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Tuesday
July 20, 1982

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

National School Lunch and Breakfast Programs; Revision of School Food Service Accountability Requirements

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: The Food and Nutrition Service (FNS) is amending the regulations for the National School Lunch Program (NSLP) and School Breakfast Program (SBP) on an interim basis to restructure the financial accountability requirements for these programs. Under this rule, the determination of nonprofit status, as a condition for program participation, is made by determining the financial status of the school food service as a whole rather than the financial status of each Federal program and nongrant activity separately. This Interim rule sets forth definitions for nonprofit school food service and for revenue to such food service and requires School Food Authorities (SFAs) to maintain appropriate revenue and expenditure records in order to substantiate the nonprofit status of their school food service. State agencies (SAs) are responsible for establishing the accounting systems for SFAs to use. This rule eliminates the requirement that cost be considered in assigning and paying NSLP and non-severe need SBP reimbursements to SFAs. The term "operating balance" is eliminated and instead, SAs are responsible for monitoring nonprofit school food service net cash resources. SAs are also responsible for establishing systems for determining and monitoring SBP costs for the purpose of establishing eligibility for and determining payment of severe need SBP reimbursement rates.

This rule simplifies Federal program requirements, reduces federally required reporting and recordkeeping burdens for SFAs, removes the program specific restrictions on Federal reimbursement, and provides added flexibility to SFAs in financing school food service operations. The rule also provides SAs with additional flexibility in administering the National School Lunch and School Breakfast Programs.

DATES: Effective October 1, 1982. To be assured of consideration, comments must be postmarked on or before December 31, 1982.

ADDRESSES: Comments may be mailed to Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302. Comments may also be delivered or reviewed during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Stanley C. Garnett, Branch Chief, Policy and Program Development Branch, School Programs Division, FNS, USDA, Alexandria, Virginia 22302, (703) 756–3620.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. It does not have an annual effect on the economy of $100 million or more, nor does it result in major increases in costs or prices for consumers; individual industries; Federal, State or local government agencies; or geographic regions. Furthermore, it does not have 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 rule has also been reviewed with regard to the requirements of Pub. L. 96–354, the Regulatory Flexibility Act. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has certified that this proposed rule will not have a significant adverse economic impact on a substantial number of small entities although it could affect virtually all SFAs participating in the School Nutrition Programs.

The Department is issuing this as an interim rule rather than a final to provide States and local school food authorities the opportunity to comment based on actual operational experience. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and/or recordkeeping requirements that are included in § 210.14(a–1) and § 210.14(g)(3) of this interim rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

On April 9, 1982, the Department published a proposed rule in the **Federal Register** (47 FR 15342) to restructure the financial accountability requirements for the NSLP and SBP. The proposal was designed to implement Section 819 of Pub. L. 97–35 which removed most references to cost accountability from the provisions of the National School Lunch and Child Nutrition Acts dealing with the use of Federal reimbursements in these programs. Under Section 819, Federal NSLP and non-severe need SBP funds are no longer restricted by law to the financing of certain specified costs, i.e., food used in the NSLP in the case of Section 4 NSLP funds, the service of free and reduced price lunches in the case of Section 11 NSLP funds, and the service of breakfasts in the case of non-severe need SBP funds. Also eliminated by Section 819 of Pub. L. 97–35 was the provision in Section 12 of the National School Lunch Act which limited total reimbursement received by any SFA under the NSLP and SBP to the net cost of operating these programs. The revised legislation now requires only that NSLP and non-severe need SBP funds be used to assist SFAs in providing program benefits within an overall nonprofit school food service environment.

With the elimination of program specific Federal cost restrictions, SAs could allow SFAs to use Federal NSLP/Commodity and non-severe need SBP reimbursements to support their overall nonprofit school food service. Under this concept, Federal reimbursements could be used to support non-program food service, such as a la carte service, in

addition to NSLP and SBP food service. This would be a rare occurrence, however, since SFAs have traditionally utilized profits from a la carte sales to subsidize their NSLP and SBP operations.

In addition to providing SFAs with some added flexibility in financing their nonprofit school food service operations this concept would decrease the amount of recordkeeping and reporting at the SFA level since separate costs for the NSLP, SBP and other school food service would not be required. However, SFAs would still be required to maintain revenue and expenditure records sufficient to establish the nonprofit status of their food service operations.

This revision in Federal program accountability requirements does not alter existing Federal financial management standards. The requirement that SAs establish and maintain financial management systems conforming to the standards enumerated in Departmental regulations (7 CFR Part 3015, Subpart H) remains in effect. In so doing, State agencies would have the option of continuing their established cost-based accounting systems if they wish or of establishing new or revised financial management systems to monitor and support revised Federal program accountability requirements. This is in keeping with the Department's long established policy of allowing SAs to impose additional requirements for participation in the NSLP and SBP which may be more stringent than the Department's regulations but are not inconsistent with them. It should be noted, however, that reductions in accounting and recordkeeping at the local level will be dependent upon the extent to which SAs alter their existing cost-based accounting systems.

In response to the April 9 proposal, the Department received 29 comments. Only two commentors clearly disapproved of the proposed rule. Of the remaining comments, 18 indicated general approval of the Department's overall approach while 11 of these offered specific recommendations for change. The remaining nine comments did not indicate approval or disapproval but did offer specific recommendations that were in line with the overall philosophy of the proposal. In view of this, the Department also considers these comments as generally supportive of the proposal. The Department would like to thank all of the commentors who responded to the proposal. Especially appreciated were the detailed suggestions made by many of the commentors which were very helpful in formulating this interim rule.

The remainder of this preamble will discuss the specific changes in program financial requirements that are being made under this interim rule. For ease of reference the changes are presented under the same headings and in the same order as in the preamble of the proposed rule.

1. *Assignment of NSLP reimbursement rates*—Under the proposal, SAs would continue to be required to assign NSLP reimbursement rates to participating SFAs at the beginning of each school year but would no longer be required to assign varying rates of reimbursement based on the anticipated cost of producing a lunch and certain specific anticipated revenues available to meet that cost. Those State agencies that wished to vary Federal reimbursements to SFAs, within the maximum rates established by the Secretary, would have had the option to do so based on the anticipated cost of producing lunches and the relative need of participating SFAs as reflected by the anticipated availability of State and local revenues.

One commentor stated that the reference to cost in discussing the option of assigning varying rates implies that only States with cost based accounting procedures would be able to exercise this option. While cost based accounting would provide a good basis for varying rates of reimbursement, the Department does not intend that this be the only basis. The Department believes that SAs should have the flexibility to assign varying rates based on the financial condition of SFAs as determined by the SA through its established accounting and reporting system. Accordingly, § 210.11(b) has been revised in this interim rule to provide SAs with this flexibility.

2. *Payment of NSLP and non-severe need SBP reimbursements*—Under the proposal, SAs would no longer be required by Federal regulation to consider cost in the payment of NSLP and non-severe need SBP reimbursements to SFAs. However, SAs could retain their existing cost-based systems and continue to limit program reimbursements to allowable program costs.

Commentors addressing this provision expressed support for this approach. Some felt that the elimination of cost considerations in the actual payment of NSLP reimbursements would provide SFAs with added flexibility in financing their nonprofit school food service operations and would decrease accounting, recordkeeping and reporting burdens at both the SFA and SA levels. Others, however, while supporting the financial flexibility afforded by this provision also expressed support for cost based accounting as an effective management tool. In response, the Department wishes to make it clear that this provision does not preclude SAs from maintaining or modifying existing cost-based accounting procedures. Furthermore, a SA could limit NSLP and non-severe need SBP reimbursement to the respective or combined costs of those programs. The Department believes that this degree of flexibility is desirable in meeting individual State needs and is retaining the proposed change in this interim rule.

3. *Nonprofit school food service*—Under the proposal, a SFA would have been required to maintain a nonprofit school food service as a condition for participating in the NSLP and/or SBP. Nonprofit school food service was defined as all food service operations conducted by the SFA principally for the benefit of school children. These operations would include the National School Lunch, School Breakfast and Special Milk Programs and could also include a la carte or other food service operations if all revenues generated by or attributable to these operations are used solely for the benefit of the nonprofit school food service.

SFAs would be required to maintain records of their nonprofit school food service revenues and expenditures in accordance with the accounting system established by the SA. However, if the SFA participates in the SMP it would be required to account separately for milk purchased and served under that Program. Also, if the SFA receives severe need SBP reimbursement rates for any of its schools, it would be required to conform to the accounting system established by the SA for documenting SBP costs.

Four comments were received on the nonprofit school food service revenue/expenditure recordkeeping requirements. Two commentors indicated that the Department should specify the accounting, recordkeeping and reporting procedures for SFAs to use while two others were concerned that overall recordkeeping burdens would not be reduced substantially by the proposal. In response to these comments, the Department believes that SA flexibility in this area is essential to accommodate State and local management and accounting requirements while ensuring compliance with Federal program requirements. As indicated earlier in this preamble, the accounting and reporting systems adopted by the SA will determine the extent to which paperwork burdens will

be reduced at the local level. The Department believes, however, that substantial reductions can be made. For these reasons, the provisions of the proposed rule in this area have not been changed in this interim rule.

The proposed treatment of nonstudent meals served within the nonprofit school food service remains the same in this interim preamble but in response to two commentors, is reworded for clarity as follows: It is the Department's policy that nonstudent meals (except for food service workers and supervisory adults) served within the nonprofit school food service not be supported by that food service except by revenues from or specifically contributed for such nonstudent meals. To comply with this policy in the absence of specific per meal cost information, SFAs shall insure that the price charged for nonstudent meals is not less than the full price for a paying child plus the Federal reimbursement for a paid meal and the per meal value of USDA donated commodities. Downward adjustments in nonstudent meal prices may be made to reflect revenues specifically contributed to the nonprofit school food service for the support of such meals. For example, a school district may subsidize teacher's meals as a fringe benefit.

Under the proposed rule, SFAs would have also been required to account separately for all competitive food services which are not operated as part of the SFA's nonprofit school food service. Profits from any such competitive food service operations could be used only for the benefit of the nonprofit school food service, the SFA or individual school, or student organizations approved by the SFA or school. Fifteen comments were received on these provisions. Most of these commentors (10) expressed concern that the rule as written could require SFAs to account for all food sales occurring within the SFA regardless of sponsor or location; for example, food and beverage sales at school athletic events sponsored by student organizations. While schools do have the authority to authorize and control such food service, commentors did not feel that it was properly subject to the accountability requirements of the NSLP and SBP. The Department agrees and has clarified this interim rule to require that SFAs account only for food service operations conducted by the SFA.

4. *Allowable expenditures*—Under the proposed rule, expenditures of nonprofit school food service revenues would be limited to allowable school food service direct and indirect costs in accordance with OMB Circular A–87 and Departmental regulations (7 CFR Part 3015) on allowable costs.

The Department also proposed to allow nonprofit school food service revenues to be used for capital expenditures associated with altering or otherwise improving nonprofit school food service facilities. The purchase of land or buildings was not allowed. Generally, commentors supported this provision but some expressed concern that revenues which should be used to improve meal quality or lower student prices might be used for capital expenditures instead. The Department is sensitive to such concerns but recognizes the increasing need for financial flexibility at the local level as well as the need for adequate facilities in order to provide quality food service. Therefore, this interim rule will allow nonprofit school food service revenues to be used for altering or improving school food service facilities. However, since the department believes that the nonprofit school food service is not intended to provide school real estate facilites, the interim rule will prohibit the expenditure of nonprofit school food service revenues for the purchase of land or the purchase or construction of buildings.

5. *Revenue*—The definition of nonprofit school food service revenue in this rule remains essentially the same as proposed. In response to comments received, the definition has been slightly reworded to accommodate either cash or accrual accounting systems.

6. *Net cash resources*—The proposed rule eliminated the term "operating balance" and instead, would have required State agencies to monitor the net cash resources available to each SFA's school food service. Net cash resources were defined as including but not being limited to, cash on hand, cash receivable, accrued earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities less cash payable. The value of food inventories were not included in net cash resources. SFAs would have been required to limit their net cash resources to an amount that did not exceed three months normal operating cost of their nonprofit school food service. State agencies would have been given the flexibility of monitoring net cash resources during audits and supervisory assistance reviews. If the State agency determined that an SFA's net cash resources exceeded three months normal operating cost for the SFA's nonprofit school food service, corrective action would have been required. The proposal specified the types of corrective action that could be undertaken. As part of its ongoing management evaluation process, FNS would review each State agency's system for monitoring and controlling the net cash resources of SFAs.

These provisions generated more comments (19) than any other part of the proposed rule. Major concerns were:

a. The definition of net cash resources is based on accrual accounting. Some States and SFAs utilize cash based accounting systems.

b. The determination of three months normal operating cost would require a cost based accounting system.

c. The three month operating cost limit is not sufficient for many SFAs since it would not allow for advance volume purchasing or for food service equipment replacement.

d. The proposed regulations do not specify how the monitoring of net cash resources is to be accomplished or the frequency of that monitoring.

In response to these valid concerns the Department has made the following changes in this interim rule:

a. The definition of net cash resources has been changed to accommodate cash as well as accrual accounting systems.

b. The regulatory guideline limit for net cash resources has been changed from "three months normal operating cost" to "three months average expenditures".

c. SAs have been given the authority to approve higher or lower net cash resource limits on an individual SFA basis according to the needs of each SFA. SAs will be required to develop and maintain criteria for approving such higher or lower limits. These criteria would be subject to review by FNS.

d. In order to afford SAs maximum flexibility in monitoring the net cash resources of SFAs, the Department is not specifying the method or frequency of review. However, as guidance to SAs this interim rule suggests that the monitoring of net cash resources be accomplished through audits and/or supervisory assistance reviews, and should be conducted at a minimum within the frequency required for such reviews and audits.

7. *Severe need reimbursement rates for the SBP*—Under the proposed rule, State agencies would be allowed to set up their own systems or to continue existing systems for determining and monitoring breakfast costs where such costs were needed to determine eligibility for and payment of severe need breakfast reimbursement rates. Per meal breakfast costs would be used in the determination of severe need eligibility as well as in the payment of severe need breakfast reimbursement.

Depending upon the accounting system used by the SFA, per meal costs could be determined on an overall SFA basis or on a school basis. For any school year, severe need reimbursement payments to any SFA would be limited to the lesser of: (1) The cost of providing free and reduced price breakfasts to eligible children in schools determined to be in severe need (per meal cost multiplied by the number of free and reduced price breakfasts served) less the reduced price payments received by such schools; or (2) the number of free and the number of reduced price breakfasts served to eligible children in schools determined to be in severe need multiplied by the applicable severe need reimbursement rates.

Two commentors pointed out that Pub. L. 97–35 makes schools with State mandated breakfast programs automatically eligible for severe need reimbursement rates until July 1, 1983 for States with annual legislatures and July 1, 1984 for States with biennial legislatures. Therefore, these schools should be exempted from the reimbursement cost comparison in the SBP regulations until their automatic severe need eligibility expires. The Department agrees and has made the appropriate changes in this interim rule. However, the Department recommends that SAs in the affected States establish accounting procedures for determining eligibility for and the actual payment of severe need SBP reimbursements which can be implemented upon expiration of the exemption.

All other proposed provisions concerning severe need reimbursement remain unchanged in this interim rule.

List of Subjects

7 CFR Part 210

Food assistance programs, National school lunch program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs—Social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, Parts 210 and 220 are amended on an interim basis as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. In § 210.2, paragraph (d) is removed and reserved, a new paragraph (i–2) is added, paragraph (j) is revised to define "nonprofit school food service," and paragraphs (k) and (n–3) are revised to read as follows:

§ 210.2 Definitions.

* * * * *

(i–2) "Net cash resources" means all monies, as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings on investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

(j) "Nonprofit school food service" means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

(k) "Nonprofit" when applied to schools or institutions eligible for the Program means exempt from income tax under the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

* * * * *

(n–3) "Revenue" when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

* * * * *

2. In § 210.7, paragraph (b) is revised to read as follows:

§ 210.7 Use of funds.

* * * * *

(b) Revenues received by the nonprofit school food service in any School Food Authority shall be used only for the operation or improvement of such food service: *Provided, however,* That such revenues shall not be used to purchase land or buildings or to construct buildings.

* * * * *

3. In § 210.8, the words "lunch program" in paragraphs (e)(10) and (e)(11) are changed to read "nonprofit school food service"; in paragraph (e)(14) the words "lunch program" are changed to read "school food service"; and paragraphs (e)(1) and (e)(2) are revised as follows:

§ 210.8 Requirements for participation.

* * * * *

(e) * * *

(1) Maintain a nonprofit school food service and observe the limitations on the use of nonprofit school food service revenues set forth in § 210.7(b) and the limitations on any competitive school food service as set forth in § 210.15b of this part;

(2) Limit its net cash resources to an amount that does not exceed three months average expenditures for its nonprofit school food service; or such other amount as may be approved by the State agency, or FNSRO where applicable.

* * * * *

§ 210.8a [Amended]

4. In § 210.8a, paragraph (f) is amended by changing the words "feeding operation" to "nonprofit school food service".

5. In § 210.11, the last sentence of paragraph (c) is removed, paragraph (d) is removed, and paragraphs (e) and (f) are redesignated (d) and (e), respectively. The second and third sentences of paragraph (a), the second sentence of paragraph (b), and redesignated paragraph (d) are revised to read as follows:

§ 210.11 Reimbursement payments.

* * * * *

(a) * * * General cash-for-food assistance payments shall be made to assist schools in obtaining food for the program. Special cash assistance payments shall be made to assist schools in providing free and reduced price lunches to children eligible for such lunches. * * *

(b) * * * At the beginning of the school year, State agencies, or FNSROs where applicable shall, within these maximum rates of reimbursement, initially assign rates of reimbursement for School Food Authorities or for schools through School Food Authorities. Such rates of reimbursement may be assigned at levels based on financial condition. * * *

* * * * *

(d) The total general cash-for-food assistance reimbursement and special cash assistance reimbursement paid to any School Food Authority for lunches served to children during the school year shall not exceed the sum of the products obtained by multiplying the total number of free, reduced price and paid lunches respectively, served to eligible children during the school year by the applicable maximum per lunch reimbursement for each type of lunch prescribed for the school year.

* * * * *

§ 210.13 [Amended]

6. In § 210.13, paragraph (a) is amended by removing the words "and other information concerning the operation of its nonprofit lunch program as set forth in paragraph (c) of this section," and paragraph (b) is amended by changing the reference to § 210.14(g)(2) in the first sentence to § 210.14(g)(1).

7. In § 210.14, paragraphs (a–1) and (g)(3) are revised to read as follows:

§ 210.14 Special responsibilities of State agencies.

* * * * *

(a–1) Each State agency, or FNS where applicable, shall establish a system of accounting under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system established shall also permit determination of school food service net cash resources, and shall include criteria for approval of net cash resources in excess of or less than three months average expenditures. In addition, School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority.

* * * * *

(g) * * *

(3) Within 90 days after the end of each school year each State agency shall submit information on the State revenue matching requirements prescribed in § 210.6 of this Part. This information shall be submitted on a form provided by FNS.

* * * * *

8. Section 210.15 is revised to read as follows:

§ 210.15 Review of net cash resources.

During audits, supervisory assistance reviews or by other means, State agencies, or FNSROs where applicable, shall be responsible for monitoring the net cash resources of the nonprofit school food service of each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service or such other amount as may be approved by the State agency or FNSRO where applicable, the State agency or FNSRO where applicable, may require the School Food Authority to reduce children's prices, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, adjustments in the rates of reimbursement under the Program shall be made.

* * * * *

9. In § 210.15b, the first sentence of paragraph (a) is amended by changing the words "a school's nonprofit food service under the program" to "lunches served under the Program", and the second sentence of paragraph (a) is revised as follows:

§ 210.15b Competitive food services.

(a) * * * The sale of competitive foods approved by the Secretary may be allowed at the discretion of the State agency and School Food Authority provided that, any profit from the sale of such foods accrue to the benefit of the nonprofit food service or to the school or to student organizations approved by the school.

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. In Section 220.2, paragraph (p) is revised and new paragraphs (o–1), (o–2), and (t–1) are added to read as follows:

§ 220.2 Definitions.

* * * * *

(o–1) "Net cash resources" means all monies as determined in accordance with the State agency's established accounting system, that are available to or have accrued to a School Food Authority's nonprofit school food service at any given time, less cash payable. Such monies may include but are not limited to, cash on hand, cash receivable, earnings or investments, cash on deposit and the value of stocks, bonds or other negotiable securities.

(o–2) "Nonprofit school food service" means all food service operations conducted by the School Food Authority principally for the benefit of school children, all of the revenue from which is used solely for the operation or improvement of such food service.

(p) "Nonprofit" when applied to schools or institutions eligible for the Program means exempt from income tax under the Internal Revenue Code of 1954, as amended; or in the Commonwealth of Puerto Rico, certified as nonprofit by the Governor.

* * * * *

(t–1) "Revenue" when applied to nonprofit school food service means all monies received by or accruing to the nonprofit school food service in accordance with the State agency's established accounting system including, but not limited to, children's payments, earnings on investments, other local revenues, State revenues, and Federal cash reimbursements.

* * * * *

2. In § 220.7, paragraph (d)(2) is amended by changing the words "feeding operation" to "nonprofit school food service"; (e)(9), (e)(10) and (e)(13) are amended by changing the words "breakfast program" to "nonprofit school food service"; and (e)(1) is revised to read as follows:

§ 220.7 Requirements for participation.

* * * * *

(e) * * *

(1)(i) Maintain a nonprofit school food service, (ii) use all revenues received by such food service only for the operation or improvement of that food service, except that such revenues shall not be used to purchase land or buildings, or to construct buildings (iii) limit its net cash resources to an amount that does not exceed three months average expenditure for its nonprofit school food service or such other amount as may be approved by the State agency, and (iv) observe the limitations on any competitive food service as set forth in § 220.12 of this part;

* * * * *

3. In § 220.9, paragraph (b) is amended by removing the word "maximum" from the first sentence; paragraphs (c) and (d) are revised, and paragraph (e) is amended by adding a sentence to the end of the paragraph as follows:

§ 220.9 Reimbursement payments.

* * * * *

(c) The total reimbursement for breakfasts served to eligible children in, (1) schools not in severe need, and (2) severe need schools in State's with State Breakfast mandates as provided for in § 220.9(e)(3) (i) and (ii) in any School Food Authority during the school year shall not exceed the sum of the products obtained by multiplying the total numbers of such free, reduced price and paid breakfasts, respectively, by the applicable rate of reimbursement for each type of breakfast as prescribed for the school year.

(d) For any school year, severe need reimbursement payments to any School Food Authority except as provided for in (c) above shall be the lesser of: (1) The cost of providing free and reduced price breakfast to eligible children in schools determined to be in severe need, less the reduced price payments received by such schools; or (2) the number of free and the number of reduced price breakfasts, respectively, that are served to eligible children in schools determined to be in severe need,

multiplied by the applicable severe need reimbursement rates for such breakfasts.

(e) * * * The State agency, or FNSRO where applicable, shall be responsible for establishing systems for determining breakfast costs where such costs are necessary to the determination of whether or not a school is in severe need.

4. In § 220.11, paragraph (c) is revised to read as follows:

§ 220.11 Reimbursement procedures.

* * * * *

(c) Where a school participates in both the National School Lunch Program and the School Breakfast Program, the State agency or FNSRO, where applicable, may authorize the submission of one claim for reimbursement to cover both programs.

* * * * *

5. In § 220.12, the first sentence of paragraph (a) is amended by changing the words "a school's nonprofit food service under the Program" to "breakfasts served under the Program", and the second sentence of paragraph (a) is revised as follows:

§ 220.12 Competitive food services.

(a) * * * The sale of competitive foods approved by the Secretary may be allowed at the discretion of the State agency and School Food Authority provided that the sale of such foods is part of the School Food Authority's nonprofit food service, or if not part of the nonprofit food service, that any profit from the sale of such foods accrue to the benefit of the nonprofit food service or to student organizations approved by the School.

