953	To enable the Secretary of Agriculture to assist, on an emergency basis, in the eradication of plant pests and contagious or infectious animal and poultry diseases.	1.50
Sept. 30	H.R. 2903	97-47	95:954	To extend by one year the expiration date of the Defense Production Act of 1950.	1.50
	H.J. Res. 266	97-48	95:955	To provide for a temporary increase in the public debt limit.	1.50
	H.J. Res. 265	97-49	95:956	To provide for a temporary increase in the public debt limit.	1.50

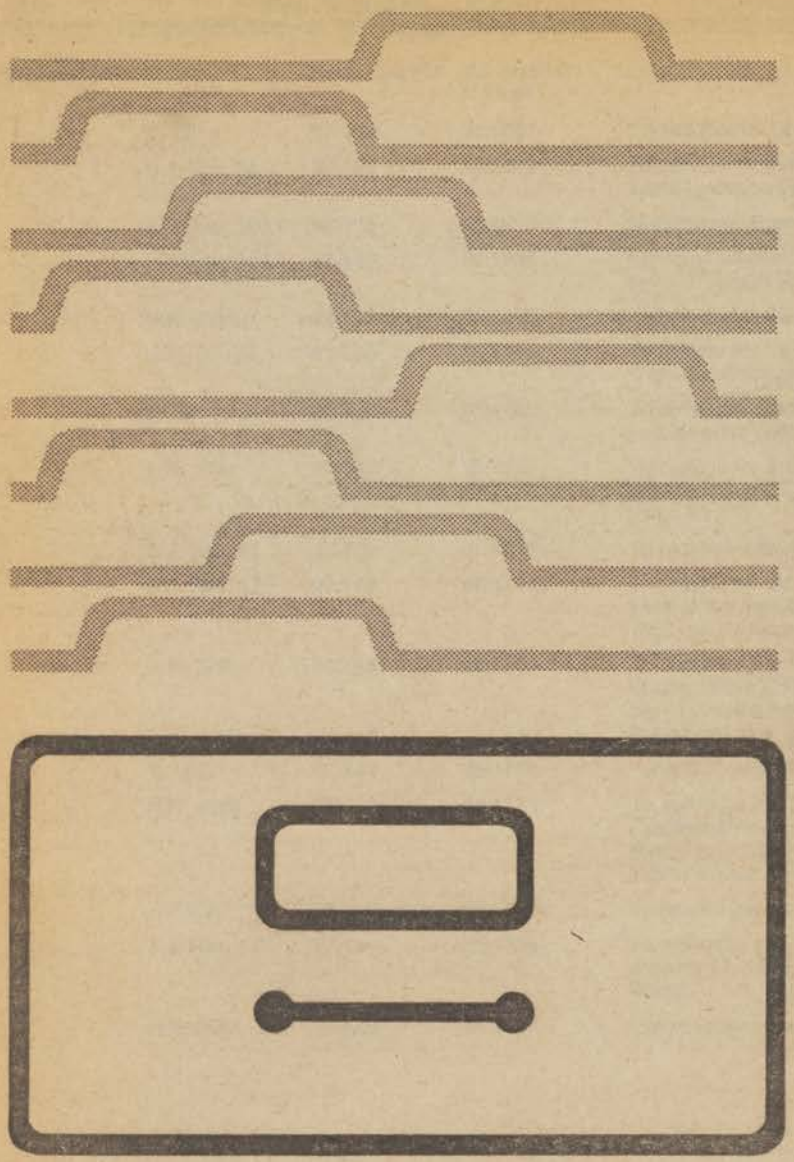
Approval Date	Bill No.	Public Law No.	U.S. Statutes at Large	Subject Matter	Price
	S. 1475	97-50	95:957	To extend the expiration date of section 252 of the Energy Policy and Conservation Act.	1.50
Oct. 1	H.J. Res. 325	97-51	95:958	Making continuing appropriations for the fiscal year 1982, and for other purposes.	1.75
Oct. 2	S.J. Res. 78	97-52	95:969	To provide for the designation of October 2, 1981, as "American Enterprise Day".	1.50
	S.J. Res. 103	97-53	95:970	To authorize and request the President of the United States to issue a proclamation designating the seven calendar days beginning October 4, 1981, as "National Port Week".	1.50
Oct. 5	S.J. Res. 65	97-54	95:971	Proclaiming Raoul Wallenberg to be an honorary citizen of the United States, and requesting the President to ascertain from the Soviet Union the whereabouts of Raoul Wallenberg and to secure his return to freedom.	1.50
Oct. 6	H.R. 618	97-55	95:973	To convey certain interests in public lands to the city of Angels, California.	1.50
	H.R. 2218	97-56	95:976	To direct the Secretary of Agriculture to convey certain National Forest System lands in the State of Nevada, and for other purposes.	1.50
Oct. 9	H.J. Res. 263	97-57	95:978	To designate May 6, 1982, as "National Recognition Day for Nurses".	1.50
	H.R. 4084	97-58	95:979	To improve the operation of the Marine Mammal Protection Act of 1972, and for other purposes.	1.75
	S. 1033	97-59	95:988	Granting the consent of Congress to the agreement between the States of North Carolina and South Carolina establishing their lateral seaward boundary.	1.50
Oct. 14	S. 1181	97-60	95:989	Uniformed Services Pay Act of 1981.	2.00
	S.J. Res. 98	97-61	95:1009	To authorize and request the President to issue a proclamation designating October 16, 1981, as "World Food Day".	1.50
	S. 1712	97-62	95:1010	To extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1982.	1.50
Oct. 16	S. 304	97-63	95:1011	National Tourism Policy Act.	1.50
	H.R. 4048	97-64	95:1019	Granting the consent of Congress to the agreement between the States of Kansas and Missouri establishing their mutual boundary in the vicinity of the French Bottoms near Saint Joseph, Missouri, and Elwood, Kansas.	1.50
	H.R. 3136	97-65	95:1021	Overseas Private Investment Corporation Amendments Act of 1981.	1.50
Oct. 17	S. 917	97-66	95:1026	Veterans' Disability Compensation, Housing, and Memorial Benefits Amendments of 1981.	1.75
Oct. 20	H.R. 4612	97-67	95:1039	To temporarily delay the October 1, 1981, increase in the price support level for milk and to extend the time for conducting the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1982.	1.50
Oct. 26	S. 1191	97-68	95:1040	To extend for three additional years the provisions of the Fishermen's Protective Act of 1967 relating to the reimbursement of United States commercial fishermen for certain losses incurred incident to the seizure of their vessels by foreign nations; and for other purposes.	1.50
	S. 1224	97-69	95:1041	To amend the provisions of title 39, United States Code, relating to the use of the frank, and for other purposes.	1.50