* * * * *

6. In § 220.13, paragraph (i) is revised, paragraph (j) is redesignated paragraph (k) and a new paragraph (j) is added as follows:

§ 220.13 [Amended]

* * * * *

(i) Each State agency, or FNS where applicable, shall establish a system of accounting under which School Food Authorities shall account for all revenues and expenditures of their nonprofit school food service. The system established shall also permit determination of school food service net cash resources, and shall include criteria for approval of net cash resources in excess of three months average expenditures. In addition, School Food Authorities shall be required to account separately for other food services which are operated by the School Food Authority.

(j) During audits, supervisory assistance reviews, or by other means, State agencies, or FNSROs where applicable, shall be responsible for monitoring the net cash resources of the nonprofit school food service of each School Food Authority participating in the Program. In the event that such resources exceed three months average expenditures for the School Food Authority's nonprofit school food service, or such amount as may be approved by the State agency or FNSRO where applicable, the State agency or FNSRO where applicable, may require the School Food Authority to reduce children's prices, improve food quality or take other actions designed to improve the nonprofit school food service. In the absence of any such action, adjustments in the rates of reimbursement under the Program shall be made.

* * * * *

(Catalog of Federal Domestic Assistance Nos. 10.553 and 10.555)

(Sec. 819, Pub. L. 97-35, 95 Stat. 533, 42 U.S.C. 1759a, 1773 and 1757)

Dated: July 14, 1982.

Samuel J. Cornelius,

Administrator, Food and Nutrition Service.

[FR Doc. 82-19479 Filed 7-19-82; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 2

[Docket No. 82-14]

Disposition of Credit Life Insurance Income

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Comptroller of the Currency (OCC) is amending an existing regulation, 12 CFR Part 2, to reflect recommendations of the Federal Financial Institutions Examination Council ("Council"). The amendments clarify the permissibility of bonuses and incentives to bank employees for credit life insurance sales; describe the circumstances under which credit life insurance income may be allocated to bank holding company affiliates other than the bank; and delete unnecessary provisions.

EFFECTIVE DATE: August 19, 1982, except that the reasonable compensation proviso in 12 CFR 2.4(b) is effective May 1, 1983.

FOR FURTHER INFORMATION CONTACT: Ford Barrett, Assistant Chief Counsel, Comptroller of the Currency, Washington, D.C. 20219. Telephone (202) 447-1896.

SUPPLEMENTARY INFORMATION:

Special Studies

The Secretary of the Treasury has certified that the amendments do not require a regulatory flexibility analysis on the ground that the amendments will have no significant economic impact. The amendments will change several minor details of a long standing OCC regulation and bring it into conformity with a policy statement recommended by the Council. In addition, the amendments permit OCC to delete several provisions in the existing regulation that are thought to be unnecessary.

The amendments do not constitute a major rule under section 3 of Executive Order 12291, and therefore no regulatory impact analysis is necessary. The Council concluded that its recommended policy statement, from which the amendments are drawn, will have a beneficial impact on financial institutions. The effect on bank holding companies and individuals was assessed as immaterial and minor, respectively. Since OCC's regulation has been in effect for more than three years, the impact of the amendments should not differ from the Council's assessment. Moreover, the staff of the Federal Reserve Board has advised that no problems or industry opposition has been encountered in the 12 months since that agency adopted the Council's policy statement. Finally, the deletion of provisions relating to board of director approvals and the retention of minority shareholders' share of credit life insurance income in trust, should have a favorable impact.

Background

On January 26, 1982, OCC proposed amending Part 2 to make it consistent with a policy statement adopted by the Council following solicitation of public comment. In the Notice of Proposed Rulemaking (47 FR 3555; January 26, 1982), OCC noted that Part 2 and the Council's policy statement were identical in overall purpose and effect, but that differences existed in certain details. Moreover, OCC's experience with Part 2 since its promulgation in 1978 indicated that certain provisions were no longer necessary.

Eleven comments were received on the proposed amendments. In view of the substantial number of comments received by OCC in 1976 when the regulation was first proposed and by the

Council in 1980 when its policy statement was published for comment, the low response can probably be interpreted as general approval of the proposed changes. It may also reflect the Federal Reserve Board's adoption of the Council's policy statement nearly a year age. See 46 FR 24690 (May 1, 1981). In any event, four of the comments, including the comment of the American Bankers Association, endorsed OCC's proposed changes with no significant reservations.

The remaining comments focused on a proposed clarification allowing national bank officials to receive bonuses for the sale of credit life insurance and on the compensation to be paid to the bank when credit life insurance income is credited to non-bank affiliates of the holding company. Both topics are discussed below.

Bonuses

The Council's policy statement on disposition of credit life insurance income prohibits bank officers and other designated persons from retaining for their own personal benefit commissions from the sale of credit life insurance to loan customers. OCC's regulation incorporates the same prohibition. However, Part 2 does not contain another provision recommended by the Council clarifying that bank employees can participate in a bonus or incentive plan under which payments based on credit life insurance sales are made in cash or in kind out of the bank's funds not more frequently than quarterly and in an amount not exceeding in any one year 5 percent of the recipient's annual salary. Accordingly, OCC proposed a similar clarification be added to its regulation.

One comment suggested raising the 5 percent limit to 20 percent, while another advocated eliminating the quarterly limitation. In view of the small number of comments offering these suggestions, we believe it is better to retain the Council's recommended limitations, at least for the time being. The Council's recommended limitations were designed to give financial institutions the flexibility of paying bonuses while at the same time "reducing the potential for abusive sales practices." The latter is a reference to the concern that some credit life purchase may be less than voluntary on the part of the borrower, which raises the possibility of a violation of federal antitrust laws and the antitying provisions of the Bank Holding Company Act Amendments of 1970, 12 U.S.C. 1971 *et seq.*[1] In addition, there is the danger that a loan officer might make a loan not otherwise considered prudent for the sake of reaping a sizeable or frequent bonus.[2]

One comment inquired whether the term "salary" as used in the bonus provision is meant to refer to the employee's total compensation for the year, i.e., salary plus bonuses and incentives not related to credit life insurance sales, or whether it is meant to refer solely to an employee's base salary. OCC believes this decision should be left to bank management.

Reasonable compensation

The Council's policy statement recommended that income derived from the sale of credit life insurance be credited to the income accounts of the bank (or its operating subsidiary) and not to the bank's individual employees, officers, directors, principal shareholders, their interests, or other affiliates. However, the Council stated that the income could be credited to an affiliate operating under the Bank Holding Company Act or to a trust for the benefit of all shareholders, provided the bank is paid "reasonable compensation" for the use of its personnel, premises and good will in the sale of the insurance. The Council stated: "As a general rule, 'reasonable compensation' means an amount equivalent to at least 20 percent of the affiliate's net income attributable to the financial institution's credit life insurance sales."

OCC's existing regulation, 12 CFR 2.4(b), also allows credit life income to be credited to an affiliate, but contains no provision for reasonable compensation to the bank. Part 2 does require, however, that the minority shareholders' proportionate share be placed in trust and paid to them periodically. The Council did not recommend this approach, believing that a reasonable compensation provision would be less burdensome while still protective of the interests of minority shareholders. Accordingly, OCC proposed deleting the minority shareholder requirement and substituting a flexible reasonable compensation provision. OCC also requested comment on several alternative approaches.

The six comments addressing this question were divided in their views, except it was agreed that the regulation should not require the income to go solely to the bank. Two comments argued that any reasonable compensation provision would cause a net increase in taxes paid by the holding company, since some income now sheltered in reinsurance company affiliates would have to be paid to the bank as compensation for use of its personnel, premises and good will.

OCC has previously stated that income tax factors are not a significant regulatory consideration in deciding how credit life insurance income should be allocated within a holding company system.[3] To the extent they should be considered, the tax effect appears minimal since a holding company's bank subsidiary is capable of reducing its tax liability through tax exempt investments. Thus, for the many holding companies with bank subsidiaries whose tax liability is small or non-existent as a result of their tax exempt portfolios, the reasonable compensation measure would not cause a significant change in tax liability. Moreover, the benefits of the reasonable compensation provision are increased bank earnings resulting in a strengthened capital position, plus more credible accounting policies recognizing the expenses incurred by one subsidiary in marketing an affiliate's product.

In light of the comments, OCC believes the least burdensome approach for the industry as a whole is to adopt the original proposal of eliminating the cumbersome minority shareholder provision and substituting a flexible reasonable compensation requirement. The elimination of the minority shareholder provision should be beneficial to the many holding companies owning less than 100 percent of the stock of a national bank subsidiary.[4] Moreover, the reasonable

[1] Antitrust concerns were an important consideration in OCC's adoption of 12 CFR 2. See 42 FR 48518, 48524 (Sept. 23, 1977). There were also cited in two court decisions relating to credit life insurance practices of national banks. *IBAA* v. *Heimann*, 613 F. 2d 1164, 1168 (D.C. Cir. 1979); *First National Bank of LaMarque* v. *Smith*, 436 F. Supp. 824, 830 (S.D. Tex. 1977), *aff'd*, 610 F. 2d 1258 (5th Cir. 1980).

[2] For this reason some bankers regard incentives for other than overall performance as dangerous. According to O. Leslie Nell, formerly executive vice president of The Indiana National Bank, "* * * as loan officers, all of us in this room would probably agree that it is not a very good idea to give a loan officer an incentive for volume. You do that and you know he will not be with you for very long, and you won't be around for very long to judge his performance." *The Journal of Commercial Bank Lending* (July 1974), cited in OCC Interpretive Letter No. 86, CCH Fed. Banking L. Rep ¶85,161. Too large or too frequent a bonus could generate what one court called "an inherent conflict of interest: the loan officer's judgment may be influenced by his direct financial reward from making the loan." *First National Bank of La Marque* v. *Smith*, *supra*, 610 F. 2d at 1265.

[3] 42 FR 48522 (Sept. 23, 1977).

[4] A significant number of bank holding companies own 80 percent of the stock of their subsidiary banks.

compensation requirement is flexible; it is stated in the form of a guideline which may be varied if holding company management can supply justification satisfactory to OCC.

The actual administration of the reasonable compensation provision is also flexible. Where the entire credit life premium is credited to the bank's reinsurance company affiliate, holding company management has the option of compensating the bank with an amount equivalent to 20 percent of the reinsurance company's net income attributable to the bank's credit life sales.[5] Alternatively, the bank would be paid 20 percent of the net income of a pro forma insurance agency affiliate receiving the ongoing rate of commission.

Where a bank holding company operates an insurance agency furnishing credit life insurance to both the bank's customers and to customers of the holding company's non-bank subsidiaries (e.g., a finance company), reasonable compensation to the bank would be 20 percent of the net income from credit life sales made by the bank.

In keeping with the flexible nature of the reasonable compensation provision, OCC is less interested in the mathematical precision of the calculations than it is in whether the bank's crucial role in marketing the credit life insurance receives adequate recognition.

The effective date of the reasonable compensation provision is May 1, 1983, the same date established by the Federal Reserve Board for state member banks. National banks that elect to wait until May 1, 1983, to implement the provision must continue to adhere to the minority shareholder requirement in the existing 12 CFR 2.4(b) until that date.

Other proposals

OCC's other proposed amendments will be adopted as proposed, including the deletion of the existing 12 CFR 2.4(c) and 2.5(a).

List of Subjects in 12 CFR Part 2

Credit life insurance income, National banks

Accordingly, 12 CFR 2 is amended to read in pertinent part as follows:

PART 2—DISPOSITION OF CREDIT LIFE INSURANCE INCOME

1. The authority citation for 12 CFR Part 2 is revised to read:

Authority: 12 U.S.C. 1 et seq., 24 (Seventh), 60, 73, 92, 93a, and 12 U.S.C. 1818(n).

[5] Net income should be based upon the Generally Accepted Accounting Principles method before income from investment of reserves.

2. Section 2.1 is revised to read:

§ 2.1 Authority.

This part is issued by the Comptroller of the Currency under the general authority of the national banking laws, 12 U.S.C. 1 et seq., and under the specific authority of 12 U.S.C. 24 (Seventh), 60, 73, 92, 93a and 1818(n).

3. Section 2.3(e) is revised to read as follows:

§ 2.3 Definitions.

* * * * *

(e) The term "credit life insurance" means credit life, health and accident insurance, sometimes referred to as credit life and disability insurance, and mortgage life and disability insurance.

4. Section 2.4 is revised to read as follows:

§ 2.4 Distribution of credit life insurance income.

(a) No bank employee, officer, director or principal shareholder may retain commissions or other income from the sale of credit life insurance in connection with any loan made by the bank. Except as provided in paragraph (b) of this section, retention of credit life insurance income by such persons or by corporations, partnerships, associations or other entities in which such persons have an interest of more than 5 percent is an unsafe and unsound banking practice. Notwithstanding this prohibition, bank employees and officers may participate in a bonus or incentive plan under which payments based on credit life insurance sales are made in cash or in kind out of the bank's funds not more frequently than quarterly and in an amount not exceeding in any one year 5 percent of the recipient's annual salary. Alternatively, bonuses paid to any one individual during the year for credit life sales may not exceed 5 percent of the average salary of all loan officers participating in the plan and may not be paid more frequently than quarterly.

(b) As an accounting and operations matter, income derived from credit life insurance sales to loan customers shall be credited to the income accounts of the bank and not to the bank's individual employees, officers, directors, principal shareholders, their interests or other affiliates. However, such income may be credited to an affiliate operating under the Bank Holding Company Act or to a trust for the benefit of all shareholders; *Provided* That the bank receives reasonable compensation in recognition of the role played by its personnel, premises and good will in credit life insurance sales. It is suggested that "reasonable compensation" means an amount equivalent to at least 20 percent of the affiliate's net income attributable to the bank's credit life insurance sales.

(c) Nothing in this section shall be construed to prohibit a bank employee, officer, director, or principal shareholder who holds an insurance agent's license from agreeing to compensate the bank for the use of its premises, employees, and good will; Provided, That all income received by said employee, officer, director, or principal shareholder from this activity is turned over to the bank as compensation.

5. Section 2.5 is revised to read as follows:

§ 2.5 Responsibilities of directors.

Directors shall observe the rules in § 2.4 and shall be mindful of their duty under both the common law and 12 U.S.C. 73 to promote and advance the interests of the bank over their own personal interests.

Dated: May 26, 1982.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 82-19581 Filed 7-19-82; 8:45 am]

BILLING CODE 4810-33-M

FEDERAL TRADE COMMISSION

16 CFR Part 4

Clearance Procedures

AGENCY: Federal Trade Commission.

ACTION: Rule related notice.

SUMMARY: This notice discusses the relationship between the Commission's rule governing participation in Commission proceedings by former employees (16 CFR 4.1(b)(8)) and a newly amended disciplinary rule of the D.C. Court of Appeals. No change in the Commission rule is contemplated.

FOR FURTHER INFORMATION CONTACT: Jack Schwartz (202) 523-3521, Deputy Assistant General Counsel, Federal Trade Commission, 6th Street & Pennsylvania Avenue NW., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: When the Commission published its revised rule governing participation in Commission proceedings by former Commission members and employees (46 FR 26293, May 12, 1981) ("FTC Rule" or "Commission Rule"), it announced that it would "reexamine its rule, as need be, after final action by the D.C. Court of Appeals" on proposed amendments to Canon 9 of the Code of Professional Responsibility. The D.C.

Court of Appeals recently adopted its amendment, No. M–81–88 ("Revolving Door"), April 30, 1982 ("D.C. Rule" or "Disciplinary Rule"). Having reviewed the effect of the D.C. Rule on the Commission's procedures, the Commission has concluded that no change in its own rule is warranted, because practitioners can comply with both rules without undue burden.

The two rules differ in the following respects:

1. *Number and kind of filings.* FTC Rule 4.1(b)(8)(ii) requires one affidavit from the attorney who wishes to participate, attesting to the screening procedures. Disciplinary Rule (DR) 9–102(C) requires two "signed documents" to be filed with the agency, one from the disqualified lawyer and another from a participating lawyer. Filing of the single affidavit called for by the Commission's Rule remains mandatory; however, the Commission's Secretary will also receive and file any additional documents from D.C. Bar members.

2. *Time of filing.* FTC Rule 4.1(b)(8)(ii) requires that the affidavit be filed "not later than the time such appearance or participation begins." DR 9–102(C) requires filing with the agency "when [the firm] accepts employment in connection with the matter . . . or when the fact and subject matter are otherwise disclosed on the public record, whichever occurs later." In Commission investigations, law firm participation often begins prior to any public disclosure of the investigation. A firm must file its affidavit at the time of such participation to comply with FTC Rule 4.1(b)(8) even if a later filing would be acceptable under DR 9–102(C).

3. *Public disclosure and service on other parties.* The Commission's Rule merely requires filing of the affidavit. Unlike individual clearance requests under FTC Rule 4.1(b)(2), these affidavits are not routinely placed on the public record. The FTC Rule contains no requirement for service on other parties, were a firm to begin its participation on behalf of one respondent in a multi-respondent adjudication.

The D.C. Rule provides that the documents "shall be public except to the extent that a lawyer submitting a signed document shows that disclosure is inconsistent with Canon 4 [preservation of client confidences] or provisions of law," DR 9–102(D), and shall be served "on each other party to any pertinent proceeding." DR 9–102(C). However, if the subject of the representation has not been disclosed to the general public, then the documents are not served and "the public department or agency shall keep the signed documents confidential." DR 9–102(E).

With respect to public disclosure, the two rules reach essentialy the same result. While the Commission intends not to create a public record file of the affidavits received under FTC Rule 4.1(b)(8)(ii), such affidavits are publicly available under Freedom of Information Act procedures if the subject matter of the representation has been publicly disclosed through some other means. Conversely, if the subject matter of the representation is a nonpublic investigation, then the affidavit would generally not be disclosed under FOIA. See 5 U.S.C. § 552(b)(7)(A). Thus, the Commission's Rule is consistent with DR 9–102 (D) and (E).

Counsel who wish to serve "signed documents" on the other parties in a proceeding, in compliance with the requirement of DR 9–102(C), should follow the usual Commission procedures for service. See FTC Rule 4.4(b).

4. *Content of statements.* Both rules require a description of the "Chinese wall" that will screen the disqualified lawyer from those who are participating, together with an assurance that the disqualified lawyer will not share in the fees gained from the matter. FTC Rule 4.1(b)(8)(ii) requires, in addition, a recitation that the firm's client has been informed of the screening arrangement and that the matter was not brought to the firm through the active solicitation of the disqualified attorney.

The Commission will continue to require full compliance with FTC Rule 4.1(b) from all persons appearing or practicing before it, including those attorneys who are also subject to the provisions of the recently adopted D.C. Rule.

Dated: July 13, July 1982.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–19631 Filed 7–19–82; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin; Removal of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing those portions of the regulations reflecting approval of a new animal drug application (NADA) providing for use of a 10-gram-per-pound tylosin (as tylosin phosphate) premix in making complete swine feeds used for increased rate of weight gain and improved feed efficiency. The sponsor, Doboy Feeds, Domain Industries, Inc., requested withdrawal of approval.

EFFECTIVE DATE: July 30, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV–218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 98–430 for Doboy Feeds Tylan 10 Premix is withdrawn. This document amends §§ 510.600(c) (21 CFR 510.600(c)) and 558.625 (21 CFR 558.625) to revoke those portions which reflect approval of this NADA.

List of Subjects

21 CFR Part 501

Administrative practice and procedure; Animal drugs; Labeling; Reporting requirements.

21 CFR Part 558

Animal drugs; Animal feeds.

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) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. In Part 510, § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry "Doboy Feeds, Domain Industries, Inc.," and in paragraph (c)(2) by removing the entry "025796."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 [Amended]

2. In Part 558, § 558.625 *Tylosin* is amended by removing paragraph (b)(24) and designating it "[Reserved]."

Effective date. July 30, 1982.

(Sec. 512(e), 82 Stat. 345–347 (21 U.S.C. 360b(c)))

Dated: July 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-19584 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Tylosin; Removal of Sponsor

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is removing Oelwein Chemical Co. from the list of sponsors of approved applications and from the regulation for use of tylosin in animal feeds. Oelwein Chemical Co. has requested the withdrawal of approval of the new animal drug application (NADA).

EFFECTIVE DATE: July 30, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, approval of NADA 111-638 for Occo Swine Fortipak TY 2000 Medicated which contains tylosin phosphate 2,000 grams per ton (equivalent to 1.0 gram per pound) is withdrawn. This document amends the regulation for the use of tylosin in animal feed by revoking that portion which reflects approval of this NADA. In addition, because Oelwein Chemical Co. is not currently the sponsor of any other approved new animal drug it is being removed from the regulations as a sponsor of an approved application.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(2) (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.

List of Subjects

21 CFR Part 510

Administrative practice and procedure; Animal drugs; Labeling; Reporting requirements.

21 CFR Part 558

Animal drugs; Animal feeds.

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) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), Parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

§ 510.600 [Amended]

1. In Part 510, § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) by removing the entry for "Oelwein Chemical Co." and in paragraph (c)(2) by removing the entry for "026431."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 [Amended]

2. In Part 558, § 558.625 *Tylosin* is amended by removing paragraph (b)(58) and making it "Reserved."

Effective date. This regulation is effective July 30, 1982.

(Sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e)))

Dated: July 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-19583 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B

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) for Growmark, Inc., providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine feeds for control of large roundworms, nodular worms, and whipworms, and for making complete chicken feeds for control of large roundworms, cecal worms, and capillary worms.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701, is sponsor of NADA 130-466 providing for use of a 0.6-gram-per-pound hygromycin B premix for making complete swine and chicken feeds. The complete swine feed is used as an aid in the control of large roundworms, nodular worms, and whipworms. The complete chicken feed is used as an aid in the control of large roundworms, cecal worms, and capillary worms. The NADA was filed by Elanco Products Co. for the sponsor. Elanco has authorized use of the safety and effectiveness data contained in their approved NADA's 10-918 and 11-948 to support approval of this application. Additionally, satisfactory chemistry, manufacturing, and control information was submitted. This approval does not change the approved use of the drug. Consequently, approval of the NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of NADA 130-466 does not require reevaluation of the safety and effectiveness data in NADA's 10-918 and 11-948. NADA 130-466 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 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.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.274 [Amended]

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) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.274 *Hygromycin B* by adding, in numerical sequence, drug sponsor code "020275" to paragraph (a)(4) and to the "sponsor" column in paragraph (e)(1) (i) and (ii).

Effective Date. July 20, 1982.

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

Dated: July 12, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-19586 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

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 for Growmark, Inc., providing for safe and effective use of a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Growmark, Inc., 1701 Towanda Ave., Bloomington, IL 61701, is the sponsor of NADA 130-465 submitted on its behalf by Elanco Products Co. This NADA provides for use of a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentery (vibrionic), and control swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

Approval of the application is based on safety and effectiveness data contained in Elanco Products Co.'s approved NADA's 12-491 and 41-275. Elanco has authorized use of the data in NADA's 12-491 and 41-275 to support approval of this application. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplemental NADA and does not require reevaluation of the safety and effectiveness data contained in NADA's 12-491 and 41-275.

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.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.630 [Amended]

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) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine* by adding, in numerical sequence, drug sponsor code "020275" to paragraph (b)(9).

Effective date. July 20, 1982.

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

Dated: July 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-19585 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tylosin and Sulfamethazine

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 for Heinold Feeds, Inc., providing for safe and effective use of a premix containing 5 grams per pound each of tylosin and sulfamethazine for making complete swine feeds.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Heinold Feeds, Inc., P.O. Box 377, Kouts, IN 46347, is sponsor of NADA 127-506 submitted on its behalf by Elanco Products Co. This NADA provides for use of a premix containing 5 grams per pound each of tylosin (as tylosin phosphate) and sulfamethazine for making complete swine feeds used to maintain weight gains and feed efficiency in the presence of atrophic rhinitis, lower the incidence and severity of *Bordetella bronchiseptica* rhinitis, prevent swine dysentery (vibrionic), and control swine pneumonias caused by bacterial pathogens (*Pasteurella multocida* and/or *Corynebacterium pyogenes*).

Approval of the application is based on safety and effectiveness data contained in Elanco Products Co.'s approved NADA's 12-491 and 41-275. Elanco has authorized use of the data in NADA's 12-491 and 41-275 to support approval of this application. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk from exposure to residues of the animal drug, nor does it change the conditions of the drug's safe use in the

target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), approval of this NADA has been treated as would approval of a Category II supplemental NADA and does not require reevaluation of the safety and effectiveness data contained in NADA's 12–491 and 41–275.

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.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.630 [Amended]

Therefore, under the Federal Food, Drugs, 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) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.630 *Tylosin and sulfamethazine* by adding, in numerical sequence, drug sponsor code "043727" to paragraph (b)(9).

Effective date. July 20, 1982.

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

Dated: July 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82–19582 Filed 7–19–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF EDUCATION

34 CFR Part 74

Education Department General Administrative Regulations (EDGAR)—Audit Requirements

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary of Education amends the Education Department General Administrative Regulations (EDGAR). These amended regulations implement a revision by the Office of Management and Budget (OMB) of the audit requirements for governmental recipients of Federal grants and subgrants—Attachment P to OMB Circular No. A–102.

EFFECTIVE DATE: These regulations are effective July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Willie Price, Acting Director, Policy Division, Assistance Management and Procurement Services, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 5082, ROB–3) Washington, D.C. 20202. Telephone (202) 755–1217.

SUPPLEMENTARY INFORMATION: On October 22, 1979, OMB revised its audit requirements for States, local governments, and Indian tribal governments receiving Federal grants and subgrants. The requirements formerly appeared in Attachment G, paragraph 2(h) of OMB Circular No. A–102. The requirements now are located in a new Attachment P, published on October 22, 1979 in 44 FR 60958.

OMB previously had circulated the proposed revisions of the audit requirements to interest groups representing State, local, and Indian tribal governments; to Federal agencies; and to professional associations. OMB also published the proposed revisions in the **Federal Register** (44 FR 40624, July 11, 1979).

The most significant changes in the audit requirements are—

1. OMB has clarified its intent that audits be conducted on an organization-wide basis rather than a grant-by-grant basis.

2. As part of the organization-wide audit concept, the new requirements prohibit any Federal program from imposing program specific audit guidelines unless they are approved by OMB.

3. To insure that audits are acceptable to all Federal granting agencies, the new requirements establish a cognizant agency system for Federal review of audits.

4. The new requirements contain, in more detail, the prescribed coverage of audits and questions to be answered.

These regulations implementing Attachment P to Circular A–102 will apply to all programs of the Department except where a regulation for a particular program specifically provides otherwise.

Other Information

These amendments merely repeat Government-wide policies established by OMB after notice and public comment. Therefore, in accordance with 5 U.S.C. 553(b), the Secretary finds that it is unnecessary to take additional public comment before adopting these policies for the Department of Education.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these final regulations.

List of Subjects in 34 CFR Part 74

Administrative practice and procedure, Grant programs—education, Grants administration.

Dated: July 14, 1982.

(Catalog of Federal Domestic Assistance No. is not applicable)

T. H. Bell,

Secretary of Education.

The Secretary amends Part 74 of Title 34 of the Code of Federal Regulations as follows:

PART 74—ADMINISTRATION OF GRANTS

1. The Table of Contents is amended by revising Subpart H to read as follows:

* * * * *

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems and Non-Federal Audits

Sec.

74.60 Scope of subpart.

74.61 Financial management standards.

74.62 Non-Federal audits—State and local governments and Indian tribal governments.

* * * * *

2. Section 74.60 is revised to read as follows:

§ 74.60 Scope of subpart.

(a) This subpart contains standards for financial management systems and non-Federal audits of recipients.

(b) Awarding parties may not impose on recipients additional financial management standards or requirements concerning non-Federal audits. The

awarding parties may, however, provide recipients with suggestions and assistance on these subjects.

(20 U.S.C. 3474)

3. Section 74.61 is amended by revising the title and by adding a new first sentence to paragraph (h)(1) to read as follows:

§ 74.61 Financial management standards.

* * * * *

(h) *Audit*—(1) *General.* This paragraph applies to each recipient that is not a "recipient organization", as defined in § 74.62(b). * * *

* * * * *

4. A new § 74.62 is added to Subpart H to read as follows:

§ 74.62 Non-Federal audits—State and local governments and Indian tribal governments.

(a) *Purpose.* (1) This section establishes audit requirements for State and local governments and Indian tribal governments that receive Federal assistance. It provides for independent audits of financial operations, including compliance with certain provisions of Federal law and regulation. The requirements are established to ensure that audits are made on an organization-wide basis, rather than on a grant-by-grant basis.

(2) Except where specifically required by law, no additional requirements for audit will be imposed unless approved by the Office of Management and Budget.

(b) *Definitions.* For the purposes of this section—

"Cognizant agency" means ED if ED has been assigned audit responsibility for a particular recipient organization by the Office of Management and Budget.

"Recipient organization" means a State department, a local government, an Indian tribal government, or a subdivision of those entities, that receives Federal assistance. It does not include State and local institutions of higher education or hospitals.

(c) *Procedures for obtaining Non-Federal audits.* State and local governments and Indian tribal governments shall use their own procedures to arrange for independent audits, and to prescribe the scope of audits. However, the audits must comply with the requirements in this section. Where contracts are awarded for audit services, the contracts must include a reference to this section (34 CFR 74.62).

(d) *Federal audits.* This section does not limit the authority of Federal agencies to make audits of recipient organizations. However, if independent audits arranged for by recipients meet the requirements in this section, all Federal agencies must rely on them, and any additional audit work must build upon the work already done.

(e) Audits must be made in accordance with the Comptroller General's *Standard for Audit of Governmental Organizations, Programs, Activities and Functions,* The General Accounting Office's *Guidelines for Financial and Compliance Audits of Federally Assisted Programs* and successor publications, any compliance supplements approved by OMB, and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(f) Audits must include, at a minimum, an examination of the systems of internal control, systems established to ensure compliance with laws and regulations affecting the expenditure of Federal funds, financial transactions and accounts, and financial statements and reports of recipient organizations. These examinations are to determine whether—

(1) There is effective control over and proper accounting for revenues, expenditures, assets, and liabilities;

(2) The financial statements are presented fairly in accordance with generally accepted accounting principles;

(3) The Federal financial reports (including Financial Status Reports, Cash Reports, and claims for advances and reimbursements) contain accurate and reliable financial data, and are presented in accordance with the terms of applicable agreements, and in accordance with Subpart I of this part; and

(4) Federal funds are being expended in accordance with the terms of applicable agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements or on the awards tested.

(g)(1) In order to accomplish the purposes set forth above, a representative number of charges to Federal awards must be tested.

(2) The test must be representative of—

(i) The universe of Federal awards received; and

(ii) All costs categories that materially affect the award.

(3) The test is to determine whether the charges—

(i) Are necessary and reasonable for the proper administration of the program;

(ii) Conform to any limitations or exclusions in the award;

(iii) Were given consistent accounting treatment and applied uniformly to both federally assisted and other activities of the recipients;

(iv) Were net of applicable credits;

(v) Did not include costs properly chargeable to other federally assisted programs;

(vi) Were properly recorded (i.e., correct amount, date) and supported by source documentation;

(vii) Were approved in advance, if subject to prior approval in accordance with Appendix C to this part;

(viii) Were incurred in accordance with competitive purchasing procedures if covered by Subpart P of this part; and

(ix) Were allocated equitably to benefiting activities, including non-Federal activities.

(h) Audits usually will be made annually, but not less frequently than every two years.

(i) If the auditor becomes aware of irregularities in the recipient organization, the auditor must promptly notify the cognizant agency and recipient management officials above the level of involvement. Irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriation of funds or other assets.

(j) The audit report must include—

(1) Financial statements, including footnotes, of the recipient organization;

(2) The auditors' comments on the financial statements which should—

(i) Identify the statements examined, and the period covered;

(ii) Identify the various programs under which the organization received Federal funds, and the amount of the awards received;

(iii) State that the audit was done in accordance with the standards in paragraph (e) of this section; and

(iv) Express an opinion as to whether the financial statements are fairly presented in accordance with generally accepted accounting principles. If an unqualified opinion cannot be expressed, the nature of the qualification should be stated;

(3) The auditors' comments on compliance and internal control, including—

(i) Comments on weaknesses in and noncompliance with the systems of internal control, separately identifying material weaknesses;

(ii) The nature and impact of any noted instances of noncompliance with the terms of agreements and those provisions of Federal law or regulations that could have a material effect on the financial statements and reports; and

(iii) An expression of positive assurance with respect to compliance

with requirements for tested items, and negative assurance for untested items.

(4) Comments on the accuracy and completeness of financial reports and claims for advances or reimbursement to Federal agencies; and

(5) Comments on corrective action taken or planned by the recipient.

(k) Work papers and reports must be retained for a minimum of three years from the date of the audit report unless the auditor is notified in writing by the cognizant agency of the need to extend the retention period. The audit workpapers must be made available upon request to the cognizant agency or its designees and the General Accounting Office or its designees.

(l) A copy of each recipient's audit report that affects federally assisted programs must be provided to the cognizant agency.

(m) Recipients shall require subrecipients that are State and local governments or Indian tribal governments to adopt the requirements in paragraphs (a) through (k) of this section. The recipient shall ensure that it receives the subrecipients' audit reports.

(n) Small business concerns and business concerns owned and controlled by socially and economically disadvantaged individuals must have the maximum practicable opportunity to participate in the performance of contracts awarded with Federal funds. Grantees of Federal funds shall take the following affirmative action to further this goal—

(1) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals as defined in Pub. L. 95–507 are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available, and arrange time frames for the audit so as to encourage and facilitate participation by small or disadvantaged audit firms;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small or disadvantaged firms;

(4) Encourage contracting with small or disadvantaged audit firms which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small or disadvantaged audit firms as described in paragraph (n)(1) if a contract is too large for an individual small or disadvantaged audit firm; and

(6) Use the services and assistance, as appropriate, of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce in the solicitation and utilization of small or disadvantaged audit firms.

(20 U.S.C. 3474)

[FR Doc. 82-19513 Filed 7-19-82; 8:45 am]

BILLING CODE 4000-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 6350]

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

Correction

In FR Doc. 82–18767, beginning on page 30490 in the issue of Wednesday, July 14, 1982, the fifth entry in the first column of the table on page 30491 should have read, "Arkansas: Nevada".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Revision of Special Rule for the African Elephant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service revises the special rule for the African elephant, *Loxodonta africana*, by requiring that raw ivory imported into or exported from the United States be marked, by eliminating prohibitions against certain domestic activities and by limiting coverage of the special rule to ivory. This rule makes no changes in the regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (50 CFR Part 23). The special rule recognizes the difficulty of enforcing some of the requirements of the old special rule and is designed to bring the special rule into line with the provisions and recommendations of the Convention. The intended effect of this rule is to preserve scarce resources and provide more effective controls on the international trade of African elephant ivory.

DATE: This rule is effective September 20, 1982.

ADDRESS: Send correspondence to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Richard M. Parsons, Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, Telephone (703/235–1937).

SUPPLEMENTARY INFORMATION: On April 9, 1981, the Service published in the **Federal Register** a notice of intent (46 FR 21209) to amend the special rule for the African elephant (50 CFR 17.40(e)). The notice stated that the Service was considering amending the special rule to ease restrictions on certain domestic activities involving African elephant items and to bring the rule more into line with the import and export provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention). The notice also stated that the Service was considering a marking requirement for "raw ivory" and measures to insure that ivory imported into the U.S. had been lawfully acquired in the country of origin.

On July 17, 1981, the Service published a proposed rule (46 FR 37059) in which the background material set forth a brief history of regulation of the African elephant in the U.S. and problems associated therewith. It also set forth a resolution issued by the third regular meeting of the Conference of the Parties to CITES (hereinafter referred to as the resolution) held last February and March in New Delhi.

On August 25, 1981, the Service published a correction to the preamble of the proposed rule which clarified its request for information concerning the necessity of licensing those ivory importers exempt from the licensing requirements of 50 CFR Part 14 (46 FR 42887). The correction also extended the comment period for the proposed rule to September 9, 1981.

Information and Comments

A small number of persons and organizations provided information and comments. In general, the comments favored adoption of the proposed rule. The Service will here summarize and address only those comments that recommended changes in the proposed rule.

Comment: The final rule should state in regulatory form the exception provided by section 9(c)(2) of the Endangered Species Act so that imports of African elephant sport hunting trophies would continue to be exempt

from the prohibitions of the Act and regulations thereunder.

Response: The Service is developing a regulation incorporating this exception into Part 17, but will make it applicable to listed species in general rather than to the African elephant alone. Therefore, this special rule does not contain any reference to the exception. Generally, this exemption is applicable to African elephant hunting trophies.

Comment: Designated ports for imports of ivory should be reduced 2 to 3 (New York City, Chicago, Seattle) from the current 9 to make regulation and monitoring of ivory more effective.

Response: Available information indicates that most of the ivory entering the U.S. enters through four ports. Limitation to these designated ports would constitute an unwarranted limitation on the trade which does not enter those ports.

Comment: The current requirement that worked ivory be derived from an elephant taken in a Party country should be retained.

Response: The resolution recommends that only permits and certificates for raw ivory mention country of origin. This is tacit recognition of the difficulty of matching documents with worked ivory and of marking worked ivory. Experience of the Service in enforcing this rule has proven that it is unworkable. Before importation into the U.S., most worked ivory has entered several countries changing ownership several times. Agreement by the Parties to limit imports of ivory to those from CITES Parties would make enforcement of such a restriction practical. Such an agreement has not been reached.

Comment: Unilateral action by the U.S. imposing a raw ivory marking requirement could cause a price dichotomy and could effectively prohibit imports from those CITES countries not requiring marking.

Response: Regulation of items in trade may have an impact on their price. Regulation of international trade is often not uniform with resultant price differentials. There is no indication such differentials will disrupt the raw ivory trade. The resolution provided no time frames for implementation probably because implementation mechanisms vary greatly from country to country. The one year grace period contained in this rule is an attempt, in part, to accommodate this variation.

Comment: There is no need to regulate trade in worked ivory if trade in raw ivory is regulated.

Response: This would be true if the trade in raw ivory were regulated exceptionally well. Raw ivory successfully smuggled and then worked could avoid all CITES controls on raw ivory. Furthermore, CITES controls would be totally circumvented in those cases where the country of origin also exported worked ivory. Several African countries are currently exporting worked ivory items.

Comment: Illegally acquired raw ivory could be sent to a non-Party country where it could be marked so as to make it appear that it comes from a Party country thereby satisfying, in part, the rules as proposed.

Response: The mark would indicate country of origin. Where "laundering" is suspected, a check back with the country of origin as marked would disclose that export was improper, or that the mark was improper.

Comment: Imports of African elephant trophies taken in non-Party countries with good conservation programs should be allowed.

Response: Such imports would usually be exempt from these regulations if they satisfied the requirements of section 9(c)(2) of the Endangered Species Act.

Comment: The proposed rule should be changed to make it clear that live and dead elephants are not covered by the rule.

Response: The final rule contains a statement to this effect and goes further by changing the proposed rule so that it only covers ivory. It is generally accepted that control of the international ivory trade is the key to controlling the detrimental impacts of the trade in elephant items. The African elephant and its parts and products including ivory will still be controlled by the Service's regulations implementing CITES (50 CFR Part 23).

Comment: The proposed rule is too complex. To simplify it, all importations of African elephant parts and products should be banned.

Response: Such a ban might simplify the regulations but not benefit the species. A ban could reduce the elephant's survival chances by removing incentives to conserve the species. The resolution rather than recommend a trade ban recommended stricter regulation of the trade. The Service believes that only internationally coordinated practical action, such as that recommended by the resolution, can truly aid the African elephant. Although imports of raw ivory into the United States constitute a small portion of world trade, our leadership in implementing a marking requirement for imports of raw ivory will bring us into line with the recommendation of the CITES Conference of the Parties and provide the leadership and incentives to other countries to do likewise.

Comment: The rule should be more restrictive by limiting trade to CITES Parties that have implemented the resolution.

Response: The rule already prohibits trade with Party countries which do not provide for raw ivory marking and which do not clearly show the country of origin of the raw ivory on documents, both important elements of the resolution. This should be sufficient to stimulate implementation by Party countries trading with the U.S.

Comment: Large amounts of worked ivory have been imported through the mails with little inspection. Mail importations should be so restricted as to allow proper inspection, documentation and enforcement.

Response: Mail shipments are routinely checked on a sample basis. Further restriction of mail shipments should be based on sufficient information as to its need and feasibility to warrant placing a further burden on commercial and personal importations.

Comment: Large quantities of ivory carvings and jewelry have been imported under the "personal effects" exception and are then being sold for large profits.

Response: Specific and substantiated allegations of this nature are a primary tool for preventing abuses of the rules and should be directed to the appropriate law enforcement office. The CITES Parties are currently in the process of examining all exemptions in Article VII of CITES.

Comment: All ivory shipped from Africa to the U.S. via a third country should be accompanied by a copy of the original export document issued by the African country.

Response: With certain exceptions, this final rule requires raw ivory imported into the U.S. to bear a mark indicating, in part, the country of origin which should enable tracing of the original documents. The requirement of an original export document in such instances, unilaterally imposed, could seriously inhibit legitimate trade with the U.S., since in most instances the U.S. destination would probably not be known until one or more export-import events had occurred.

Comment: The United States should not trade with any CITES Party that trades in ivory with a non-Party country.

Response: A proposal to ban trade in ivory with non-Party countries was discussed by the Technical Expert Committee in connection with a draft of the resolution. No agreement could be reached. To the best of the Service's information, few if any Party countries other than the U.S. have adopted such a

ban. Refusal to trade with Party countries not banning trade with non-Party countries would more than likely disrupt the U.S. ivory trade and hamper any attempts at negotiating such an international ban with Party countries.

Comment: It is believed that there are vey few importers of raw ivory for commercial purposes and that they are presently licensed under 50 CFR Part 14. A requirement for a separate license would be redundant and therefore unnecessary.

Response: The Service has no information to indicate that a significant number of ivory importers are not licensed under Part 14. Since those persons generally exempted from the license requirement are small entities, imposing the requirement without substantial information that it is necessary would be contrary to the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601.

Final Rule Differs From Proposed Rule

The proposed rule covered all parts and products of the African elephant. The final rule only covers ivory. Most imports into the U.S. of parts and products of the African elephant involve ivory in one form or another; adequate controls exists for other parts and products in the regulations that implement CITES (see 50 CFR Part 23).

The phrase "whole tusks when the whole surface has been carved * * *" in the proposed definition of worked ivory has been changed to "* * * whole tusks where all or substantially all of the surface has been carved * * *" in order to include as worked ivory carved tusks which have a portion left uncarved in final form. In order to include in the defintion of worked ivory, products which need further manufacturing, crafting or carving after being imported, but which are clearly recognizable as to function on importation, the definition was further changed by adding the word "substantial" to the phrase "* * * in a form requiring no further [substantial] carving, crafting or manufacture * * *"

The definition of raw ivory was changed with reference to ivory pieces by adding the phrase "howsoever changed from its original form". Ivory chips, flakes and compressed powder would, for example, be included in the definition of raw ivory. It is intended that all ivory must either fall under the definition of raw ivory or worked ivory. It was also with this intent that both the proposed and final definition omitted the word "cut" used in the resolution in reference to pieces so that pieces of ivory obtained in any fashion would be included in the definition.

The proposed rule provided a one year grace period within which raw ivory could be imported without the required mark to provide sufficient and reasonable time for countries to institute marking and registration systems. The proposal required a prescribed mark to be affixed prior to final entry. The final rule retains the grace period (extending it to 18 months to enable adjustments to the rule which may be adopted by the Fourth Conference of the Parties), but allows final entry without prior marking. However, this will only be allowed if the Service is satisfied (1) that the raw ivory was legally exported from the country of origin, and (2) that the country exporting the ivory to the U.S. does not yet have a marking system. This change from the proposed rule, which provided for marking after import but before final entry of the raw ivory, was made because it was learned that access to items in Customs' custody is very restricted, making the marking requirement, as proposed, difficult to comply with.

In order to assure appropriate marking for identification purposes of unmarked ivory imported during the grace period and of unmarked ivory in the U.S. prior to the effective date of this rule, the final rule contains a requirement that prior to export from the U.S. such ivory must bear a mark assigned by the Service under permit.

The final rule accommodates marks which supply the neccessary information, but which use a formula at variance with the one set forth in the rule. Marking systems have been in operation in some countries of origin for some time, and it would be an unnecessary burden to require a revamping of systems that meet regulatory needs.

In a similar vein, the final rule adds an alternate import marking requirement which enables reimportation of raw ivory marked for export from the United States, and importation of raw ivory marked by a country other than a country of origin. The Service recognizes that there are large stores of raw ivory scattered around the world. While requiring such ivory to obtain marks of registry from countries of origin would be impractical, the Service believes that such ivory should bear officially prescribed marks prior to importation, in part, to prevent freshly taken ivory from avoiding marking requirements under claims that it was "old ivory" in storage.

The weight element of the marking requirements has been modified in the final rule to require that weight be marked to the *nearest* kilogram. Items which could be rounded up or down (i.e., ivory with a weight of .5 kilograms or some whole number and .5 kilograms) should be rounded down to the nearest kilogram. One of the marking formulas in the proposed and final rule also refers to the two-letter country codes established by the International Organization for Standardization. The codes are included in the final rule as they appear in the official "Proceedings of the second meeting of the Conference of the Parties" Volume 1, pages 414–419, as published by the Secretariat of the Convention, IUCN, Gland, Switzerland, 1980, and supplemented by information received from the Secretariat. The Service has asked the Secretariat to notify the Parties of any changes in this list, and will publish them as received.

With regard to the requirement that raw and worked ivory must be imported from a Party country, a proviso has been added to the final rule that an item imported from a Party country which it transited under the exemption in Article VII paragraph 1 of CITES does not satisfy this requirement. Thus, for example, a shipment from Austria which transits the United Kingdom before being imported into the United States would be an import from Austria. This makes clear that for purposes of this Special Rule the CITES definition of export (as opposed to transit) applies. This is necessary to avoid "laundering" of ivory shipments through countries which, because of the transit exemption in CITES, have no obligation to assure the legality of the shipment or to mark and register raw ivory. Further, regarding such requirement, all references to Parties which have taken a reservation have been omitted from the final rule for drafting purposes only. It should be understood that imports of raw or worked ivory from Parties with current reservations as to such items are not considered to be imports from Parties. The Service knows of no such reservations currently in effect.

The final rule also requires marking of raw ivory only where the size and density of the raw ivory makes punch-die marking feasible. Thus such items as small chips, flakes and loose powder would not have to bear one of the prescribed marks.

Effect of the Final Rule

This final rule changes the "special rule" covering the African elephant as contained in 50 CFR 17.40(e) as follows:

(1) It eliminates controls on live and dead African elephants and on all parts, products and offspring thereof with the exception of ivory. Of course, the rules implementing CITES as found in 50 CFR Part 23 continue to control imports and exports of all of the aforesaid.

(2) It eliminates prohibitions under the Endangered Species Act of 1973 against taking African elephant, possession of unlawfully taken African elephant, certain activities in interstate and foreign commerce and sale and offer for sale in interstate commerce of African elephant.

(3) With regard to raw ivory, it eliminates the requirement that raw ivory must originate in and remain in a chain of trade composed of Party countries from country of origin to the U.S. and substitutes a requirement that the raw ivory must originate in a Party country and be exported to the U.S. from a Party country. Other intermediary countries in the chain of trade can be either Party or non-Party countries. This rule adds a requirement that raw ivory imported into the U.S. must bear a mark established by the rule. An 18 month exception to this import requirement is provided. However, unmarked raw ivory exported from the U.S. must bear a mark provided by a Service permit.

(4) With regard to worked ivory, this rule eliminates the requirement that worked ivory originate in a Party country and remain in a chain of trade composed of Party countries, and substitutes therefor a requirement that worked ivory must be exported to the U.S. from a Party country.

Determinations of Effects, NEPA

The Department of the Interior has determined that this is not a major rule under Executive Order 12291.

The Department has also certified that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. The small number of raw ivory shipments to the United States indicates that the number of small business entities engaged in such trade is also small. The system of marking raw ivory is designed to bring stability to the trade which should be of benefit to small businesses. It has also been determined that this rule does not require an environmental impact statement under the National Environmental Policy Act.