	S. 1687	97-70	95:1045	To make a technical amendment to the International Investment Survey Act of 1976.	1.50
	H.J. Res. 268	97-71	95:1046	To designate October 23, 1981, as "Hungarian Freedom Fighters Day".	1.50
Nov. 3	H.R. 3499	97-72	95:1047	Veterans' Health Care, Training, and Small Business Loan Act of 1981.	2.00
	S. 1209	97-73	95:1064	Authorizing appropriations to the Secretary of the Interior for services necessary to the nonperforming arts functions of the John F. Kennedy Center for the Performing Arts, and for other purposes.	1.50
	S. 1000	97-74	95:1065	Independent Safety Board Act Amendments of 1981.	1.50

Approval Date	Bill No.	Public Law No.	U.S. Statutes at Large	Subject Matter	Price
	S.J. Res. 4	97-75	95:1067	To authorize the President to issue a proclamation designating the week beginning November 22, 1981, as "National Family Week".	1.50
Nov. 5	H.R. 4608	97-76	95:1068	To continue in effect any authority provided under the Department of Justice Appropriation Authorization Act, Fiscal Year 1980, for a certain period, and for other purposes.	1.50
Nov. 13	S. 1322	97-77	95:1069	To designate the United States Department of Agriculture Boll Weevil Research Laboratory building, located adjacent to the campus of Mississippi State University, Starkville, Mississippi, as the "Robey Wentworth Harned Laboratory"; to extend the delay in making any adjustment in the price support level for milk; and to extend the time for conducting the referenda with respect to the national marketing quotas for wheat and upland cotton.	1.50
Nov. 16	H.R. 3975	97-78	95:1070	To facilitate and encourage the production of oil from tar sand and other hydrocarbon deposits.	1.50
	S. 736	97-79	95:1073	Lacey Act Amendments of 1981.	1.75
Nov. 20	S. 999	97-80	95:1081	To amend the Earthquake Hazards Reduction Act of 1977 and the Federal Fire Prevention and Control Act of 1974 to authorize the appropriation of funds to the Director of the Federal Emergency Management Agency to carry out the earthquake hazards reduction programs and the fire prevention and control program, and for other purposes.	1.50
	H.R. 4792	97-81	95:1085	Military Justice Amendments of 1981.	1.75
	H.R. 4734	97-82	95:1091	To recognize the organization known as the Italian American War Veterans of the United States.	1.50
	S.195	97-83	95:1094	To recognize the organization known as the United States Submarine Veterans of World War II.	1.50
	S. 1672	97-84	95:1097	To expand the membership of the United States Holocaust Memorial Council from sixty to sixty-five and for other purposes.	1.50
Nov. 23	H.J. Res. 368	97-85	95:1098	Making further continuing appropriations for the fiscal year 1982.	1.50
Dec. 1	S. 815	97-86	95:1099	Department of Defense Authorization Act, 1982.	2.50
	S. 1133	97-87	95:1134	To amend the National Advisory Committee on Oceans and Atmosphere Act of 1977 to authorize appropriations to carry out the provisions of such Act for fiscal year 1982, and for other purposes.	1.50
Dec. 4	H.R. 4144	97-88	95:1135	Energy and Water Development Appropriation Act, 1982.	2.00
	H.R. 3454	97-89	95:1150	Intelligence Authorization Act for Fiscal Year 1982.	2.00
	H.R. 3413	97-90	95:1163	Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1982.	1.75
	H.R. 4522	97-91	95:1173	District of Columbia Appropriation Act, 1982.	1.75
Dec. 15	H.J. Res. 370	97-92	95:1183	Making further continuing appropriations for the fiscal year 1982, and for other purposes.	2.25
	S.J. Res. 115	97-93	95:1204	To approve the President's recommendation for a waiver of law pursuant to the Alaska Natural Gas Transportation Act of 1976.	1.50
Dec. 17	H.R. 4591	97-94	95:1205	To amend the mineral leasing laws of the United States to provide for uniform treatment of certain receipts under such laws, and for other purposes.	1.50
	S.J. Res. 136	97-95	95:1206	To validate the effectiveness of a plan for the use or distribution of funds appropriated to pay a judgment awarded to the San Carlos Tribe of Arizona.	1.50
Dec. 21	S. 1098	97-96	95:1207	National Aeronautics and Space Administration Authorization Act, 1982.	1.75
	H.R. 4845	97-97	95:1212	To designate the building known as the Lincoln Federal Building and Courthouse in Lincoln, Nebraska, as the "Robert V. Denney Federal Building and Courthouse."	1.50
Dec. 22	S. 884	97-98	95:1213	Agriculture and Food Act of 1981.	4.75
Dec. 23	H.R. 3455	97-99	95:1359	Military Construction Authorization Act, 1982.	2.50
	H.R. 4035	97-100	95:1391	Making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 1982, and for other purposes.	2.25

Approval Date	Bill No.	Public Law No.	U.S. Statutes at Large	Subject Matter	Price
	H.R. 4034	97-101	95:1417	Department of Housing and Urban Development—Independent Agencies Appropriation Act, 1982.	2.25
	H.R. 4209	97-102	95:1442	Department of Transportation and Related Agencies Appropriation Act, 1982.	2.25
	H.R. 4119	97-103	95:1467	Making appropriations for Agriculture, Rural Development, and Related Agencies programs for the fiscal year ending September 30, 1982, and for other purposes.	2.25
	H.R. 3484	97-104	95:1491	George Washington Commemorative Coin Act.	1.50
	H.R. 4910	97-105	95:1493	To amend the District of Columbia Self-Government and Governmental Reorganization Act and the charter of the District of Columbia with respect to the provisions allowing the District of Columbia to issue general obligation bonds and notes and revenue bonds, notes, and other obligations.	1.75
	H.R. 4241	97-106	95:1503	Military Construction Appropriation Act, 1982.	1.75
	H.R. 5273	97-107	95:1509	To allow the George Washington University Higher Education Facilities Revenue Bond Act of 1981 of the District of Columbia to take effect immediately.	1.50
	H.R. 1465	97-108	95:1510	State and Local Government Cost Estimate Act of 1981.	1.50
Dec. 26	S. 1003	97-109	95:1512	To amend title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, to authorize appropriations for such title for fiscal years 1982 and 1983, and for other purposes.	1.50
	H.R. 4879	97-110	95:1513	International Banking Facility Deposit Insurance Act.	1.50
	S. 1948	97-111	95:1517	To permit to become effective certain Farm Credit Administration regulations which expand the authority of financing institutions, other than farm credit system institutions, to borrow from and discount with Federal intermediate credit banks.	1.50
Dec. 29	H.R. 4894	97-112	95:1518	To authorize the Secretary of the Interior to disburse certain trust funds of the Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin, and for other purposes.	1.50
	S. 1196	97-113	95:1519	International Security and Development Cooperation Act of 1981.	3.00
	H.R. 4995	97-114	95:1565	Department of Defense Appropriation Act, 1982.	2.50
	S. 1086	97-115	95:1595	Older Americans Act Amendments of 1981.	2.00
	H.R. 4327	97-116	95:1611	Immigration and Nationality Act Amendments of 1981.	1.75
	H.R. 4503	97-117	95:1623	Municipal Wastewater Treatment Construction Grant Amendments of 1981.	1.75
	H.R. 4506	97-118	95:1634	To name the lock and dam authorized to replace locks and dam 26, Mississippi River, Alton, Illinois, as "Melvin Price Lock and Dam".	1.50
	H.R. 5159	97-119	95:1635	To amend the Internal Revenue Code of 1954 to provide a temporary increase in the tax imposed on producers of coal, and for other purposes.	1.75