This rule contains information collections, under the Paperwork Reduction Act of 1980, which have Office of Management and Budget approval under clearance number 1018–0022.

Effective Date of Rule, Authorship

This rule shall enter into effect on September 20, 1982. The primary author of this final rule is Arthur Lazarowitz, Acting Chief, Management Operations Branch, Federal Wildlife Permit Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

For the reasons set forth in the preamble to the proposed rule and this rule, §§ 17.3 and 17.40(e) of 50 CFR Part 17 are amended as follows:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; and Pub. L. 96–159, 93 Stat. 1241 (16 U.S.C. 1531, et seq.).

2. Section 17.3—amend 17.3 by inserting the following new definition alphabetically:

§ 17.3 [Amended]

* * * * *

"Convention" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249.

3. Amend § 17.40(e) by removing all of the language thereof and substitute therefor the following:

§ 17.40 [Amended]

* * * * *

(e) African elephant (*Loxodonta africana*)—(1) *Scope.* The regulations of this paragraph (e) only apply to import and export of raw and worked ivory, however, the import and export of African elephants, including live and dead animals, offspring, and all parts and derivatives are also subject to Parts 14 and 23 of this subchapter.

(2) *Definitions.* For purposes of this paragraph (e):

"Lip mark area" means that area of a whole African elephant tusk where the tusk emerges from the elephant's skull and which is usually denoted by a prominent ring of staining on the tusk in it natural state.

"Raw ivory" means any whole African elephant tusk, polished or unpolished, and in any form whatsoever, and all pieces thereof howsoever changed from its original form, except for worked ivory.

"Worked ivory" means any item made from raw ivory including whole tusks where all or substantially all of the surface has been carved, provided such item is clearly recognizable as jewelry, adornment, art, utility or a musical instrument, and is in a form requiring no further substantial carving, crafting or manufacture to effect its purpose.

(3) Prohibitions against import; exceptions. Except as provided below, it is unlawful to import any raw or worked ivory of an African elephant (see paragraph (e)(4) for prohibitions and exceptions on export).

(i) Import of *Raw Ivory; exception.* The prohibition against import of raw ivory shall not apply to raw ivory that:

(A) Has as its country of origin a country that is at the time of import a Party to the Convention; and

(B) Is imported from a country that is at the time of import a Party to the Covention, under documentation, as required by Part 23 of this subchapter, which clearly shows the country of origin of raw ivory: *Except,* That: raw ivory that transited or was transhipped through a country while remaining under Customs control shall not be considered to be imported from that country; and

(C) Is, where its size and density make it feasible, legibly marked:

(*1*) Under a marking and registration system established by the country of origin, by means of punch-dies, and including the following information: country of origin represented by the two-letters as indicated in the two-letter code established by the International Organization for Standardization (see Appendix A to Chapter I) followed by the registration number assigned to the raw ivory by the country of origin, the last two digits of the year of registration and the weight of the raw ivory to the nearest kilogram (example, KE 127/8214 represents Kenya, registration number 127, year of registration 1982 and weight 14 kilograms); or

(*2*) Under a marking and registration system established by a country of re-export, showing the same information as in paragraph (c)(3)(i)(C)(*1*) of this section, except that the mark shall show the country requiring the marking instead of the country of origin; and

(*3*) In the case of whole tusks, any mark should be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark.

(D) Any mark which substantially supplies the information required in paragraph (e)(3)(i)(C) of this section shall be acceptable.

(E) For a period of 18 months from the effective date of this rule, paragraph (e)(3)(i)(C) of this section shall not apply to raw ivory imported without such a mark if the Service is satisfied by documentary information provided by the importer or by other appropriate means that:

(*1*) The ivory was legally exported from the country of origin; and that

(*2*) The ivory is imported from a country which has certified that it does not require the raw ivory in question to

be marked in a manner that would satisfy the marking requirements of paragraph (e)(3)(i)(C) of this section.

(ii) Imports of *Worked Ivory; exception.* The prohibition against import of worked ivory shall not apply to worked ivory imported from a country that is at the time of import a Party to the Convention: *Except,* That: worked ivory that passed through a country in accordance with Article VII, Paragraph 1 of the Convention (the so-called transit exemption, see 50 CFR 23.13(b)) shall not be considered to be imported from that country.

(4) Prohibitions against export; exceptions. Except as provided below, it is unlawful to export any raw ivory of an African elephant (see paragraph (e)(3) of this section for prohibitions and exceptions on import).

(i) *Export of raw ivory; exception for marked ivory.* The prohibition against export of raw ivory shall not apply to raw ivory which was imported bearing a mark meeting the requirements in paragraph (e)(3)(i)(C) of this section and which retains that mark. The export of any pieces of such ivory which fall within the definition of raw ivory may only be exported under a permit issued under paragraph (e)(4)(iii) of this section.

(ii) *Export of raw ivory; exception where marking infeasible.* The prohibition against export of raw ivory shall not apply if the size or density of such ivory makes marking infeasible.

(iii) *Export of raw ivory; permit.* The prohibition against export of raw ivory shall not apply if the ivory is marked pursuant to a permit issued by the Service under the following provisions:

(A) The Director may, upon receipt of an application submitted in accordance with the provisions of this section and §§ 13.11 and 13.12 of this subchapter, issue a permit authorizing the marking and export of raw ivory.

(Note.—This application may be combined with an application to export or re-export the raw ivory as provided for in Part 23 of this subchapter). Applications shall be submitted to the Director by the person who wishes to mark and export the raw ivory. Each application shall be submitted on an offical application form (Form 3–200) provided by the Service. Each application shall contain the general information required by section 13.12(a) of this subchapter, plus the following additional information:

(*1*) Documents or other information showing legal export from the country of origin of the raw ivory;

(*2*) A description of the raw ivory to be marked including the weight to the nearest kilogram and any distinguishing marks or other features on or associated with such ivory; if the raw ivory is in the form of pieces of tusks, weight and description of each piece must be supplied; and

(*3*) Documents or other information showing legal importation of the raw ivory under this subchapter.

(B) Upon receiving a complete application, the Director will decide whether or not a permit shall be issued. In making this decision, the Director shall consider, in addition to the criteria in § 13.21(b) of this subchapter, whether there is sufficient information to: determine that the country of origin was a Party to CITES at the time of importation into the U.S. and that the ivory was legally exported from that country; describe the raw ivory for purposes of identification; and to establish that the raw ivory was not imported in violation of the regulations of this subchapter.

(C) Each whole tusk or piece or raw ivory must be marked prior to export using the following formula: the two-letter code for the United States (US) followed by a number assigned by the Service and the weight of the raw ivory to the nearest kilogram; and in the case of whole tusks, the mark shall be placed on the lip mark area and indicated by a flash of color which serves as a background for such mark. NOTE: The information collections contained in this paragraph (e)(4)(iii) of this section are approved by Office of Management and Budget under the Paperwork Reduction Act of 1980 and have been assigned clearance number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications. The obligation to respond is required to obtain or retain a permit.

(iv) *Export of raw ivory; exception for remarked pieces.* The prohibition against export of raw ivory shall not apply to pieces of raw ivory which were cut from raw ivory imported bearing a mark meeting the requirements in paragarph (e)(3)(i)(C) of this section, provided that each such piece is marked with a repetition of the original mark showing the weight of the piece being exported.

4. Add as an Appendix A to 50 CFR Chapter I the following:

APPENDIX A TO CHAPTER I.—CODES FOR THE REPRESENTATION OF NAMES OF COUNTRIES [ESTABLISHED BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION]

Country	2-Letter code
Afghanistan	AF.
Albania	AL.
Algeria	DZ.
Angola	AO.
Argentina	AR.
Australia	AU.
Austria	AT.
Bahamas	BS.
Bahrain	BH.
Bangladesh	BD.
Barbados	BB.
Belgium	BE.
Benin	BJ.
Bhutan	BT.
Bolivia	BO.
Botswana	BW.
Brazil	BR.
Bulgaria	BG.
Burma	BU.
Burundi	BI.
Canada	CA.
Cape Verde	CV.
Central African Empire	CF.
Chad	TD.
Chile	CL.
China	CN.
Colombia	CO.
Comoros	KM.
Congo	CG.
Costa Rica	CR.
Cuba	CU.
Cyprus	CY.
Czechoslovakia	CS.
Democratic Kampuchea	KH.
Democratic People's Republic of Korea.	KP.
Democratic Yemen	YD.
Denmark	DK.
Djibouti	DJ.
Dominica	DM.
Dominican Republic	DO.
Ecuador	EC.
Egypt	EG.
El Salvador	SV.
Equatorial Guinea	GQ.
Ethiopia	ET.
Fiji	FJ.
Finland	FI.
France	FR.
Gabon	GA.
Gambia	GM.
German Democratic Republic	DD.
Germany, Federal Republic of	DE.
Ghana	GH.
Greece	GR.
Grenada	GD.
Guatemala	GT.
Guinea	GN.
Guinea-Bissau	GW.
Guyana	GY.
Haiti	HT.
Holy See	VA.
Honduras	HN.
Hungary	HU.
Iceland	IS.
India	IN.
Indonesia	ID.
Iran	IR.
Iraq	IQ.
Ireland	IE.
Israel	IL.
Italy	IT.
Ivory Coast	CI.
Jamaica	JM.
Japan	JP.
Jordan	JO.
Kenya	KE.
Kiribati	KI.
Kuwait	KW.
Lao People's Democratic Republic.	LA.
Lebanon	LB.
Lesotho	LS.
Liberia	LR.
Libyan Arab Jamahiriya	LY.
Liechtenstein	LI.
Luxembourg	LU.
Madagascar	MG.
Malawi	MW.
Malaysia	MY.
Maldives	MV.

APPENDIX A TO CHAPTER I.—CODES FOR THE REPRESENTATION OF NAMES OF COUNTRIES [ESTABLISHED BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION]—Continued

Country	2-Letter code
Mali	ML.
Malta	MT.
Mauritania	MR.
Mauritius	MU.
Mexico	MX.
Monaco	MC.
Mongolia	MN.
Morocco	MA.
Mozambique	MZ.
Nauru	NR.
Nepal	NP.
Netherlands	NL.
New Zealand	NZ.
Nicaragua	NI.
Niger	NE.
Nigeria	NG.
Norway	NO.
Oman	OM.
Pakistan	PK.
Panama	PA.
Papua New Guinea	PG.
Paraguay	PY.
Peru	PE.
Philippines	PH.
Poland	PL.
Portugal	PT.
Qatar	QA.

APPENDIX A TO CHAPTER I.—CODES FOR THE REPRESENTATION OF NAMES OF COUNTRIES [ESTABLISHED BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION]—Continued

Country	2-Letter code
Republic of Korea	KR.
Romania	RO.
Rwanda	RW.
Saint Lucia	LC.
Samoa	WS.
San Marino	SM.
Sao Tome and Principe	ST.
Saudi Arabia	SA.
Senegal	SN.
Seychelles	SC.
Sierra Leone	SL.
Singapore	SG.
Solomon Islands	SB.
Somalia	SO.
South Africa	ZA.
Spain	ES.
Sri Lanka	LK.
Sudan	SD.
Suriname	SR.
Swaziland	SZ.
Sweden	SE.
Switzerland	CH.
Syrian Arab Republic	SY.
Thailand	TH.
Togo	TG.
Tonga	TO.
Trinidad and Tobago	TT.

APPENDIX A TO CHAPTER I.—CODES FOR THE REPRESENTATION OF NAMES OF COUNTRIES [ESTABLISHED BY THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION]—Continued

Country	2-Letter code
Tunisia	TN.
Turkey	TR.
Tuvalu	TV.
Uganda	UG.
Union of Soviet Socialist Republics.	SU.
United Arab Emirates	AE.
United Kingdom of Great Britain and Northern Ireland.	GB.
United Republic of Cameroon	CM.
United Republic of Tanzania	TZ.
United States of America	US.
Upper Volta	HV.
Uruguay	UY.
Vanuatu	VU.
Venezuela	VE.
Viet Nam	VN.
Yemen	YE.
Yugoslavia	YU.
Zaire	ZR.
Zambia	ZM.
Zimbabwe	ZW.

Dated: June 18, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 82-19561 Filed 7-19-82; 8:45 am]

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Proposed Rules

Federal Register
Vol. 47, No. 139
Tuesday, July 20, 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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110 and 9003

[Notice 1982-5]

Candidate's Use of Property in Which Spouse Has an Interest

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed rules to govern a candidate's use of property jointly owned with a spouse or in which the spouse has some other interest that necessitates the spouse's signature on a loan instrument. The proposed rules being published today seek to relax some of the restrictions now imposed by the regulations on loans obtained by candidates for use in their campaigns. The proposed revision would amend 11 CFR 100.7(a)(1)(i), 100.7(b)(11), and 100.8(b)(12) to allow a spouse, under certain circumstances, to be a signatory on a bank loan without being a contributor. The proposed revision would also amend 11 CFR 110.10(b) and 9003.2(c)(3) to reorder the criteria defining "personal funds" and to redefine one of the criteria. Finally, the proposed revision would add a subsection to §§ 110.10(b) and 9003.2(c)(3) to provide a definition of the candidate's personal funds if the assets used to secure a loan for the campaign are jointly owned with his or her spouse.

DATES: Comments must be received on or before August 19, 1982.

ADDRESS: Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, 1325 K Street, NW., Washington, D.C. 20463 (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Generally, if a candidate co-owns collateral with his or her spouse or if the spouse has non-ownership interest in the collateral (e.g., inchoate dower), the lending institution will ask for the spouse's signature on the security instrument in order to assure that, in the event of default, it will be able to foreclose on the property free of the claims of other co-owners or interest holders. When the spouse becomes a party to the transaction in this way, the lending institution may also routinely require that spouse's signature on an accompanying promissory note. Since the regulations now in effect view all loan endorsers or guarantors as contributors, it is difficult for a candidate to use his or her share of property without placing the spouse in the position of being a contributor.

The revisions presently proposed are confined to property in which the candidate's spouse has an interest or in which the spouse's signature is required. In addition to the fact that signature and common ownership problems most often arise in husband-wife situations, the peculiar nature of the husband-wife relationship as opposed to other intra-family relationships or non-family relationships gives rise to unique forms of ownership, i.e., tenancy by the entirety and community property. These types of ownership evidence the special consideration that the law gives to property held by partners in a marital relationship. Furthermore, other than voluntary joint ownership arrangements, the law imposes certain safeguards for a spouse such as dower and curtesy, homestead rights, and rights in intestacy, and these safeguards may necessitate the spouse's signature on a security instrument or a commercial note. Thus, the spouse is in a position quite different from that of any other family or non-family co-owner.

A proposed revision adding a new § 100.7(a)(1)(i)(D) and redesignating current subsection (D) as (E) would permit the candidate's spouse to be a signatory without being a contributor when the value of the candidate's share of the property used as collateral or as a basis for the loan equals or exceeds the amount of the loan that is used for the candidate's campaign. This proposed amendment, therefore, would allow a candidate to utilize what are, in reality, his or her "own" funds in accordance with the holding of the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 at 52-54 and 11 CFR 110.10(a). However, if the loan proceeds going to the committee exceed the candidate's interest in the collateral, the spouse would still be a contributor according to the proposed regulations.

A second proposed revision involves an addition to 11 CFR 100.7(b)(11) and 100.8(b)(12). These sections presently exclude from the definitions of contribution and expenditure, respectively, loans by lending institutions made in accordance with applicable banking laws and in the ordinary course of business but provide that each endorser or guarantor of such loans shall be considered a contributor. The proposed addition would apply the standard set out in the newly added § 100.7(a)(1)(i)(D) to §§ 100.7(b)(11) and 100.8(b)(12).

A third proposed revision involves a change in the wording of one of the criteria in §§ 110.10(b)(1) and 9003.2(c)(3), the sections defining personal funds. This revision would substitute the term "equitable interest" for "beneficial enjoyment" when defining the types of ownership interest that may be used as personal funds. "Equitable interest" is a more specific term which is used as a definition of ownership or pecuniary interest.

A fourth proposed change would reorder the criteria defining personal funds. The legislative history of the 1974 Amendments to 18 U.S.C. 608 pertaining to the limitations on expenditures of personal funds by a candidate, also cited in *Buckley, supra*, at 51, 52, n.57, emphasizes "access to or control over" as a criterion to determine whether or not assets were part of a candidate's personal funds. In order to make it clear that a candidate having legal or rightful title, as well as a candidate having an equitable interest, needs access to or control over the assets, the revision proposed would place the access or control criterion first and them make it clear that one of the two other criteria is to be added in order to define "personal funds."

A fifth proposed revision involves adding a new subsection (3) to § 110.10(b) and a new subsection (iii) to § 9003.2(c)(3). Under this proposal, a spouse could sign a loan agreement without being a contributor if the candidate's share in the asset secured equals or exceeds the amount of the loan going to the committee. The new proposed subsection (3) would clarify what portion of jointly owned property the candidate's share is considered to

be. For example, spouses holding property as tenants by the entirety are said to own whole interest of the property collectively and not any individual share. However, if the husband and wife join to put up as collateral property held in such a way, the Commission, according to the proposed regulation, will construe the candidate's personal funds as one-half of the property.

The Commission also seeks comments as to whether or not the narrow exception being proposed should be extended to other family members who are co-owners or even to non-family members who are co-owners of property with a candidate.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Political candidates, Campaign funds.

11 CFR Part 9003

Campaign funds, Political candidates, Elections.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

It is proposed to revise 11 CFR 100.7(a)(1)(i)(C) as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

(a) * * *
(1) * * *
(i) * * *

(C) Except as provided in (D), a loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

* * * * *

It is proposed to redesignate 11 CFR 100.7(a)(1)(i)(D) as 11 CFR 100.7(a)(1)(i)(E) and add new 11 CFR 100.7(a)(1)(i)(D) as follows:

(a) * * *
(1) * * *
(i) * * *

(D) A candidate may obtain a loan on which his or her spouse's signature is required when jointly owned assets are used as collateral or security for the loan. The spouse shall not be considered a contributor to the candidate's campaign if the value of the candidate's share of the property used as collateral equals or exceeds the amount of the loan which is used for the candidate's campaign.

(E) * * *

* * * * *

It is proposed to revise 11 CFR 100.7(b)(11) as follows:

* * * * *

(b) * * *

(11) A loan of money by a State bank, a federally chartered depository institution (including a national bank or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For purposes of 11 CFR 100.7(b)(11), an overdraft made on a checking or savings account shall be considered a contribution by the bank or institution unless: the overdraft is made on an account which is subject to automatic overdraft protection; the overdraft is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule.

* * * * *

It is proposed to revise 11 CFR 100.8(b)(12) as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(12) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: Bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement, except that, in the event of a signature by the candidate's spouse, the provisions of 11 CFR 100.7(a)(1)(i)(D) shall apply. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For the purpose of 11 CFR 100.8(b)(12), an overdraft made on a checking or savings account shall be considered an expenditure unless: The overdraft is made on an account which is subject to automatic overdraft protection; and the overdraft is subject to a definite interest rate and a definite repayment schedule.

* * * * *

PART 110—CONTRIBUTIONS AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

It is proposed to revise 11 CFR 110.10(b)(1) as follows:

§ 110.10 Expenditures by candidates.

* * * * *

(b) * * *

(1) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(i) Legal and rightful title, or

(ii) An equitable interest

* * * * *

It is proposed to add new 11 CFR 110.10(b)(3) as follows:

* * * * *

(b) * * *

(3) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by an instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

PART 9003—ELIGIBILITY FOR PAYMENTS

It is proposed to revise 11 CFR 9003.2(c)(3) as follows:

§ 9003.2 Candidate certifications.

* * * * *

(c) * * *

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean—

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate

Certification of No Effect Pursuant to 5 U.S.C. 605(b) Regulatory Flexibility Act

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no entity is required to make any expenditures under the proposed rules.

Dated: July 15, 1982.

Frank P. Reiche,

Chairman, Federal Election Commission.

[FR Doc. 82-19604 Filed 7-19-82; 8:45 am]

BILLING CODE 6715-01-M

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Semiannual Regulatory Agenda

Corrections

In FR Doc. 82-18177 appearing on page 29462 in the issue of Tuesday, July 6, 1982, make the following changes:

(1) On page 29463, second column, paragraph numbered 2, eleventh line, "prohibitions" should read "prohibited".

(2) On page 29464, first column, twenty-sixth line from the bottom, "(39 FR 29385 * * *" should read "(39 FR 39385 * * *".

(3) On page 29465, third column, paragraph numbered 9, first line "contracts" should read "contacts".

(4) On page 29466, first column, twelfth line from the top, insert "debtor" after "principal".

(5) on page 29468, third column, last line, "know" should read "known".

BILLING CODE 1505-01-M

16 CFR Part 13

[File No. 821 0077]

BATUS, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, that a Louisville, Kentucky management and holding company timely divest 200,000 square feet of its retail floor space, and reduce the volume of its retail sales by $20 million of 1981 sales. Further, the company would be barred from making certain acquisitions in prescribed areas without prior Commission approval.

DATE: Comments must be received on or before September 20, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th and Pennsylvania Ave., NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

FTC/CS-4, Daniel P. Ducore, Washington, D.C. 20580 (202) 724-1268.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Department stores.

In the Matter of BATUS Inc., a corporation. Agreement Containing Consent Order File No. 821 0077.

The Federal Trade Commission ("Commission") having initiated an investigation of the acquisition of the stock and assets of Marshall Field & Company ("Marshall Field") by BATUS Inc. ("BATUS") and it now appearing that BATUS, as proposed respondents, is willing to enter into an agreement containing an order in settlement of that investigation:

It is hereby agreed by and between BATUS, by its duly authorized agent and its attorney, and counsel for the Commission that:

1. BATUS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky.

2. BATUS admits all jurisdictional facts set forth in the draft of complaint here attached.

3. BATUS waives:

(a) any further procedural steps;

(b) the requirement that the Commission decision contain a statement of findings of fact and conclusions of law;

(c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) any claim under the Equal Access to Justice Act.

4. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information with respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify BATUS, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by BATUS that the law has been or would be violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to BATUS, issue its complaint corresponding in form and substance with a draft of complaint here attached and its decision containing the order set forth herein in diposition of the proceeding and make information public with respect thereto. When so entered, the order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and the agreed-to order to BATUS shall constitute service. BATUS waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no other agreement, understanding, representation or interpretation not contained in the order or in the agreement, may be used to vary or contradict the terms of the order.

7. BATUS has read the draft of complaint and order contemplated hereby. BATUS understands that once the Order has been issued, BATUS will be required to file one or more compliance reports showing it has fully complied with the order. BATUS further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that for purposes of this order the following definitions shall apply:

1. "BATUS" means BATUS Inc., a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with headquarters address at 2000 Citizens Plaza, Louisville, Kentucky 40202, as well as its officers, directors, employees, agents, parents, divisions, subsidiaries, affiliates, successors, assigns, and the officers, directors, employees or agents of BATUS' parents, divisions, subsidiaries, affiliates successors or assigns.

2. "Marshall Field" means Marshall Field & Company, a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with principal offices at 25 East Washington St., Chicago, Illinois 60602, as well as its officers, directors, employees, agents, its parents, divisions, subsidiaries, affiliates, successors and assigns, and the officers, directors, employees or agents of its parents, divisions, subsidiaries, affiliates, successors or assigns.

3. "SMSA" means a Standard Metropolitan Statistical Area as defined by the Office of Management and Budget, Statistical Policy Division, 1975 Edition, as amended.

4. "Department stores," as used herein, corresponds with Bureau of the Census Standard Industrial Classification No. 531, 1977 Census of Retail Trade. It refers to retail stores normally employing 25 or more people and engaged in selling some items of each of the following groups of merchandise:

(a) Furniture, home furnishings, appliances, and radio and TV sets; and

(b) A general line of apparel for the family; and

(c) Household linens and dry goods.