	S. 657	97-120	95:1646	To designate the Department of Commerce Building in Washington, the District of Columbia, as the "Herbert Clark Hoover Department of Commerce Building".	1.50
	H.R. 4559	97-121	95:1647	Foreign Assistance and Related Programs Appropriations Act, 1982.	1.75
	H.R. 4431	97-122	95:1658	To provide for the designation of the E. Michael Roll Post Office.	1.50
	H.R. 4331	97-123	95:1659	To amend the Omnibus Reconcilation Act of 1981 to restore minimum benefits under the Social Security Act.	1.75
	H.R. 3799	97-124	95:1666	To extend the Federal tort claims provisions of title 28, United States Code, to acts or omissions of members of the National Guard, and to provide that the remedy under those provisions shall be exclusive in medical malpractice actions involving members of the National Guard.	1.50
	S. 1192	97-125	95:1667	Union Station Redevelopment Act of 1981.	1.75
	H.R. 2494	97-126	95:1674	To designate the John Archibald Campbell United States Courthouse.	1.50
	S. 1946	97-127	95:1675	Czechoslovakian Claims Settlement Act of 1981.	1.75
	S. 1493	97-128	95:1681	To deauthorize several projects within the jurisdiction of the Army Corps of Engineers.	1.75
	S. 1211	97-129	95:1686	To amend the Toxic Substances Control Act to authorize appropriations for fiscal years 1982 and 1983.	1.50

Approval Date	Bill No.	Public Law No.	U.S. Statutes at Large	Subject Matter	Price
	S. 271	97-130	95:1687	Record Carrier Competition Act of 1981.	1.75
	S.J. Res. 34	97-131	95:1692	To provide for the designation of the week commencing with the third Monday in February 1982 as "National Patriotism Week".	1.50
	S.J. Res. 100	97-132	95:1693	Multinational Force and Observers Participation Resolution.	1.75
	H.J. Res. 377	97-133	95:1698	Providing for the convening of the second session of the Ninety-seventh Congress.	1.50
	H.R. 3210	97-134	95:1699	Federal-Aid Highway Act of 1981.	1.75
	S.J. Res. 57	97-135	95:1704	To provide for the designation of February 7 through 13, 1982, as "National Scleroderrna Week".	1.50
	S. 831	97-136	95:1705	To authorize appropriations for the Coast Guard for fiscal year 1982, and for other purposes.	1.50
	H.R. 2241	97-137	95:1709	To provide for the establishment of the Bandon Marsh National Wildlife Refuge, Coos County, State of Oregon, and for other purposes.	1.50
	S.J. Res. 84	97-138	95:1713	To proclaim March 19, 1982, "National Energy Education Day".	1.50
	S.J. Res. 121	97-139	95:1715	To provide for the designation of the year 1982 as the "Bicentennial Year of the American Bald Eagle" and the designation of June 20, 1982, as "National Bald Eagle Day".	1.50
	H.R. 779	97-140	95:1717	To authorize the Secretary of the Army to contract with the Tarrant County Water Control and Improvement District Numbered 1 and the city of Weatherford, Texas, for the use of water supply storage in Benbrook Lake, and for other purposes.	1.50
	S. 1551	97-141	95:1719	Federal Physicians Comparability Allowance Amendments of 1981.	1.50
	H.R. 4926	97-142	95:1721	To authorize the Secretary of the Army to acquire, by purchase or condemnation, such interests in oil, gas, coal, and other minerals owned or controlled by the Osage Tribe of Indians as are needed for Skiatook Lake, Oklahoma, and for other purposes.	1.50
	S. 1976	97-143	95:1723	To amend the Act of July 31; 1946, as amended (40 U.S.C. 193a).	1.50
	S.J. Res. 117	97-144	95:1725	To authorize and request the President to designate the week of January 17, 1982, through January 23, 1982, as "National Jaycee Week".	1.50
	H.R. 3567	97-145	95:1727	Export Administration Amendments Act of 1981.	1.50

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