5. "GMAF stores," as used herein, refers to all retail establishments included in the following Bureau of Census Major Industry Group and Standard Industrial Classifications as used in the 1977 Census of Retail Trade:

Census Number and Descriptions

Classification No. 531—Department stores
Major Industry Group No. 56—Other stores primarily engaged in the sale of apparel
Classification No. 533—Limited price variety stores
Classification No. 539—Miscellaneous general merchandise stores
Major Industry Group No. 57—Furniture, home furnishings and equipment stores.

II

It is further ordered that BATUS shall, within two (2) years from the date upon which this order becomes final, divest absolutely and in good faith such of its department stores in the Milwaukee, Wisconsin SMSA as will reduce the floor space of its department stores in that SMSA by an amount not less than 200,000 square feet and reduce its annual sales volume in that SMSA in an amount not less than $20 million as measured by fiscal 1981 sales.

A. Divestiture if any store under the terms of this order shall be made only to an acquiror approved in advance by the Federal Trade Commission.

B. Such divestiture shall include all leases, stock space and inventories but not the trade name or other proprietary names associated with the store.

C. Should BATUS divest the Marshal Field department store in Mayfair Mall it shall within two (2) years from the date of such divestiture open or begin construction of another Marshall Field retail establishment consisting of not less than 120,000 square feet of floor space in the Milwaukee SMSA. BATUS shall complete construction within three years from the time construction is begun. BATUS shall ensure that the store is a viable competitive retail establishment for not less than five (5) years from the date of its opening.

III

It is further ordered that:

A. For a period of ten (10) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located within the Milwaukee, Wisconsin SMSA without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located within the Milwaukee, Wisconsin SMSA without the prior approval of the Federal Trade Commission.

B. For a period of two (2) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission.

C. For a period of three (3) years, beginning two (2) years from the date upon which this order becomes final, BATUS shall not, directly or indirectly, through acquisition of stock, share capital, equity or any other interest in any equity, corporate or noncorporate, acquire any department store or DMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission; nor shall BATUS acquire any assets of any entity, corporate or noncorporate, operating any department store or GMAF store located in any SMSA in which BATUS then operates a department store or GMAF store without the prior approval of the Federal Trade Commission. Provided that this provision (III. C.) shall not be deemed to require prior approval of the Federal Trade Commission of acquisitions (1) of store sites, leases or inventories if the store property has not been operated as a department store or GMAF store for a period of ninety (90) consecutive days immediately prior to its acquisition, or (2) of stock, share capital, equity or any other

interest in any equity, corporate or noncorporate, or assets for a purchase price or other consideration less than $15 million.

IV

It is further ordered that BATUS shall submit within sixty (60) days after the date upon which this order becomes final, and every ninety (90) days thereafter, until such time that divestiture as required by paragraph II of this order has been accomplished, a report setting forth in detail the manner and form in which BATUS intends to comply, is complying, and has complied with the terms of this order and such additional information relating thereto as may from time to time be required. All such reports shall include a summary of contacts or negotiations with anyone for the specified assets, the identity of all such persons, and copies of all written communications to and from such persons.

V

It is further ordered that for a period of ten (10) years from the date upon which this order becomes final, BATUS shall notify the Federal Trade Commission at least thirty (30) days prior to any change in BATUS which may affect compliance with the obligations arising out of this consent order, such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation.

VI

It is further ordered that each year, for a period of ten (10) years from the date upon which divestiture as required by paragraph II of this order is accomplished, BATUS shall submit a report setting forth in detail the manner and form in which BATUS intends to comply, is complying or has complied with paragraph III of this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from BATUS Inc.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation in this matter concerned the April 1982 acquisition by BATUS Inc. ("BATUS") of the stock of Marshall Field & Company ("Marshall Field"). Marshall Field operates one department store in the Milwaukee, Wisconsin Standard Metropolitan Statistical Area (SMSA), where BATUS operates seven Gimbels department stores and 14 Kohl's department stores. Since the proposed consent order was negotiated during the investigational stage of the proceedings, the complaint proposed by the Commission staff was not issued. That complaint charges that BATUS' acquisition of Marshall Field violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. The complaint alleges that there will be anticompetitive effects of the acquisition in the Milwaukee SMSA, a highly concentrated market. The alleged anticompetitive effects include (a) the elimination of actual competition between BATUS and Marshall Field in the Milwaukee SMSA; (b) increased concentration in the department store and traditional department store business in the Milwaukee SMSA and in the retail sale of certain merchandise lines; and (c) the lessening of the likelihood of future deconcentration in the department store business in the Milwaukee SMSA.

The proposed order contains provisions requiring divestiture and imposing limitations on BATUS' future acquisitions. Under the order BATUS will be required to divest stores in the Milwaukee SMSA, within two years of the date the order becomes effective, such as to reduce BATUS' presence by 200,000 square feet and $20 million of 1981 sales. Divestiture will be made to an acquiror or acquirors approved in advance by the Federal Trade Commission. The proposed order also requires that for a period of ten (10) years from the effective date of the order, BATUS will not be permitted to make any acquisitions in the department store business in the Milwaukee SMSA without prior Commission approval. Furthermore, BATUS will be required to obtain Commission approval prior to making any department store acquisition in other areas where BATUS operates for five years from the effective date of the order; with a provision, beginning after two years, that acquisitions of inoperative store assets or acquisitions for less than $15 million will not require prior Commission approval.

The provisions of the proposed order are expected to ameliorate the anticompetitive effects alleged in the Complaint resulting from the merger. Before the acquisition BATUS was ranked number one in the market and Marshall Field number seven. As a result of the acquisition the concentration ratio for the four largest firms in Milwaukee increased by more than 3%. BATUS' relative position stayed the same though its market share increased by more than 3%. Under the proposed consent order BATUS' market share increase will be limited almost completely, and four-firm concentration may actually decrease. This will alleviate to a substantial extent any possible adverse impact of the acquisition on competitors in the Milwaukee department store markets.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-19618 Filed 7-19-82; 8:45 am]

BILLING CODE 6750-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 239, 240, and 249

[Release Nos. 33-6416, 34-18878, 40-12543; File No. S7-939]

Disclosure of Certain Relationships and Transactions Involving Management

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment, as part of its comprehensive Proxy Review Program, proposed rule, form and schedule amendments relating to the disclosure of transactions in which certain persons connected with management have a material interest and relationships between a registrant's directors or nominees for director and certain entities with which the registrant conducts business. The proposed amendments are intended to simplify disclosure and reduce compliance burdens in a manner consistent with investor protection. The proposed amendments include, among other things, a proposed new uniform item, applicable to registration statements, periodic reports and proxy statements, relating to disclosure of certain relationships and transactions and, in connection therewith, substantially streamlined requirements relating to disclosure of relationships.

DATE: Comments must be received on or before September 7, 1982.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Comment letters should refer to File No. S7-939. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C. (prior to July 23, 1982), or at 450 5th Street, NW., Washington, D.C. (after July 23, 1982).

FOR FURTHER INFORMATION CONTACT: Susan P. Davis (202) 272-2604 or Robert Pincus (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today published for comment proposed amendments to Regulation S-K (17 CFR 229) and to Forms S-1 (17 CFR 239.11)

and S–11 (17 CFR 239.18) under the Securities Act of 1933 (the "Securities Act") (15 U.S.C. 77a et seq. (1976 and Supp. III 1979), as amended by the Small Business Incentive Act of 1980, Pub. L. No. 96–447 (October 21, 1980)), as well as to Form 10 (17 CFR 249.210), Form 10–K (17 CFR 249.310), Schedule 14A (17 CFR 240.14a–101) and Schedule 14B (17 CFR 240.14a–102) under the Securities Exchange Act of 1934 (the "Exchange Act") (15 U.S.C. 78a et seq. (1976) and Supp. II 1977)). These proposals include: (1) A new Item 494 of Regulation S–K (17 CFR 229.404) concerning disclosure of certain relationships and related transactions; (2) amendments to Item 401 of Regulation S–K (17 CFR 239.401) to include certain disclosure involving the business experience of executive officers and directors; (3) amendments to Item 402 of Regulation S–K (17 CFR 229.402) to rescind certain disclosure requirements proposed to be incorporated into new Item 404 relating to transactions with management, indebtedness of management, and transactions with promoters, and to rescind the disclosure requirements relating to transactions with pension plans; (4) amendments to Forms S–1, S–11, 10 and 10–K and Schedules 14A and 14B to require the disclosure called for by new Item 404; and (5) amendments to Item 6(b) of Schedule 14A to rescind certain disclosure requirements concerning relationships of directors, some of which are proposed to be incorporated into new Item 404. These proposed amendments are the first rulemaking initiatives of the Commission's Proxy Review Program.

I. The Proxy Review Program

Over the past several years, the Commission has been engaged in a number of major rulemaking initiatives designed to simplify, in a manner consistent with the protection of investors, the complex disclosure systems that have evolved during the more than forty years since the enactment of the federal securities laws. Application of similar themes in other areas produced, among other things, the Integrated Disclosure System, which streamlines and harmonizes two major disclosure systems—the registration of securities under the Securities Act and the continuous reporting system under the Exchange Act.[1] In addition, the Commission recently examined the registration requirements and exemptive scheme under the Securities Act and adopted new Regulation D,[2] designed to achieve uniformity between state and federal exemptions and to facilitate capital formation.[3]

The Commission now is commencing a major program in connection with the third major disclosure system—the rules, forms and schedules relating to the solicitation of proxies. While various aspects of the proxy rules have been the subject of study in recent years, this will be the first comprehensive and coordinated review of the entire system of proxy regulation.

The existing proxy rules were adopted in a piecemeal fashion and have been the subject of frequent changes. This has led to certain duplicative requirements and difficulty for registrants in keeping current with existing requirements and establishing systems for gathering information for disclosure in proxy statements under Regulation 14A[4] and information statements under Regulation 14C[5] (hereinafter referred to, collectively, as "proxy statements"). Moreover, the disclosure requirements applicable to proxy statements have become more detailed and complex over the years. The burdens associated with proxy statement preparation have been widely felt, since the proxy rules apply to all companies registered pursuant to Section 12 of the Exchange Act.[6]

The Commission also recognizes that the continued accretion in the information required to be included in proxy statements may not always provide benefits to security holders that outweigh the costs of compliance for registrants. Merger proxy statements, for example, may be so lengthy and detailed that they cannot be digested easily by security holders. In fact, security holders may be discouraged from reading some proxy statements due to their sheer volume. To the extent that a proxy statement is overly complicated and difficult to read, it may not effectively perform its intended function of communicating meaningful information to security holders in order that they may make informed voting decisions.

In order to update the proxy regulations and, in doing so, improve the readability of proxy statements and eliminate unnecessary disclosure costs, the Commission has commenced a comprehensive review of the proxy regulations. The Proxy Review Program will involve review of existing substantive and procedural provisions and elimination of duplicative or outmoded requirements. Where practicable, concepts developed in connection with the Integrated Disclosure System, such as incorporation by reference and the use of uniform disclosure items, will be applied to proxy regulations. Particular attention will be paid to simplifying proxy disclosure, because, while security holders often rely on market professionals to digest Exchange Act reports and Securities Act registration statements, they generally do not rely on such persons to do the same in connection with proxy statements.

The Proxy Review Program currently contains six projects.[7] The Commission intends to put revised requirements into place as promptly as possible consistent with registrants' needs for a reasonable time to comply with any new requirements. The entire Proxy Program is expected to take approximately two years to complete.

This release discusses the background of proposed Item 404, the disclosure provisions from which it is derived, the changes proposed to be made from existing disclosure requirements, and proposed coordinating changes. Attention is directed to the text of the proposals for a more complete understanding.

II Background

These proposals result primarily from comments received in response to Release No. 34–17517,[8] which, among

[1] Release No. 33–6383 (March 3, 1982) (47 FR 11380).

[2] 17 CFR 230.501 et seq.

[3] Release No. 33–6389 (March 8, 1982) (47 FR 11251).

[4] 17 CFR 240.14a–1 et seq.

[5] 17 CFR 240.14c–1 et seq.

[6] Registration arises under Section 12(b) for companies registering securities on a national securities exchange. Companies register under Section 12(g) if, on the last day of their fiscal year, they have total assets exceeding $1 million and a class of securities held of record by 500 or more persons. Pursuant to Section 12(g) and the rules promulgated thereunder, however, companies are not required to register under Section 12(g) until they have 500 record holders and total assets of $3 million or more. Release No. 34–18647 (April 15, 1982) (47 FR 17046).

[7] In addition to the revision of rules relating to the disclosure of transactions and relationships, the Program will include: (1) The simplification of the provisions contained in Item 402 of Regulation S–K relating to disclosure of management remuneration; (2) a reexamination of Exchange Act Rule 14a–8 regarding shareholder proposals (17 CFR 240.14a–8); (3) the simplification of Form S–14—the merger proxy statement (17 CFR 239.23); (4) a review of the rules concerning proxy contests; and (5) an evaluation of the recommendations of the Advisory Committee on Shareholder Communications concerning the processes by which issuers communicate with the beneficial owners of their securities. *See* U.S. Securities and Exchange Commission, "Improving Communications Between Issuers and Beneficial Owners of Nominee Held Securities," *Report of the Advisory Committee on Shareholder Communications*, June 1982.

[8] Release No. 34–17517 (February 5, 1981) (46 FR 12011) (the "February Release"). The Commission received 85 comment letters, not including 16 letters that commented exclusively on the amendments that were proposed to Rule 14a–8, which are the

other things: (1) proposed amendments to Item 6(b) of Schedule 14A to clarify and simplify the requirements relating to disclosure of relationships that may affect the independent judgement of directors and nominees for election as a director (hereinafter referred to, collectively, as "directors") and (2) solicited comment on the advisability of combining Item 6(b) with Item 402(f) of Regulation S–K, which elicits disclosure of transactions in which certain persons connected with the registrant or their relatives have a direct or indirect material interest, to create a uniform Regulation S–K item applicable equally to registration statements, periodic reports and proxy statements.[9] The Commission suggested that, although these items originally were adopted to serve differing disclosure functions,[10] it might be appropriate to develop a uniform item since the two items overlap.[11] The Commission noted that this overlap has resulted in some confusion and duplication with concomitant burdens on registrants. In addition, the Commission is concerned that overly detailed disclosure about relationships and transactions may result in truly significant relationships and transactions being obfuscated by less important information.

While commentators generally supported the proposed amendments in the February Release, a large number of commentators stated that the Commission should re-examine the entire area of disclosure of transactions and relationships and, as it had suggested, attempt to develop a uniform item. Commentators asserted that investors and security holders are interested in essentially the same transactions and business relationships, so that separate disclosure requirements for registration statements, periodic reports and proxy statements should not be maintained. They also stated that a uniform item would make document preparation less burdensome. At the same time, however, commentators expressed concern that all of the requirements of Item 6(b) not be incorporated into a new item applicable to registration statements on the basis that detailed disclosure about directors' relationships is not necessary for informed investment decisionmaking and that substantial additional burdens should not be imposed on registrants.

As a result of the Commission's reexamination of this area, it is proposing a new uniform Regulation S–K item, Item 404, "Certain relationships and related transactions," which would be applicable to registration statements, periodic reports and proxy statements. The proposed item represents the Commission's efforts to extract a basic package of information about transactions and relationships that is important to both investment and voting decisions. The requirements of proposed Item 404 are derived, in large part, from the requirements of Items 402(f) and 6(b). In addition, proposed Item 404 incorporates, with some modifications, other provisions of Item 402 of Regulation S–K concerning disclosure of loans to persons connected with management and transactions with promoters so that all provisions regarding transactions are included in one Regulation S–K item.[12] Finally, the Commission is proposing to amend various registration forms and periodic reports, as well as Schedules 14A and 14B, to reference the new Item and to make other necessary changes.

The Commission believes that these proposals, if adopted, will maintain the quality of disclosure received by security holders and investors while reducing compliance burdens on registrants. Moreover, the addition of a new item to Regulation S–K concerning certain relationships and related transactions would constitute another step in integrating the disclosure required under the Securities Act and the Exchange Act.

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

III. Proposed Item 404: Certain Relationships and Related Transactions

A. Proposed Item 404(a)—Transactions With Management and Others

Proposed Item 404(a) sets forth the disclosure requirements with respect to transactions in which certain specified persons connected with the registrant or their relatives have a direct or indirect material interest. Such information is relevant for investment and voting decisions as it indicates insiders' interests in transactions engaged in for the benefit of public security holders.

The provisions of proposed Item 404(a) are derived from existing Item 402(f).[13] The Commission believes that Item 402(f) has worked quite well to elicit information on transactions that are important to investors and security holders. In addition, a large number of the commentators responding to the February Release expressed the view that Item 402(f)'s requirements should be the basis of, or at least included in, any new disclosure item concerning transactions and relationships with management. The commentators stated, among other things, that Item 402(f)'s materiality standard is an effective indicator of conflicts of interest that are important to security holders and investors.[14]

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subject of a separate project. The comment letters, as well as a Comment Highlight prepared by the Division of Corporation Finance, are available for public inspection in the Commission's Public Reference Room. *See* File No. S7–871.

[9] Among the other amendments proposed in the February Release were amendments to Instructions 1 and 5 of Item 403 of Regulation S–K (17 CFR 229.403) relating to the disclosure of beneficial ownership, which will be acted upon at the same time that final action is taken with respect to the proposals set forth herein.

[10] Item 402(f), which was promulgated originally in 1942 (Release No. 34–3347 (December 18, 1942) (7 FR 10653)) as part of Schedule 14A of the Commission's proxy rules and made a part of Regulation S–K in 1978 (Release No. 33–5949 (July 29, 1978) (43 FR 34407)), requires disclosure of transactions involving the registrant or its subsidiaries in which specified persons (including, but not limited to, officers and directors and certain of their relatives) have a direct or indirect material interest.

Item 6(b) was added to the Commission's proxy rules in 1978 (Release No. 34–15384 (December 6, 1978) (43 FR 58552)) following extensive hearings on the subjects of shareholder communications, shareholder participation in the corporate electoral process and corporate governance generally.

See Release Nos. 34–13482 (April 28, 1977) (42 FR 23901) and 34–13901 (August 29, 1977) (42 FR 44860). At the hearings, support was expressed for improving the quality of disclosure to security holders regarding the structure and composition of corporate boards of directors in order to enable security holders to make more informed voting decisions in elections of directors. The Commission thereafter adopted Item 6(b), which requires disclosure of relationships between directors and certain significant customers, suppliers and creditors, as well as with law or investment banking firms that provide services to the registrant. For a more complete discussion of the corporate governance hearings and various staff recommendations, *see* Division of Corporation Finance, U.S. Securities and Exchange Commission, *Staff Report on Corporate Accountability*, 96th Cong., 2d Sess. (Comm. Print 1980) (Senate Comm. on Banking, Housing and Urban Affairs) (the "Staff Report").

[11] Under Item 402(f), a material interest in a transaction involving another entity may arise, in certain circumstances, from a position with such other entity. Similarly, Item 6(b) requires the registrant to focus on a director's or nominee's position with significant customers, suppliers and creditors. Moreover, Item 402(f) requires an examination of certain transactions that also may need to be examined to determine the identity of significant customers, suppliers and creditors under Item 6(b).

[12] As discussed *infra*, the provisions concerning disclosure of transactions with pension plans are proposed to be rescinded.

[13] Accordingly, Item 402(f) is proposed to be rescinded.

[14] Similarly, Congressman John D. Dingell recently stated in hearings held by a Subcommittee on

While including the requirments of Item 402(f) in proposed Item 404(a), the Commission is making several changes to clarify certain requirements and to close certain gaps in the disclosure of transactions involving relatives of persons who are connected with the registrant. First, the $50,000 *de minimis* threshold, currently set forth in Instruction 2C to Item 402(f), is proposed to be incorporated into the text of Item 404(a). Second, the provision, also currently contained in Instruction 2C, regarding aggregation of a series of similar transactions, is likewise proposed to be included in the text of the new item.

Third, the Commission proposes to require disclosure under Item 404(a) of the amount of the transaction, in addition to the amount of any disclosable interest. Currently, Instruction 4 to Item 402(f) requires disclosure of the amount of the transaction only when it is not practicable to state the amount of the interest involved. The Commission believes that information regarding the size of the transaction, as well as the size of the interest of those connected with management, would be material to investors and security holders in making investment or voting decisions relating to the registrant.

Fourth, the Commission proposes to change the class of relatives whose transactions must be disclosed. Currently, Item 402 requires disclosure of transactions in which any relative of a director or officer of the registrant, a nominee for director, or an owner, beneficially or of record, of more than five percent of any class of the registrant's voting securities, who lives in the same household as such person, or who is a director or officer of any parent or subsidiary of the registrant, has a direct or indirect material interest. The Commission believes that Item 402(f) may be too narrow in its coverage of relatives of persons connected with management. Potential conflicts of interest are not necessarily limited to relatives who live in the same household or who are employed by parents or subsidiaries of the registrant; such opportunities may exist for any close relative of a person connected with management. Accordingly, the Commission is proposing to require disclosure of transactions involving relatives of the specified persons, provided they are no more remote than first cousin. The Commission solicits specific comment, however as to whether other classifications of relatives whose transactions are required to be disclosed would be more appropriate.

The Commission is not proposing at this time to make any other changes in the classes of persons whose transactions are disclosable. However, the Commission is requesting comment on whether transactions of only "executive officers," rather than all officers, should be disclosed. Disclosure of transactions would then be required only with respect to officers that perform policy-making functions.[15]

The Commission is proposing to include, as instructions to Item 404(a), most of the instructions to Item 402(f) that are not proposed to be incorporated into the text of the new item. Instructions 2A, B and D (relating to transactions that need not be disclosed), Instruction 2C (relating to aggregation of periodic installments), Instruction 3 (relating to interests that are not deemed to be material), Instruction 4 (regarding the computation of the amount of the transaction) and Instruction 7 (relating to transactions involving remuneration) are proposed as Instructions 1, 2, 3, 4 and 6 to Item 404(a), respectively.[16] Instruction 5 to Item 402(f) (relating to the purchase or sale of assets not in the ordinary course of business) is proposed to be included in Item 404(a) as Instruction 5, except that the Commission is proposing to clarify the Instruction by moving the portion that relates only to registration statements on Form S–11 into that form. Instruction 1 (dealing with information disclosed or omitted pursuant to other paragraphs of Item 402), which has been revised slightly, and Instruction 6 (relating to the presentation of the Item 402(f) information in a registration statement) are proposed to be included as general instructions to Item 404, since they apply to all the disclosure requirements contained in the item. Finally, a new general instruction is proposed to clarify the application of the new item to non-Canadian foreign private issuers that are eligible to use Form 20–F (17 CFR 249.220f).

B. Proposed Item 404(b)—Disclosure of Business Relationships

Proposed Item 404(b) sets forth requirements applicable to registration statement, periodic reports and proxy statements with respect to disclosure of certain relationships of directors and nominees for director. The requirements are derived from Items 6(b)(3), (4), (5) and (7) of Schedule 14A,[17] which are applicable to registrants other than investment companies registered under the Investment Company Act of 1940.[18] Proposed Item 404(b)(1) applies to disclosure of relationships with significant customers; proposed Item 404(b)(2) concerns relationships with significant suppliers; proposed Item 404(b)(3) deals with disclosure of relationships with significant creditors; proposed Items 404(b)(4) and (5) deal with disclosure of relationships with law and investment banking firms respectively; and proposed Item 404(b)(6) requires disclosure of any similar relationships.

The requirements of proposed Item 404(b) are streamlined significantly from those contained in Item 6(b). The major changes from the existing requirements are: (1) Eliminating the need for registrants to trace directors' relationships over two years; (2) eliminating disclosure where a director's relationships with a significant customer, supplier or creditor consists solely of a directorship or employment with the other entity; (3) eliminating disclosure where a director owns five percent or less of the equity interest in the other entity; (4) raising the thresholds of payments or indebtedness that must be met before a relationship is required to be disclosed; (5) requiring the specific dollar amount of payments received by law and investment banking firms to be disclosed only if such amount exceeds five percent of such firm's gross revenues and unconsolidated gross revenue respectively; and (6) excluding certain payments made or received by, or indebtedness incurred by, certain *de minimis* subsidiaries.

The adoption of a Regulation S–K item applicable to registration statements, periodic reports and proxy statements would mean that certain additional information relating to relationships would be required to be included in

Oversight and Investigations of the House of Representatives:

Self-dealing transactions [are] an area in which management is most likely to favor itself with the potential for substantial harm to shareholders. It is precisely in this area of greatest potential harm that full disclosure is most thoroughly needed.

Transcript of hearings before the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, House of Representatives, on H.R. "The administration of the federal securities laws and the regulations concerning corporate disclosure," February 8, 1982, p. 7.

[15] *See* the definition of "executive officer" contained in Rule 405 under the Securities Act (17 CFR 230.405) and Rule 3b-7 under the Exchange Act (17 CFR 240.3b–7).

[16] Instruction 8, the general materiality instruction to Item 402(f), is proposed to be incorporated into new Instruction 1.

[17] Accordingly, Items 6(b)(3), (4), (5) nd (7) are proposed to be rescinded.

[18] 15 U.S.C. 80a–1 et seq. (the "Investment Company Act").

registration statements.[19] Such a result would be in accordance with the views of some commentators responding to the February Release who believed that little distinction could be made in the information on transactions and relationships that is relevant to investment and voting decisions; if information is relevant to one type of decision, it also would be relevant to the other. Thus, there was support for disclosing relationships in registration statements on the basis that, among other things, relationships that are important for security holders to know when voting because they may affect directors' independence also are important to investors when making their decisions as to whether to invest in a company.

In spite of the importance of certain directors' relationships to investors, commentators also were of the view that not all of the relationships currently required to be disclosed by Items 6(b)(3), (4) and (5) are equally important to investment decision-making. In addition, commentators were concerned that substantial additional burdens would be imposed if all of the requirements of Item 6(b) were applied to registration statements.

In view of these comments, proposed Item 404(b) would require disclosure only of those relationships currently required to be disclosed under Items 6(b)(3), (4) and (5) that the Commission believes are necessary for informed voting and investment decisions. The Commission believes that proposed Item 404 strikes an appropriate balance between security holders' and investors' needs for meaningful information that may bear on the ability of directors to exercise independent judgment and the compliance costs that generating and disclosing this information entails. The differences between proposed Item 404(b) and current Items 6(b)(3), (4) and (5) are discussed in more detail below.

1. *Concurrent Relationships.* Item 6(b)(3) currently requires disclosure of any relationship where a director is, or has been within the last two full fiscal years, an officer, director or employee of, or owns, or has owned within the last two full fiscal years, in excess of one percent equity interest in, any entity that has been a significant customer, supplier or creditor during the registrant's last fiscal year or other appropriate period. Commentators have asserted that the requirement to trace directors' relationships over the previous two years results in disclosure of relationships that did not, in fact, exist when the transactions between the registrant and other entity took place.[20]

The Commission believes that conflicts of interest are most likely to arise when a director's relationship with a business entity and the registrant's relationship with such entity are concurrent. In addition, tracing directors' relationships over the two previous years imposes substantial burdens on registrants and may result, in certain instances, in misleading disclosure. Accordingly, the Commission is proposing to limit disclosure of directors' relationships with entities that have been significant customers, suppliers or creditors of the registrant during its last fiscal year to relationships that existed during that period.

2. *Director and Employee Relationships.* In the February Release, the Commission proposed to raise the thresholds of payments made or received or indebtedness incurred that must be met before a relationship with a customer, supplier or creditor is disclosable where the only relationship between the registrant and the other entity is the existence of a common nonemployee director. Many commentators stated that disclosure of relationships based solely on the existence of common directors should be eliminated altogether. These commentators opined, among other things, that such directors generally are unaware of transactions between the registrant and the other entity of which they are a director, and thus they are unlikely to be subject to conflicts of interest due to their relationships.

On the basis of the comments received and its own experience, the Commission believes that the need for disclosure of the existence of business dealings between entities with common directors does not justify the effort involved in making this determination. Accordingly, the Commission is not requiring disclosure based solely on common directorships under proposed Item 404(b). This is consistent with the exclusion in proposed Item 404(a) (based on Item 402(f)) for transactions in which a person's interest consists solely of a directorship with the other entity involved in the transaction.

The Commission also is proposing to eliminate disclosure where a director's relationship with a significant customer, supplier or creditor arises merely from the director's employment as other than an officer with the other entity. Situations where a person is a director of the registrant and also an employee, other than an officer, of the other entity are apt to arise infrequently.

3. *Equity Ownership.* In the February Release, the Commission proposed to raise, from one percent to five percent, the ownership threshold for disclosure of business relationships between the registrant and a significant customer, supplier or creditor in which a director has an equity interest. This proposal was overwhelmingly endorsed by commentators who agreed with the Commission that the increased threshold would help to reduce burdens and allow security holders to focus more readily on disclosure of more significant relationships. Accordingly, proposed Item 404(b) utilizes a five percent equity ownership threshold.

4. *Thresholds of Payments or Indebtedness.* Currently, a customer relationship is required to be disclosed under Items 6(b)(3)(i) and (ii) if the amount of payments made or proposed to be made to the registrant or its subsidiaries for property or services during the registrant's last full fiscal year exceeds one percent of the registrant's consolidated gross revenues for its last full fiscal year. Similarly, a supplier relationship is disclosable under Items 6(b)(3)(iv) and (v) if payments made or proposed to be made by the registrant or its subsidiaries for property or services during the other entity's last full fiscal year exceeds one percent of such other entity's consolidated gross revenues for its last full fiscal year.

In the February Release, the Commission proposed to raised the thresholds of payments, where the only relationship between the registrant and the other entity consists of the existence of a common nonemployee director, to five percent of the registrant's consolidated gross revenues, in the case of customers, and to five percent of the other entity's consolidated gross revenues, in the case of suppliers. Agreeing with the proposal, many commentators stated, furthermore, that the one percent thresholds are too low and do not focus on truly significant relationships, regardless of the nature of the relationship between the registrant and the other entity. To improve the quality of disclosure, commentators suggested across-the-board increases in the thresholds.

[19] Specifically, information on relationships would be required to be presented in Forms S-1 and S-11. In addition, such information would be required to be incorporated by reference into Forms S-2 (17 CFR 239.12) and S-3 (17 CFR 239.13) from the registrant's latest annual report on Form 10-K.

[20] For example, if during year one a nominee had the requisite equity interest in a company which in year two became the registrant's customer, but in year two the nominee no longer had an equity interest in the customer, then in fact there was no relationship or common interest, but Item 6(b)(3)(i) would require disclosure as if there were.

In view of these comments, the Commission is proposing to establish consolidated gross revenues thresholds of five percent in Items 404(b) (1) and (2). The Commission believes, however, that the significance of a customer or supplier relationship should be determined by reference to the percentage of business from the point of view of both the registrant and the other entity involved in the transaction. Accordingly, proposed Item 404(b) applies the five percent test to the consolidated gross revenues of the registrant and to the consolidated gross revenues of the other entity, regardless of whether the registrant is making or receiving payments.

Proposed Item 404(b)(2) also changes the time period over which payments made, or proposed to be made, by the registrant or its subsidiaries are measured from the other entity's last or current fiscal year to the registrant's last or current fiscal year. The proposed time period is consistent with that over which payments made to the registrant or its subsidiaries are measured under proposed Item 404(b)(1) (derived from Items 6(b)(3) (i) and (ii)).

In conformity with the change regarding payments, the Commission is proposing to incorporate into proposed Item 404(b) a five percent consolidated gross assets threshold of indebtedness that must be met before a relationship with a creditor is required to be disclosed. Current Item 6(b)(3)(iii) requires disclosure of a director's relationship with any entity to which the registrant or its subsidiaries was indebted, at any time during the last fiscal year, in excess of one percent of the registrant's consolidated gross assets, or $5,000,000, whichever is less. In the February Release, the Commission proposed to raise the consolidated gross assets threshold to five percent and to eliminate the alternative $5,000,000 threshold where the only relationship between the registrant and the creditor is the existence of a common nonemployee director. A substantial number of commentators advocated raising the percentage threshold and, in particular, eliminating the $5,000,000 alternative threshold regardless of the nature of the relationship between the registrant and the creditor, as they believed the alternative threshold imposed a greater burden on large companies whose indebtedness to any particular creditor may be in excess of $5,000,000 but less than one percent of the company's consolidated gross assets.

The Commission agrees that larger companies should not bear a disproportionate burden with respect to disclosure of relationships with creditors. Accordingly, the Commission, while setting the consolidated gross assets threshold in proposed Item 404(b)(3) at five percent, is not including the $5,000,000 alternative threshold therein.

5. *Relationships with Law and Investment Banking Firms.* Currently, Item 6(b)(4) requires disclosure of whether any director is a member or employee of, or is associated with, a law firm that the issuer has retained in the last two full fiscal years or proposes to retain in the current fiscal year. Item 6(b)(5) requires similar disclosure of relationships of directors with investment banking firms. In February Release, the Commission proposed to retain, as separate items, the requirements to disclose relationships with law and investment banking firms and to add a statement to the effect that a registrant would not be required to specify the amount of transactions between the registrant and the law or investment banking firm if such amount did not exceed $50,000.

The majority of the commentators supported this proposal, but argued that the $50,000 figure above which the Commission would require disclosure of the dollar amounts of payments was much too low to elicit important information for security holders, given the amounts that ordinarily are paid by companies each year for legal or investment banking services. In addition, a few commentators objected to relationships with law and investment banking firms being treated differently from relationships with other entities that supply services to the registrant, which would be disclosable only if certain thresholds were met.

The Commission is reevaluating the requirements concerning disclosure of relationships with law and investment banking firms in light of the changes in both the composition of boards of directors [21] and in the nature of relationships between registrants and law and investment banking firms. Proposed Items 404(b)(4) and (5) would continue to require disclosure of these relationships regardless of the dollar amount involved, but would permit the omission of the dollar amounts which do not exceed five percent of the law firm's gross revenues or the investment banking firm's consolidated gross revenues.[22] The Commission, however, solicits specific comment as to whether relationships with law and investment banking firms should be treated in the same fashion as relationships with other suppliers of services by requiring both the relationship and the dollar amount involved to be disclosed only if the five percent gross revenue threshold is met.

6. *Other Changes.* While incorporating various current disclosure requirements of Item 6(b)(3) into proposed Item 404(b), the Commission is proposing to clarify several of these disclosure provisions and to reduce the costs of compliance. First, the Commission is proposing to add Instruction 3B to Item 404(b), which, consistent with previous staff interpretations, would permit registrants to exclude amounts due for purchases subject to the usual trade terms in calculating their aggregate amount of indebtedness. This exclusion is based on a proposal in the February Release which was supported by commentators. The Commission believes that trade debt is more appropriately considered in connection with the calculation of amounts arising from customer and supplier relationships pursuant to proposed paragraphs (b)(1) and (2) of Item 404. In addition, this exclusion would result in the consistent treatment of trade debt for purposes of Item 404.

Second, the Commission is proposing that Item 404(b)(3), consistent with previous staff interpretations, refer to the aggregate amount of indebtedness as of the end of the registrant's fiscal year. This provision is derived from a similar proposal in the February Release that was supported by commentators.

The Commission also is proposing to permit the exclusion of payments for property or services when the transaction involves the rendering of services as a common or contract carrier, in addition to the exclusion in current Item 6(b)(3) which permits such exclusion when services are performed as a public utility. This proposal, which also is derived from the February Release, would be consistent with proposed paragraph (a) of Item 404.

Finally, the Commission is proposing to permit registrants, when computing aggregate amounts of payments for services or property or indebtedness under Item 404(b), to exclude payments made or received by, or indebtedness incurred by, certain *de minimis*

[21] *See* Release No. 34–18532 (March 3, 1982) (47 FR 10792) analyzing the results of the Commission's 1981 proxy monitoring program, which indicates a downward trend in the presence of lawyers and investment bankers on boards of directors.

[22] In order to treat these relationships in a more similar manner to those of other suppliers of services, proposed Items 404(b)(4) and (5) would not require disclosure of a director's position as an associate or employee of (other than of counsel to) a law or investment banking firm that provides services to the registrant.

subsidiaries. The proposal, derived from a proposal made in the February Release but modified in response to comments, is intended to reduce costs of compliance without a loss of significant information to investors.

The February Release proposed that payments made or received by five percent subsidiaries or indebtedness incurred by such subsidiaries be excluded from the calculations of payments or indebtedness. A "five percent subsidiary," in turn, was defined as a "significant subsidiary" under Rule 1–02(v) of Regulation S–X,[23] except that the applicable assets and income thresholds were to be five, rather than ten, percent. The exclusion was proposed to be made available, however, only if all five percent subsidiaries engaged in transactions, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary under Rule 1–02(v).

The proposal met with substantial criticism. Commentators objected that the introduction of the new "five-percent subsidiary" concept would cause confusion and argued that the "significant subsidiary" concept contained in Rule 1–02(v) could be utilized in connection with the exclusion without any loss of meaningful information to security holders. Commentators also believed that the requirement to aggregate payments or indebtedness of all *de minimis* subsidiaries in determining whether the exclusion is applicable would impose substantial burdens on registrants that would outweigh any benefits that might otherwise be achieved.

In accordance with the views of commentators, the proposed exclusions utilize the existing concept of "significant subsidiary." Thus, proposed Instructions 2C and 3C to Item 404(b) permit registrants, when computing the aggregate amount of payments for services or property or indebtedness, to exclude payments made or received by, or indebtedness incurred by, subsidiaries other than significant subsidiaries as defined in Rule 1–02(v). However, this exclusion is proposed to be made available only if all subsidiaries other than significant subsidiaries engaged in transactions, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary.[24] The Commission continues to believe that, when the *de minimis* subsidiaries, in the aggregate, represent a material part of the registrant's business, such transactions would be important to investors.

C. Proposed Item 404(c)—Indebtedness of Management

In connection with the development of a uniform item on transactions and relationships, the Commission has examined Item 402 of Regulation S–K, the focus of which is management remuneration, with a view towards determining if any provisions contained therein, in addition to the provisions on transactions with management contained in Item 402(f), would be more appropriately included in proposed Item 404. On the basis of this examination, the Commission is proposing to move the provisions regarding disclosure of management indebtedness, currently elicited by Item 402(e), into proposed Item 404 as paragraph (c).[25] The Commission believes that information regarding loans is more appropriately elicited under a transactions disclosure item than a remuneration disclosure item.

The Commission is proposing several changes in the disclosure provisions regarding loans to management in connection with the inclusion of those provisions in proposed Item 404(c). First, the Commission proposes to modify the persons whose connections with management require that their indebtedness be disclosed under Item 404(c) to conform more closely to the persons whose transactions must be disclosed under Item 404(a).

Currently, Item 402(e) requires disclosure of indebtedness of directors, officers and nominees and associates of such persons. Through the definition of "associate" under Securities Act Rule 405 and Exchange Act Rule 12b–2, (17 CFR 240.12b–2), Item 402(e) covers substantially the same types of family relationships as currently are specified in Item 402(f). Just as the Commission believes that Item 402(f) is too limited in its coverage of relatives, and thus is broadening that coverage in proposed Item 404(a), it also believes that Item 402(e) is likewise too limited. Opportunities for obtaining loans from a registrant may arise for any close relatives of directors, officers, or nominees, regardless of where such relatives live or whether they are officers of the registrant's parents or subsidiaries. Accordingly, the Commission is proposing to apply the provisions regarding disclosure of loans to all relatives, provided that they are no more remote than first cousin.[26]

Second, the Commission is proposing to move the threshold of indebtedness that triggers disclosure, currently contained in Instruction 2 to Item 402(e), into the text of proposed Item 404(c) and to raise the threshold to be consistent with that applicable to transactions generally. Currently, Item 402(e) requires disclosure of aggregate indebtedness in excess of the lesser of $25,000 or one percent of the registrant's total assets, whereas the threshold applicable to transactions generally under proposed Item 404(a) is $50,000. The Commission believes that loans aggregating less than $50,000 are generally *de minimis* so that conforming the thresholds of transactions and indebtedness will ease compliance burdens without sacrificing information important to security holders.[27]

Third, the Commission is proposing to include the provisions currently contained in Instruction 1 to Item 402(e), concerning the naming of the person whose indebtedness is required to be disclosed, into the text of the proposed new item.

The Commission is proposing, as instructions to Item 404(c), instructions based on the provisions of existing Instructions 2, 3 and 4 to Item 402(e), with several modifications.[28] First, the exclusion in current Instruction 2 (proposed Instruction 1) for transactions in the ordinary course of business is proposed to be eliminated as duplicative of the exclusions for ordinary travel and expense advances. In connection with this, the Commission is proposing to eliminate, as unnecessary, the language in current Instruction 3 (proposed Instruction 2) that makes clear that the ordinary course of business exclusion

[23] 17 CFR 210.1–02(v).

[24] For example, under proposed Instruction 2C, if a specified entity made payments for property or services to a subsidiary constituting 3 percent of the registrant's consolidated assets, to a subsidiary constituting 4 percent of the registrant's consolidated assets and to a subsidiary constituting 11 percent of the registrant's consolidated assets, the amount of the payments to the 3 and 4 percent subsidiaries could be disregarded in determining whether the disclosure is required under Item 404(b)(1). If, however, the same entity made payments to a subsidiary constituting 8 percent of the registrant's consolidated assets and to a subsidiary constituting 6 percent of the registrant's consolidated assets, the amount of these payments would be included in an Item 404(b)(1) computation.

[25] In connection therewith, Item 402(e) is proposed to be rescinded.

[26] The Commission is proposing to specify in Item 404(c) the persons currently covered by the term "associate" whose indebtedness will continue to be required to be disclosed, as well as the modified class of relatives.

[27] In this regard, related party transactions, including loans, must be disclosed in the financial statements, regardless of their size, if they are material. *See* Statement of Financial Accounting Standards No. 57 (March 1982).

[28] Instruction 5 (relating to disclosure of indebtedness in registration statements) is not proposed as an instruction to Item 404(c) as it is duplicative of proposed general Instruction 2.

does not permit registrants in the business of making loans to omit disclosure of loans in excess of the specified threshold.

Finally, the Commission is proposing to amend the remainder of current Instruction 3 (proposed Instruction 2), which exempts banks, savings and loan associations and broker-dealers extending credit under Federal Reserve Regulation T [29] from having to describe loans made in the ordinary course of business on substantially the same terms as those for comparable transactions that do not involve more than the normal risk of collectability, to limit the exemption to loans that are not nonperforming.[30] The Commission believes that abbreviated disclosure is not appropriate in the case of loans that are in default or as to which there are serious problems with respect to repayment.

This proposal is derived from a similar proposal made in the February Release, exept that disclosure is proposed to be required only of loans that were nonperforming at the end of the registrant's fiscal year, rather than at any time during the fiscal year. While comments on the proposal generally were supportive, commentators believed it would be unduly burdensome to have to determine whether loans had been nonperforming at any time during the fiscal year.[31]

D. Proposed Item 404(d)—Transactions With Promoters

The Commission believes that disclosure of transactions with promoters, currently elicited by Item 402(h) of Regulation S–K, may be more appropriately included with the other provisions concerning potential conflicts of interest in proposed Item 404. Accordingly, the Commission proposes to rescind Item 402(h) and to move the disclosure requirements of current Item 402(h) into Item 404, as paragraph (d), without proposing any changes in the substance of the provisions.

E. Transactions With Pension or Similar Plans

Finally, the Commission's examination of the provisions of Item 402 has led it to propose the rescission of current Item 402(g) regarding disclosure of transactions with pension or similar plans. The Commission believes that the item is unnecessary in view, among other things, of the extent to which affiliated transactions by pension plans generally are regulated under the Employee Retirement Income Security Act of 1974.[32] However, specific comments are requested as to whether such action will eliminate meaningful disclosure.

IV. Proposed Amendments to Item 6(b)

As a result of the proposed incorporation of the substantive requirements relating to disclosure of relationships with significant customers, suppliers and creditors into Item 404, the Commission is proposing new Items 6(b)(1) and (2) which instruct registrants to furnish the information required by Item 404 of Regulation S-K.[33] Proposed Item 6(b)(1) requires registrants to furnish the information required by Items 404 (a), (c) and (d). Proposed Item 6(b)(2) requires registrants, other than investment companies registered under the Investment Company Act, to furnish the information required by Item 404 (b). This limitation to registrants other than registered investment companies is consistent with current requirements.

In connection with its review of the requirements relating to disclosure of relationships, the Commission has reexamined the provisions of existing Items 6(b)(1) and (2) relating to disclosure of employment experience and family relationships of directors. Item 6(b)(1) currently requires disclosure of whether any director or nominee has during the past five years had a principal occupation or employment with any of the issuer's parents, subsidiaries or other affiliates. Item 401(e) of Regulation S-K calls for disclosure of a similar nature, requiring registrants to furnish a brief account of the business experience during the past five years of each director, executive officer, nominee for director or executive officer and certain other persons, including the person's principal occupation and employment during the period and the name and principal business of any corporation or other organization in which such occupations and employment were carried on.

The Commission believes that the existence of two items concerning past experience is duplicative and unnecessary. Accordingly, the Commission is proposing to rescind Item 6(b)(1) and amend Item 401(e) to require that registrants, in identifying any corporations or other organizations by which the enumerated persons have been employed during the past five years, indicate whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant.

Item 6(b)(2) of Schedule 14A currently requires to indicate whether any director or nominee is related to any executive officer of the registrant's parents, subsidiaries or other affiliates. Disclosure of family relationships also is covered by Item 401(d) of Regulation S-K, which requires registrants to indicate family relationships between the registrant's executive officers, directors and nominees for executive officer or director.

The Commission believes that only one item pertaining to disclosure of family relationships is necessary. Accordingly, the Commission is proposing to rescind Item 6(b)(2). While current Item 6(b)(2) is slightly more expansive in that it includes relatives employed by parents, subsidaries and other affiliates, the Commission does not believe that such relationships are sufficiently important to investors that they must be disclosed. To the extent that a close relative of a director, including a relative that is an executive officer of a parent or subsidiary, has a material interest in a transaction involving the registrant, that interest would be disclosed under proposed Item 404(a).

Finally, the Commission proposes to rescind Item 6(b)(6) which requires disclosure if the nominee or director is a control person of the issuer. Based on its experience, the Commission believes that such disclosure does not add any material information to that which is otherwise available to security holders and investors.

V. Coordinating Amendments to Forms and Schedules

In coordination with the proposal of uniform Regulations S–K Item 404, the

[29] 12 CFR Part 220.

[30] "Nonperforming" is proposed to be defined in a manner consistent with Industry Guide 3, "Statistical Disclosure by Bank Holding Companies." Thus, more information would be required with respect to loans that (i) are accounted for on a non-accrual basis; (ii) are contractually past due 90 days or more with respect to principal or interest; (iii) have been renegotiated to provide a reduction in principal or interest payments due to a deterioration in financial condition of the borrower; or (iv) are now current but about which serious doubts exist regarding compliance with repayment terms.

[31] Concurrent with this proposal, the Commission is proposing amendments to Article 9 of Regulation S–X, that, among other things, would revise the requirement to disclose aggregate indebtedness of related parties in excess of a specified amount and to require disclosure of nonperforming loans if they represent a significant portion of the total reported related party loans. Release No. 33–6417 (July 9, 1982). In that release, the Commission is proposing to rescind Schedule 1 which requires disclosure of loans from the registrant to its executive officers and principal shareholders. However, the Commission solicits specific comments as to whether that schedule should be included in proxy statements. Proposed Item 404 excludes such loans made in the ordinary course of business.

[32] 29 U.S.C. 1001 et seq.

[33] As discussed *infra*, current Items 6(b)(1) and (2) are proposed to be rescinded.

Commission is proposing to amend registration Forms S–1 and S–11 under the Securities Act, and Forms 10 and 10–K and Schedules 14A and 14C under the Exchange Act to require the information called for by Item 404. The Commission is also proposing certain renumbering changes necessitated by the addition of proposed Item 404 to such forms and schedules.[34]

VI. Request for Comment

Any interested person wishing to submit written comments on the proposed amendments, as well as on other matters that might have an impact on the proposals contained herein, are requested to do so. In addition to the issues raised above, the Commission requests comment on whether the proposed item and amendments, if adopted, would have an adverse effect on competition or would impose a burden on competition which is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on this inquiry should include, to the extent feasible, detailed empirical and evidentiary material in support of any conclusions, opinions or positions. Comment on this inquiry will be considered by the Commission in complying with its responsibilities under Section 23(a)(2) of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 239, 240 and 249.

Reporting requirements and securities.

VII. Text of Proposals

In accordance with the foregoing, it is proposed to amend Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

1. By revising paragraph (e)(1) of § 229.401 to read as follows:

§ 229.401 (Item 401) Directors and executive officers.

* * * * *

(e) *Business experience*—(1) *Background.* Give a brief account of the business experience during the past five years of each director, executive officer, person nominated or chosen to become a director or executive officer, and each person named in answer to paragraph (c) of this section. The account should set forth each person's principal occupations and employment during the past five years and the name and principal business of any corporation or other organization in which such occupations and employment were carried on, including whether such corporation or organization is a parent, subsidiary or other affiliate of the registrant. When an executive officer or person named in response to paragraph (c) of this section has been employed by the registrant or a subsidiary of the registrant for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his prior business experience. What is required is information relating to the level of his professional competence, which may include, depending upon the circumstances, such specific information as the size of the operation supervised.

* * * * *

§ 229.402 [Amended]

2. By revising § 229.402 to change its title to Management remuneration, to remove paragraphs (e)–(h) and to redesignate paragraph (i) as paragraph (e).

3. By adding § 229.404 to read as follows:

§ 229.404 (Item 404) Certain relationships and related transactions.

(a) *Transactions with management and others.* Describe briefly any transaction, or series of similar transactions, since the beginning of the registrant's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the registrant or any of its subsidiaries was or is to be a party, in which the amount involved exceeds $50,000 and in which any of the following persons had, or is to have, a direct or indirect material interest, naming such person and indicating the person's relationship to the registrant, the nature of such person's interest in the transaction, the amount of such transaction and, where practicable, the amount of such person's interest in the transaction:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any security holder who is known to the registrant to own of record or beneficially more than five percent of any class of the registrant's voting securities; and

(4) Any relative, by blood, marriage or adoption, of any of the foregoing persons who has no more remote relationship to such person than first cousin.

Instructions to Paragraph (a) of Item 404

1. No information need be given in answer to this Item 404(a) as to any transaction where:

A. The rates or charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common or contract carrier, or public utility, at rates or charges fixed in conformity with law or governmental authority;

B. The transaction involves services as a bank depository of funds, transfer agent, registrar, trustee under a trust indenture, or similar services;

C. The interest of the specified person arises solely from the ownership of securities of the registrant and the specified person receives no extra or special benefits not shared on a pro rata basis.

There may be situations where, although this instruction does not expressly authorize nondisclosure, the interest of a specified person in a particular transaction or series of transactions is not a direct or indirect material interest. In that case, information regarding such interest and transaction is not required to be disclosed in response to this paragraph. In determining the significance of the information to investors, the importance of the interest to the person having the interest, the relationship of the parties to the transaction with each other, and the amount involved in the transaction are among the factors to be considered.

2. In computing the amount involved in the transaction or series of similar transactions, include all periodic installments in the case of any lease or other agreement providing for periodic payments or installments.

3. This paragraph calls for disclosure of indirect, as well as direct, material interests in transactions. A person who has a position or relationship with a firm, corporation, or other entity that engages in a transaction with the registrant or its subsidiaries may have an indirect interest in such transaction by reason of such position or relationship. However, a person shall be deemed not to have a material indirect interest in a transaction within the meaning of this paragraph where:

A. The interest arises only (i) from such person's position as a director of another corporation or organization which is a party to the transaction; or (ii) from the direct or indirect ownership by such person and all other persons specified in paragraphs (a)(1) through (4) of this Item, in the aggregate, of less than a ten percent equity interest in another person (other than a partnership) which is a party to the transaction; or (iii) from both such position and ownership;

B. The interest arises only from such person's position as a limited partner in a partnership in which the person and all other persons specified in paragraphs (a)(1) through (4) of this Item had an interest of less than ten percent; or

C. The interest of such person arises solely from the holding of an equity interest (including a limited partnership interest but excluding a general partnership interest), or a creditor interest, in another person which is a party to the transaction with the registrant or

[34] When final action is taken on the amendments proposed herein, certain other technical amendments may be necessary.

any of its subsidiaries and the transaction is not material to such other person.

4. The amount of the interest of any specified person shall be computed without regard to the amount of the profit or loss involved in the transaction.

5. In describing any transaction involving the purchase or sale of assets by or to the registrant or any of its subsidiaries, otherwise than in the ordinary course of business, state the cost of the assets to the purchaser and, if acquired by the seller within two years prior to the transaction, the cost thereof to the seller. Indicate the principle followed in determining the registrant's purchase or sale price and the name of the person making such determination.

6. Information shall be furnished in answer to this paragraph with respect to transactions not excluded above which involve remuneration from the registrant or its subsidiaries, directly or indirectly, to any of the specified persons for services in any capacity unless the interest of such persons arises solely from the ownership individually and in the aggregate of less than ten percent of any class of equity securities of another corporation furnishing the services to the registrant or its subsidiaries.

(b) *Certain business relationships.* Describe any of the following relationships that exist, indicating the identity of the entity with which the registrant has such a relationship, the name of the nominee or director affiliated with such entity and the nature of such nominee's or director's affiliation, the relationship between such entity and the registrant and the amount of the business done between the registrant and the entity during the registrant's last full fiscal year or proposed to be done during the registrant's current fiscal year:

(1) If the nominee or director is an officer of, or owns of record or beneficially in excess of five percent equity interest in, any business or professional entity that has made during the registrant's last full fiscal year, or proposes to make during the registrant's current fiscal year, payments to the registrant or its subsidiaries for property or services in excess of five percent of the registrant's or other entity's consolidated gross revenues for its last full fiscal year;

(2) If the nominee or director is an officer of, or owns of record or beneficially in excess of five percent equity interest in, any business or professional entity to which the registrant or its subsidiaries has made during the registrant's last full fiscal year, or proposes to make during the registrant's current fiscal year, payments for property or services in excess of five percent of the registrant's or other entity's consolidated gross revenues for its last full fiscal year;

(3) If the nominee or director is an officer of, or owns of record or beneficially in excess of five percent equity interest in, any business or professional entity to which the registrant or its subsidiaries was indebted at the end of the registrant's last full fiscal year in an aggregate amount in excess of five percent of the registrant's total consolidated assets at the end of such fiscal year;

(4) If the nominee or director is a member of, or of counsel to, a law firm which the issuer has retained during the last fiscal year or proposes to retain during the current fiscal year, *Provided, however,* That the dollar amount of fees paid to a law firm by the registrant need not be disclosed if such amount does not exceed five percent of the law firms gross revenues for its last fiscal year.

(5) If the nominee or director is a director, partner or officer of any investment banking firm which has performed services for the registrant, other than as a participating underwriter in a syndicate, during the last fiscal year or which the registrant proposes to have perform services during the current year, *provided,* however, *that* the dollar amount of compensation received by an investment banking firm need not be disclosed if such amount does not exceed five percent of the investment banking firm's consolidated gross revenues for its last fiscal year;

(6) Any other relationships that the registrant is aware of between the nominee or director and the registrant that are substantially similar in nature and scope to those relationships listed above.

Instructions to Paragraph (b) of Item 404

1. In order to determine whether payments or indebtedness exceed five percent of the consolidated gross revenues of any entity other than the registrant for such entity's last full fiscal year, it is appropriate to rely on information provided by the nominee or director.

2. In calculating payments for property and services the following may be excluded:

A. Payments where the rates of charges involved in the transaction are determined by competitive bids, or the transaction involves the rendering of services as a common contract carrier, or public utility, at rates or charges fixed in conformity with the law or governmental authority;

B. Payments that arise solely from the ownership of securities of the registrant and no extra or special benefit not shared on a pro rata basis by all holders of the class of securities is received;

C. Payments made or received by subsidiaries other than significant subsidiaries as defined in Rule 1–02(v) of Regulation S–X [17 CFR 210.1–02(v)], provided that all such subsidiaries making or receiving payments, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1–02(v).

3. In calculating indebtedness the following may be excluded:

A. Debt securities that have been publicly offered, admitted to trading on a national securities exchange, or quoted on the automated quotation system of a registered securities association;

B. Amounts due for purchases subject to the usual trade terms;

C. Indebtedness incurred by subsidiaries other than significant subsidiaries as defined in Rule 1–02(v) of Regulation S–X [17 CFR 210.1–02(v)], provided that all such subsidiaries incurring indebtedness, when considered in the aggregate as a single subsidiary, would not constitute a significant subsidiary as defined in Rule 1–02(v).

(c) *Indebtedness of management.* If any of the following persons has been indebted to the registrant or its subsidiaries at any time since the beginning of the registrant's last fiscal year in an amount in excess of $50,000, indicate the name of such person, the nature of the person's relationship by reason of which such person's indebtedness is required to be described, the largest aggregate amount of indebtedness outstanding at any time during such period, the nature of the indebtedness and of the transaction in which it was incurred, the amount thereof outstanding as of the latest practicable date and the rate of interest paid or charged thereon:

(1) Any director or officer of the registrant;

(2) Any nominee for election as a director;

(3) Any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which any of the persons specified in paragraphs 404(c)(1) or (c)(2) above is an officer or partner or is, directly or indirectly, the beneficial owner of ten percent or more of any class of equity securities;

(4) Any trust or other estate in which any of the persons specified in paragraphs 404(c)(1) or (c)(2) above has a substantial beneficial interest or as to which such person serves as a trustee or in a similar capacity; and

(5) Any relative, by blood, marriage or adoption, of any of the persons specified in paragraphs 404(c)(1) or (c)(2) above who has no more remote relationship to such person than first cousin.

Instructions to Paragraph (c) of Item 404

1. Exclude from the determination of the amount of indebtedness all amounts due from the particular person for purchases subject to usual trade terms and for ordinary travel and expense advances.

2. If the lender is a bank, savings and loan association, or broker-dealer extending credit under Federal Reserve Regulation T (12 CFR Part 220) and the loans are not nonperforming, disclosure may consist of a statement, if such is the case, that the loans to such persons (A) were made in the ordinary course of business, (B) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons, and (C) did not involve more than the normal risk of collectability or present other unfavorable features. For purposes of this instruction, "nonperforming loans" are loans that, at the end of the registrant's last fiscal year, were within any of the following categories: (i) Loans accounted for on a nonaccrual basis; (ii) loans contractually past due 90 days or more as to interest or principal payments; (iii) loans, the terms of which have been renegotiated to provide a reduction or deferral of interest or principal because of deterioration in the financial position of the borrower; or (iv) loans now current where there are serious doubts as to the ability of the borrower to comply with present loan repayment terms. A renewal on current market terms at maturity will not be considered a renegotiation within the meaning of clause (iii) of this instruction.

3. If any indebtedness required to be described arose under Section 16(b) of the Exchange Act and has not been discharged by payment, state the amount of any profit realized, that such profit will inure to the benefit of the registrant or its subsidiaries and whether suit will be brought or other steps taken to recover such profit. If, in the opinion of counsel, a question reasonably exists as to the recoverability of such profit, it will suffice to state all facts necessary to describe the transactions, including the prices and number of shares involved.

(d) *Transactions with promoters.* Registrants that have been organized within the past five years and that are filing a registration statement on Form S–1 under the Securities Act (§ 239.11 of this chapter) or on Form 10 under the Exchange Act (§ 249.210 of this chapter) shall:

(1) State the names of the promoters, the nature and amount of anything of value (including money, property, contracts, options or rights of any kind) received or to be received by each promoter, directly or indirectly, from the registrant and the nature and amount of any assets, services or other consideration therefor received or to be received by the registrant; and

(2) As to any assets acquired or to be acquired by the registrant from a promoter, state the amount at which the assets were acquired or are to be acquired and the principal followed or to be followed in determining such amount and identify the persons making the determination and their relationship, if any, with the registrant or any promoter. If the assets were acquired by the promoter within two years prior to their transfer to the registrant, also state the cost thereof to the promoter.

Instructions to Item 404

1. No information need be given in response to any paragraph of this Item as to any remuneration or other transaction reported in response to any other paragraph of this Item or to Item 402 of Regulation S–K (§ 229.402 of this chapter) or as to any remuneration or transaction with respect to which information may be omitted pursuant to any other paragraph of this Item or Item 402.

2. If the information called for by this Item is being presented in a registration statement filed pursuant to the Securities Act or the Exchange Act, the period for which the information called for shall be reported is the previous three years.

3. A non-Canadian foreign private issuer eligible to use Form 20–F (§ 249.220f of this chapter) may respond to this Item only to the extent that the registrant discloses to its security holders or otherwise makes public the information specified in this Item.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

4. By revising § 239.11 to add a new paragraph (m) to Item 11 as follows:

§ 239.11 Form S–1, registration statement under the Securities Act of 1933.

* * * * *

Item 11. *Information With Respect to the Registrant.*

* * * * *

(m) Information required by Item 404 of Regulation S–K (§ 229.404 of this chapter), certain relationship and related transactions.

* * * * *

5. By revising § 239.18 to renumber Items 23–35 as Items 24–36 and to add a new Item 23 to read as follows:

§ 239.18 Form S–11, for registration under the Securities Act of 1933 of securities of certain real estate companies.

* * * * *

Item 23. *Transactions with Management and Related Transactions.*

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter). If the information prescribed by Instruction 4 to Item 404(a) is included and the assets have been acquired by the seller within five years prior to the transaction, disclose the aggregate depreciation claimed by the seller for federal income tax purposes.

* * * * *

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

6. By revising paragraph (b) of Item 6 of § 240.14a–101 to read as follows:

§ 230.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 6. *Directors and executive officers.*

* * * * *

(b)(1) Furnish the information required by Item 404 (a), (c) and (d) of Regulation S–K (§ 229.404 of this chapter).

(2) With respect to registrants other than investment companies registered under the Investment Company Act of 1940, furnish the information required by Item 404(b) of Regulation S–K (§ 229.404(b) of this chapter).

* * * * *

7. By revising paragraph (b) of Item 4 of § 240.14a–102 to read as follows:

§ 240.14a–102 Schedule 14B. Information to be included in statements filed by or on behalf of a participant (other than the issuer) pursuant to § 240.14a–11(c) (Rule 14a–11(c)).

* * * * *

Item 4. *Further matters.*

* * * * *

(b) Furnish for yourself and your associates the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter).

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

8. By revising § 249.210 to renumber Items 7–14 as Items 8–15 and to add a new Item 7 to read as follows:

§ 249.210 Form 10, general form for registration of securities pursuant to section 12 (b) or (g) of the Securities Exchange Act of 1934.

* * * * *

Item 7. *Certain Relationships and Related Transactions.*

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter).

9. By revising § 249.310 to renumber Item 13 as Item 14 and to add a new Item 13 as follows:

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.

* * * * *

Item 13. *Certain Relationships and Related Transactions.*

Furnish the information required by Item 404 of Regulation S–K (§ 229.404 of this chapter).

* * * * *

Statutory Authority

These amendments are being proposed pursuant to authority in Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933 and Sections 12, 13, 14, 15(d) and 23(a) of the Securities Exchange Act of 1934.

(Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 205, 209, 48 Stat. 906, 908; sec. 301, 54 Stat. 857; sec. 8, 68 Stat. 685; sec. 1, 79 Stat. 1051; sec. 308(a)(2), 90 Stat. 57; secs. 12, 13, 14,

15(d), 23(a) 48 Stat. 892, 895, 901; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; Sec. 203(a), 49 Stat. 704; sec. 202, 68 Stat; 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574, secs. 1, 2, 3, 82 Stat. 454, 455; secs. 28(c), "1, 2, 3–5, 84 Stat, 1435, 1497; sec. 105(b), 88 Stat. 1503; secs. 8, 9, 10, 18, 89 Stat. 117, 118, 119, 155; sec. 308(b), 90 Stat. 57; secs. 202, 203, 204, 91 Stat. 1994, 1498, 1499, 1500; 15 U.S.C. 77f, 77g, 77h, 77j ,77s(a), 78/, 78m, 78n, 78o(d), 78w(a))

By the Commission.

Dated July 9, 1982.

George A. Fitzsimmons,

Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b), that the proposed amendments published in Release No. 33–6416 (July 9, 1982) "Disclosure of Certain Relationships and Transactions Involving Management," will not, if promulgated, have a significant economic impact on a substantial number of small entities. The reasons for such certification are that, while all entities that are subject to the Commission's rules and regulations or that initially file registration statements on Forms S–1 or S–11 will be affected by the proposed amendments, it is not expected that such amendments will have a significant impact on any registrant.

In any event, those small entities that file registration statements on Form S–18 (an optional registration statement available to small entities and others) will be unaffected by the proposed amendments as such amendments will not be applicable to that form.

Dated: July 9, 1982.

John S. R. Shad,

Chairman.

[FR Doc. 82–19590 Filed 7–19–82; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79–76–098 (Montana—1)]

High-Cost Gas Produced From Tight Formations; Montana Public Hearing

July 14, 1982.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of hearing on proposed rule; date change.

SUMMARY: On July 1, 1982 the Commission issued a Notice of Public Hearing pertaining to high-cost gas produced from tight formations in Docket No. RM79–79–76–098 (Montana–1), (47 FR 29569 (July 7, 1982). The Hearing was scheduled for Tuesday, July 27, 1982. The Commission subsequently received a request from a party desiring to participate in the hearing to have the hearing date changed to avoid a scheduling conflict that the party had. Accordingly, the hearing is rescheduled for August 20, 1982.

DATES: The public hearing will be held on Friday, August 20, 1982, at 10:00 a.m. Requests to participate and amount of time requested should be directed to the Secretary of the Commission no later than August 16, 1982.

ADDRESS: The hearing will be held in a hearing room at the Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426.

Requests to participate and questions regarding participation should be directed to the Office of Secretary, 825 North Captiol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357–8511.

Kenneth F. Plumb,

Secretary.

[FR Doc. 82–19516 Filed 7–19–82; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 78N–3028]

Orthopedic Devices; General Provisions and Classification of 77 Devices; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: In FR Doc. 82–17576 appearing at page 29052 in the Federal Register of Friday, July 2, 1982, the following correction is made: On page 29052 in the first column in the heading, [DOCKET NO. 78N–2830] is corrected to read [DOCKET NO. 78N–3028].

FOR FURTHER INFORMATION CONTACT: Agnes B. Black, Federal Register Writer's Office (HFC–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

Dated: July 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82–19486 Filed 7–19–82; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 206, 207, and 209

Fishing, Hunting, and Navigation Regulations; Removal and Amendment of Obsolete Provisions

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the Fishing and Hunting and Navigation Regulations in Title 33 by revoking certain sections and amending other sections where identified as obsolete or unnecessary. This is part of the Corps ongoing program to improve its regulations.

DATE: Comments must be received on or before August 19, 1982.

ADDRESS: HQDA, DAEN-CWO-N, Washington, D.C. 20314

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard, at (202) 272–0200.

SUPPLEMENTARY INFORMATION: The Corps of Engineers has reviewed the regulations in 33 CFR Parts 206, 207 and 209 with a view toward amending or deleting obsolete or unnecessary sections. The following is a list of regulations affected by this proposal and the reason for the proposed change.

1. *Part 206 Fishing and Hunting Regulations (removed and reserved.)* On 16 November 1979 (44 FR 65977–86) the Corps published final rules that revoked most of the fishing and hunting regulations and held the revocation of the remaining regulations in Part 206 in abeyance pending further study. Our current study supports the position that was taken previously that the regulations in Part 206 are unnecessary and may be contradictory in view of the issuance of nationwide permits for marine life harvesting devices in 33 CFR Part 330. It should be noted that these marine life harvesting devices will continue to be subject to regulation by the Corps. If additional control is necessary in the future the district engineers may through public notices, designate and publicize the areas considered to be acceptable for fishing and hunting structures.

2. *Part 207 Navigation Regulations.* We have reviewed the regulations in Part 207 and have identified many that no longer serve the intended purpose and accordingly are obsolete and should be deleted in their entirety. Other regulations in Part 207 are amended to

revoke obsolete and unnecessary requirements.

Section 207.473 Waukegan Harbor, Illinois, is removed from the index. This section was deleted by a previous action.

The following navigation regulations in Part 207 are obsolete. We propose to delete them.

Section 207.37 Jamaica Bay, Long Island, N.Y., Seaplane restricted area.
Section 207.90 Delaware River, Pa.; use of Government landing pier at Marcus Hook.
Section 207.280 White River, Ark.; use, administration and navigation of locks in upper White River.
Section 207.290 Current River above Van Buren, Mo.; logging.
Section 207.400 Duluth—Superior Harbor, Minn., and Wis.; use, administration and navigation, and bridge regulations.
Section 207.410 Keweenaw Waterway, Mich.; use, administration and navigation.
Section 207.490 Cheboygan River, Mich.
Section 207.611 St. Lawrence River from Tibbets Point to Raquette River, excluding the section between Eisenhower Lock and Snell Lock, N.Y.; use, administration and navigation in U.S. Waters.
Section 207.613 Pacific Ocean; U.S. Navy restricted area in vicinity of Scripps Institution of Oceanography Pier, La Jolla, Calif.
Section 207.655 Roque River, Oregon; logging.
Section 207.660 Coquille River, Oregon, logging on North Fork between its mouth and Gravel Ford, at the junction of the North and East Forks.
Section 207.663 South Fork of Coos River, Oreg.; logging in tidal section.
Section 207.720 Willapa Bay and tributaries, Wash.; logging.
Section 207.730 Grays Harbor and tributaries, Wash.; logging.
Section 207.770 Snoqualmie and Snohomish Rivers, Wash.; logging.
Section 207.780 Sammamish River, Wash.; logging.

3. The following regulations in Part 207 are amended to remove obsolete and unnecessary requirements.

Section 207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaraies, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration and navigation. Revise paragraph (d)(5) to change VHF Channel from 16 to 14.

Section 207.187 Gulf Intracoastal Waterway, Tex.; special floodgate lock and navigation regulations. In paragraph (c)(1) and (2) change 1.5 miles per hour to 2 miles per hour, add reference to head differential at the Colorado River Locks in (2) and in paragraph (c)(6)(i) delete 2738 kilocyles and replace with "VHF–FM Channels 12, 13, and 16."

Section 207.476 The Inland—lock in Crooked River, Alason, Mich., use, administration and navigation. Paragraph (c) is amended to read "Operation—The lock operating season will commence and close as determined by the district engineers, Corps of Engineers in charge of the locality, depending on conditions and the need for lockage services. Public notices will be issued announcing the opening and closing dates at least 15 days in advance of such dates". Paragraph (g) is deleted and paragraph (h) is redesignated as (g).

Section 207.614 Pacific Ocean off the east coast of San Clemente Island, Calif., Naval restricted areas. In paragraph (a) *The Area.* The reference to "the Naval Restricted Anchorage Area, as described in § 202.218 (Anchorage Regulations) of this chapter", is changed to ". . . the restricted anchorage area described in § 110.218 of this chapter. . ."

Section 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River and connecting waters, Calif. Delete paragraph (d) San Francisco Bay at South San Francisco, seaplane restricted area. The area is no longer used for its intended purpose.

4. *Part 209—Administrative Procedure* is amended with respect to § 209.330 *Lake Survey Office* which is obsolute. We are holding in abeyance all other changes to Part 209 to allow time for further study. Part 209 will be reviewed and revised as necessary in the near future.

List of Subjects in 33 CFR

Part 206

Fisheries, Fishing, Waterways, Hunting.

Part 207

Navigation, Waterways.

Note.—The Chief of Engineers has determined that this document does not contain a major rule requiring a regulatory impact analysis under Executive Order 12291 because it will not result in an annual effect on the economy of $100 million or more and it will not result in a major increase in coasts or prices. The Chief of Engineers has also determined that this proposed rule will not have a significant economic impact on a substantial number of entities and thus does not require the preparation of a regulatory flexibility analysis.

(40 Stat. 266; 33 U.S.C. 1 and 43 U.S.C. 1333(e))

Dated: June 30, 1982.

James W. Ray,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

For the reasons cited above, it is proposed to amend 33 CFR Parts 206, 207 and 209 as follows:

PART 206 [REMOVED AND RESERVED]

1. 33 CFR Part 206—Fishing and Hunting Regulations is removed and reserved.

PART 207—NAVIGATION REGULATIONS

2. The table of contents for Part 207 is amended by removing the entry for § 207.473 *Waukegan Harbor, Ill.*

§ 207.37 [Removed]

2a. Section 207.37 *Jamaica Bay, Long Island, N.Y., seaplane restricted area* is removed.

§ 207.90 [Removed]

3. Section 207.90 *Delaware River, Pa.; use of Government landing pier at Marcus Hook* is removed.

4. Paragraph (d)(5) in § 207.180 is revised to read as follows:

§ 207.180 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes and the Atchafalaya River) from St. Marks, Fla., to the Rio Grande; use, administration and navigation.

* * * * *

(d) Locks and floodgates. * * *

(5) *Radiophone.* Locks will monitor continously VHF—Channel 14 ("Safety and Calling" Channel) and/or AM–2738 kHz for initial communication with vessels. Upon arrival at a lock, a vessel equipped with radio-phone will immediately advise the lock by radio of its arrival so that the vessel may be placed on proper turn. Information transmitted or received in these communications shall in no way effect the requirements for use of sound signals or display of visual signals, as provided in paragraphs (d) (3) and (4) of this section.

5. Paragraphs (c)(1), (c)(2) and (c)(6) of § 207.187 are revised to read as follows:

§ 207.187 Gulf Intracoastal Waterway, Tex.; special floodgate, lock and navigation regulations.

* * * * *

(c) *Operation of floodgates and locks*—(1) *Unlimited passage.* The floodgates and locks shall be opened for the passage of single vessels and towboats with single or multiple barges when the current in the river is less than

2 miles per hour and the head differential is less than 0.7 foot. When the head differential is less than 0.7, the Colorado River locks shall normally be operated as floodgates, using only the riverside gates of each lock.

(2) *Limited passage.* When the current in either river exceeds 2 miles per hour or the head differential at the Brazos River floodgates is between the limits of 0.7 foot and 1.8 feet, both inclusive, or the head differential at the Colorado River locks is 0.7 foot or greater, passage shall be afforded only for single vessels or towboats with single loaded barges or two empty barges. When two barges are rigidly assembled abreast of each other and the combined width of both together is 55 feet or less, they shall be considered as one barge. Each section of an integrated barge shall be considered as one barge, except when it is necessary to attach a rake section to a single box section to facilitate passage, the two sections shall be considered as one barge. It shall be the responsibility of the master, pilot or other person in charge of a vessel to determine whether a safe passage can be effected, give due consideration to the vessel's power and maneuverability, and prevailing current velocity, head differential, weather and visibility. If conditions are not favorable, passage shall be delayed until conditions improve and a safe crossing is assured.

* * * * *

(6) *Communication*—(i) *Radio.* The floodgates and locks are equipped with short wave radio equipment transmitting and receiving on VHF—FM Channels 12, 13, 14 and 16. Call letters for the floodgates are WUI 411 and for the locks are WUI 412.

(ii) *Telephone.* The floodgates and locks are equipped with telephone facilities. The floodgates may be reached by phoning Freeport, Tx, 713–233–1251; the locks may be reached by phoning Matagorda, Tx, 713–863–7842.

* * * * *

§ 207.280 [Removed]

6. Section 207.280 *White River, Ark.; use, administration, and navigation of locks in upper White River* is removed.

§ 207.290 [Removed]

7. Section 207.290 *Current River above Van Buren, Mo.; logging* is removed.

§ 207.400 [Removed]

8. Section 207.400 *Duluth-Superior Harbor, Minn. and Wis.; use, administration, and navigation, and bridge regulations* is removed.

§ 207.410 [Removed]

9. Section 207.410 *Keweenaw Waterway, Mich.; use, administration, and navigation* is removed.

10. In § 207.476, paragraph (c) is revised, paragraph (g) is removed, and paragraph (h) is revised and redesignated as (g) to read as follows:

§ 207.476 The Inland Route—Lock in Crooked River, Alanson, Mich., use, administration, and navigation.

* * * * *

(c) *Operation.* The lock operating season will commence and close as determined by the district engineers, Corps of Engineers in charge of the locality, depending on conditions and the need for lockage services. Public notices will be issued announcing the opening and closing dates at least 15 days in advance of such dates.

* * * * *

(g) *Precedence at lock.* The craft arriving first at the lock shall be first to lock through; but precedence will be given to craft belonging to the United States or other local government entities, such as state, county, or municipality. Arrival posts may be established above and below the lock. Craft arriving at or opposite such posts or markers will be considered as having arrived at the locks within the meaning of this paragraph.

§ 207.490 [Removed]

11. Section 207.490 *Cheboygan River, Mich.* is removed.

§ 207.611 [Removed]

12. Section 207.611 *St. Lawrence River from Tibbets Point to Raquette River, excluding the section between Eisenhower Lock and Snell Lock, N.Y.; use, administration, and navigation in U.S. waters* is removed.

§ 207.613 [Removed]

13. Section 207.613 *Pacific Ocean; U.S. Navy restricted area in vicinity of Scripps Institution of Oceanography Pier, La Jolla, Calif.* is removed.

14. Paragraph (a) of § 207.614 is revised to read as follows:

§ 207.614 Pacific Ocean off the east coast of San Clemente Island, Calif., Naval restricted areas.

(a) *The area.* The waters of the Pacific Ocean within an area extending easterly from the east coast of San Clemente Island, California, described as follows: The northerly boundary to be a continuation, to seaward of the existing southerly boundary of the restricted anchorage area, as described in 110.218 of this chapter, to latitude 33°00.3'N., longitude 118°31.1'W.; thence to latitude 32°58.6'N., longitude 118°30.0'W.; thence to latitude 32°57.9'N., longitude 118°31.3'W on the shoreline; thence northerly along the shoreline to the point of beginning.

* * * * *

15. Paragraph (d) regarding San Francisco Bay at South San Francisco; seaplane restricted area in § 207.640 is removed and reserved.

§ 207.640 San Francisco Bay, San Pablo Bay, Carquinez Strait, Suisun Bay, San Joaquin River, and connecting waters, Calif.

* * * * *

(d) [Removed and reserved]

* * * * *

§ 207.655 [Removed]

16. Section 207.655 *Roque River, Oregon; logging* is removed.

§ 207.660 [Removed]

17. Section 207.660 *Coquille River, Oregon; logging on North Fork between its mouth and Gravel Ford, at the junction of the North and East Forks* is removed.

§ 207.663 [Removed]

18. Section 207.663 *South Fork of Coos River, Oreg.; logging in tidal section* is removed.

§ 207.720 [Removed]

19. Section 207.720 *Willapa Bay and tributaries, Wash.; logging* is removed.

§ 207.730 [Removed]

20. Section 207.730 *Grays Harbor and tributaries, Wash.; logging* is removed.

§ 207.770 [Removed]

21. Section 207.770 *Snoqualmie and Snohomish Rivers, Wash.; logging* is removed.

§ 207.780 [Removed]

22. Section 207.780 *Sammamish River, Wash.; logging* is removed.

PART 209—ADMINISTRATIVE PROCEDURE

§ 209.330 [Removed]

23. Section 209.330 *U.S. Lake Survey Office* is removed.

[FR Doc. 82-19512 Filed 7-19-82; 8:45 am]

BILLING CODE 3710-92-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 536 and 538

[Docket No. 82-36]

Procedures and Requirements for Currency Adjustment Factors

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: Currency adjustment factors (CAF) are a major concern to the shipping public and an effective system which is fair and reasonable to carriers, conferences, and shippers is required. This would establish a simplified and uniform procedure for the publishing and filing of currency adjustment factors. These provisions would require the filing of CAF schedules for each trade currency by carriers and conferences to govern the imposition of surcharges and discounts to be applied on rates in those trades. If finalized this rule would replace the current procedures and requirements for currency adjustment factors found in 46 CFR 538.4.

DATE: Comments due on or before September 20, 1982.

ADDRESS: Comments (original and fifteen copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, (202) 523-5725.

SUPPLEMENTARY INFORMATION: The proposed amendment is intended to establish a uniform procedure for publishing currency adjustment factors (CAFs) by all common carriers by water in the U.S. foreign commerce and conferences of such carriers, including non-vessel operating common carriers (NVOCCs). It has been developed from a methodology employed by some conferences in the Canadian continental trades. The system would operate as follows:

Carriers and conferences would file CAF schedules in their tariffs to indicate when, and to what extent, currency surcharges and discounts are to be applied to base ocean freight rates. Whenever a carrier or conference wishes to impose a CAF, it would be required to do so using those schedules. The base level of currency values to be used in the construction of the schedules is to be established for each of the selected trade currencies, relative to the tariff currency, in a given trade.[1]

The exchange rates—obtained from any suitable media source such as the *Wall Street Journal, Journal of Commerce,* or *London Financial Times,* etc.—will serve as the basis for the CAF schedules, to be developed for each trade currency to apply on cargo destined to that nation's ports. This may or may not be a major trade currency; its selection being solely at the discretion of a carrier or conference. In order to satisfy statutory notice requirements, carriers and conferences offering dual rate contracts approved by the Commission pursuant to section 14b of the Shipping Act (46 U.S.C. *813a*) and desiring to publish a CAF provision would be required to file such provision with the Commission no less than 90 days prior to their effective dates. All other carriers and conferences would file CAF tariff provisions at least 30 days in advance of their effectiveness.

A CAF tariff provision could be filed, or updated, at any time but would only become effective on the first day of a month after all applicable statutory notice requirements are met. On the first market day of each succeeding month, on or after the effective date, CAFs would be applied for the full month in accordance with these schedules depending on relative currency values published that day in a selected media source. The schedules are to be constructed so that no CAFs can be imposed in any month unless the value of a trade currency exceeds a two percent minimum deviation from the tariff currency base exchange rate. Each time the schedules are updated, for whatever reason, they will change depending upon the existing exchange rate values of the selected trade currencies in relation to the tariff currency.

The CAF schedules are not to be developed on a one-for-one basis, but rather on a 50 percent factor of the nominal change in the value of the trade currencies of the nations served.[2] Under this system, unless this 50 percent result equals or exceeds a 2 percent currency change at intervals of 2 percent at the beginning of each monthly period, there would be no currency adjustment or change in the adjustment.

A carrier, or conference, which elects to impose CAFs at a subsequent date, or an independent carrier entering the trade, would be required to file currency schedules and, in addition, would be subject to the statutory notice requirements. Any CAFs filed pursuant to this rule would not be valid unless they were imposed in accordance with a currently effective schedule.

This system for each selected trade currency trade currency will eliminate differences in currency adjustment factors applied on cargo with the same destination country to and from all U.S. ports. The currency adjustment would be applied only upon the base rate. This system, however, will not require the submission of any operating expense or revenue data to justify CAF levels. The only mandatory feature is that carriers and conferences publish CAF schedules for each selected trade currency in their tariffs if they choose to file currency adjustment factors. The selection of the trade currencies involved would be at the discretion of the carrier or conference. An example of the currency schedules as applied to the German mark and Japanese yen is contained in paragraph (f) of the proposed rule. Other selected currency exchange rates in multi-currency trades would follow a similar but separate arrangement. CAs determined from these sample currency schedules would apply on cargo moving to or from German and Japanese ports.

The Commission finds that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). Section 601(2) of the Act exempts from its coverage any "rule of particular applicability relating to rates, * * * or practices relating to such rates * * *" As this proposed rule clearly relates to rates and rate practices, and applies only to those particular carriers which elect to publish CAFs, the Regulatory Flexibility Act requirements are determined to be inapplicable.

Information collection requirements contained in this proposed regulation (section 536.16(a) through (f)) must be approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96-511). A copy of this proposed rule is being forwarded to O.M.B. for their action.

[1] The U.S. dollar is the tariff currency in most cases. However, this system could also operate using another tariff currency.

[2] The amount of a CAF at any moment in a given trade represents 50 percent of the magnitude of the change in the value of a trade currency in relation to the tariff currency. This is based on the assumption that no more than one half of any currency change should affect carriers. While this system is not concerned with trade expenses in major operating currencies, it effectively operates under that same theoretical concept. Under the latter hypothesis, the percentage of expenses in the tariff currency is determined and excluded in CAF computations. No CAF system can, or should, be based on 100 percent of the currency changes since whatever share of the expenses is incurred in the tariff currency will act to limit the size of a CAF. Based on experience, and the difficulty in making valid predictions about future exchange rate fluctuations, a 50 percent factor does not appear unreasonable and any adverse effects created under this system should even out over time.

List of Subjects in 46 CFR Parts 536 and 538

Marine carriers, Rate.

Therefore, pursuant to 5 U.S.C. 552 and 553 and sections 14(b), 15, 18(b) and 43 of the Shipping Act, 1916 (46 U.S.C. 813a, 814, 817(b) and 841a), Parts 536 and 538 of 46 CFR are proposed to be amended to:

PART 536—PUBLISHING AND FILING TARIFFS BY COMMON CARRIERS IN THE FOREIGN COMMERCE OF THE UNITED STATES

I. Add a new § 536.16 which reads as follows:

§ 536.16 Requirements for Filing Currency Adjustment Factors (CAFs).

(a) No adjustments in rates based upon fluctuations in the exhange rate of the tariff currency shall be accepted for filing *unless* the carrier or conference has also filed in its tariff a currency adjustment factor (CAF) provision, incorporating currency schedules allowing for surcharges and discounts. Such provisions must conform with all of the requirements of this section. Tariff matter containing currency adjustment factors of any type not conforming to these requirements, or otherwise not in accord with statutory notice requirements, will be rejected.

(b) Currency schedules governing the level of currency surcharges or discounts to be applied on base rates are to be computed on the basis of exchange rate relationships prevailing at a date within 30 days prior to the filing of a currency schedule. The date chosen by the carrier or conference will serve as the base date for exchange rate values to be established for each of the selected trade currencies relative to the tariff currency. These exchange rates, obtained from any suitable media source, will be used to construct the currency schedules applying to CAF levels for each trade selected. A separate CAF schedule is to be constructed for each selected trade currency of a country served to govern all CAFs applied on cargo destined to or from that nation's ports. On the first market day of each succeeding month on or after the effective date of a CAF tariff provision, surcharges and discounts—to be effective for the entire month—will be determined from these schedules depending on the rates of exchange published in the selected media source.

(c) No CAFs shall be imposed in any month unless currency values exceed a 2 percent minimum deviation from the base. The schedules are to be constructed on a 50 percent factor of the nominal change in the value of the selected trade currencies in relation to the tariff currency. Unless this 50 percent result equals or exceeds a 2 percent currency change at intervals of 2 percent at the beginning of a month, there shall be no currency adjustment or change in the adjustment. The schedules may be updated at any time based upon the exchange values of the trade currencies prevailing at the time of such filings. The first CAF adjustment under a new schedule cannot be imposed prior to the first market day of a month following the effective date of the revised currency clause.

(d) CAF tariff provisions filed by carriers and conferences operating dual rate system approved pursuant to section 14(b) of the Shipping Act, 1916 (46 U.S.C. 813a), must be filed with the Commission no later than 90 days prior to their effective dates. CAF tariff provisions filed by all other carriers and conferences must be filed no less than 30 days prior to their effective dates. While CAF tariff provisions may be filed or updated at any time at the discretion of a carrier or conference, any CAFs imposed must be filed in accordance with currency schedules in effect at the time.

(e) The selection of trade currencies will be at the discretion of the carrier or conference. However, the pertinent market and media sources for the exchange rate information used in the construction of the currency schedules shall be indicated in the tariff.

(f) The following is an example of a CAF tariff provision as it would apply to two trade currencies, the German mark and Japanese yen, in the trade between the U.S. and German or Japanese ports.

Currency Adjustment Factor (CAF) Tariff Provision

The U.S. dollar or any other currency in which a quotation is made is only to be used to express the value at the moment of quoting. The rates in this tariff are in U.S. dollars and have been based on the following rates of exchange in effect on April 1, 1981:

U.S. dollar=D.M. 2.0990
U.S. dollar=Japanese yen 212.60
U.S. dollar=Fr. Frs. 4.9550
U.S. dollar=H. Florins 2.3225
U.S. dollar=(Other selected currency exchange rates depending on countries within scope of tariffs.)

Any fluctions of 2 percent or more from the above base currency rates, as indicated by the exchange rates in the New York foreign exchange market (Wall Street Journal), on the first market day of each succeeding month beginning with May 1981 will automatically invoke a surcharge or discount in accordance with the following schedules:

CAF SCHEDULE APPLIED TO CARGO SHIPPED BETWEEN U.S. AND W. GERMAN PORTS

Range of D.M exchange values per U.S. dollar	CAF
2.520 to 2.561	10% discount.
2.478 to 2.519	9% discount.
2.436 to 2.477	8% discount.
2.394 to 2.435	7% discount.
2.352 to 2.393	6% discount.
2.310 to 2.351	5% discount.
2.268 to 2.309	4% discount.
2.226 to 2.267	3% discount.
2.184 to 2.225	2% discount.
2.142 to 2.183	1% discount.
2.058 to 2.141 (mid-point DM 2.0990)	Tariff rates
2.016 to 2.057	1% surcharge.
1.974 to 2.015	2% surcharge.
1.932 to 1.973	3% surcharge.
1.890 to 1.931	4% surcharge.
1.848 to 1.889	5% surcharge.
1.806 to 1.847	6% surcharge.
1.764 to 1.805	7% surcharge.
1.722 to 1.763	8% surcharge.
1.680 to 1.721	9% surcharge.
1.638 to 1.679	10% surcharge.

CAF SCHEDULE APPLIED TO CARGO SHIPPED BETWEEN U.S. AND JAPANESE PORTS

Range of Japanese yen exchange values per U.S. dollar	CAF
255.13 to 259.37	10% discount.
250.88 to 255.12	9% discount.
246.63 to 250.87	8% discount.
242.37 to 246.62	7% discount.
238.12 to 242.36	6% discount.
233.87 to 238.11	5% discount.
229.62 to 233.86	4% discount.
225.37 to 229.61	3% discount.
221.11 to 225.36	2% discount.
216.86 to 221.10	1% discount.
208.36 to 216.85 (mid-point 212.60 yen)	Tariff rates
204.11 to 208.35	1% surcharge.
199.85 to 204.10	2% surcharge.
195.60 to 199.84	3% surcharge.
191.35 to 195.59	4% surcharge.
187.10 to 191.34	5% surcharge.
182.85 to 187.09	6% surcharge.
178.59 to 182.84	7% surcharge.
174.34 to 178.58	8% surcharge.
170.09 to 174.33	9% surcharge.
165.84 to 170.08	10% surcharge.

Should any fluctuation extend beyond the foregoing limits, the currency schedules may be extended at any time. For purpose of this rule, the rates of exchange published in the selected media source, *Wall Street Journal, Journal of Commerce,* or *London Financial Times,* etc.—to be indicated in the tariff—on the first market day of a month will be used as the basis for determining the appropriate surcharge or discount for that month. The currency schedules may be updated at any time subject to statutory notice. Irrespective of any quotation/bookings/contracts, whether firm or provisional, these adjustments will not be subject to the carrier or conference quotation period. For the purposes of this rule, the Bill of Lading date will govern the appropriate currency surcharge or discount.

§ 536.4 [Amended]

II. Amend § 536.4(f) to add the term "currency adjustment factor" after the word "surcharge."

§ 536.5 [Amended]

III. Amend § 536.5(d)(10) to add the term "currency adjustment factor" after the word "surcharge."

PART 538—DUAL RATE CONTRACT SYSTEMS IN THE FOREIGN COMMITTEE OF THE UNITED STATES

§ 538.4 [Removed]

IV. Remove § 538.4.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-19828 Filed 7-19-82; 8:45 am]

BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1032

[Ex Parte No. 137]

Contracts for Protective Services

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to proposed removal of regulations.

SUMMARY: In the Federal Register notice of June 18, 1982 (47 FR 26409), the date comments were due in this proceeding on the proposed exemption of contracts for protective services against heat or cold provided to or on behalf of rail carriers and express companies and the related proposed removal of regulations was July 19, 1982. At the request of the Chessie System Railroads, the due date has been postponed to August 2, 1982. Parties who have already filed comments are free to file supplemental statements by that date; however, such comments cannot reply to previously filed comments. The proposed removal of regulations and the notice of proposed exemption published at 47 FR 26463, June 18, 1982, will be considered in a single proceeding and parties need not file duplicating comments.

DATE: Comments are due August 2, 1982.

ADDRESS: Send original and 15 copies to: Ex Parte No. 137, Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

Dated: July 15, 1982.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19663 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 47, No. 139
Tuesday, July 20, 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

National Advisory Council on Rural Development; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–163), notice is hereby given of a meeting of the National Advisory Council on Rural Development. The meeting will be held on August 4 and August 5, 1982 at the Gold Kist/Cotton States Building, 244 Perimeter Center Parkway, NE., Atlanta, Georgia 30346.

The purpose of the meeting will be to develop preliminary policy options related to rural development issues and to continue the discussion of specific assignments for the remainder of fiscal year 1982.

The meeting will be open to the public. In order to provide opportunity for the public to comment on the work of the Council, written statements will be received two weeks prior to and two weeks following the meeting. Due to the press of business, however, public participation will be limited to written statements. Views and comments will be addressed in writing, and, when deemed appropriate by the Co-Chair, may be addressed orally at the next meeting of the council.

Written comments, both prior to and following the meeting, should be addressed to: Mr. Willard (Bill) Phillips, Jr., Director, Office of Rural Development Policy, Room 4128–S, United States Department of Agriculture, 12th and Independence, SW., Washington, D.C., (202) 382–0044.

Dated: July 14, 1982.

Willard Phillips, Jr.,

Director, Office of Rural Development Policy.

[FR Doc. 82–19567 Filed 7–19–82; 8:45 am]

BILLING CODE 3410–07–M

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates and Day Care Home Food Service Payment Rates for the Period July 1, 1982–June 30, 1983

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of adjustments in the national average payment rates for meals served in centers and the food service payment rates for meals served in day care homes to reflect changes in the Consumer Price Index. Further adjustments are made to these rates to reflect the higher costs of providing meals in the States of Alaska and Hawaii. The adjustments contained in this notice are required by the statutes and regulations governing the Program.

Adjustment to the administrative payment rates is subject to a federal district court order in the case, *Petry v. Block*, No. 82–1682 (D.D.C., June 28, 1982) (order granting preliminary injunction). That litigation is still pending. The preliminary injunction order forces the Department to rescind the formula for administrative reimbursement published at 47 FR 27540 (June 25, 1982), and to apply the 1981 formula for administrative costs reimbursement, pending promulgation of a new regulation. Therefore, this notice makes no adjustment to these rates.

EFFECTIVE DATE: July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Jordan Benderly, Director, or Beverly Walstrom, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 416, Alexandria, Virginia 22302 or by telephone at (703) 756–3888.

SUPPLEMENTARY INFORMATION:

Classification

This notice has been reviewed under Executive Order 12291, and has been determined to be "non-major" because it will not have an annual effect on the economy of $100 million, will not cause a major increase in costs or prices, and will not have a significant economic impact on competition, employment, investment, productivity, innovation, or on the ability of U.S. enterprises to compete.

This notice has been reviewed for compliance with the requirements of Pub. L. 96–354. Samuel J. Cornelius, Administrator of the Food and Nutrition Service, has determined that this notice will not have a significant economic impact on a substantial number of small entities. This notice merely complies with a Congressional mandate to adjust reimbursement rates in the Child Care Food Program to allow for changes in the Consumer Price Index, thereby maintaining constancy in the Program.

Background

Pursuant to Sections 11 and 17 of the National School Lunch Act (NSLA), Section 4 of the Child Nutrition Act (CNA) and §§ 226.4, 226.12 and 226.13 of the regulations governing the Child Care Food Program (7 CFR Part 226), notice is hereby given of the new payment rates for participating institutions.

These rates shall be in effect during the period July 1, 1982–June 30, 1983. The national average payment rates for breakfasts, lunches and suppers served to children attending centers and the food service payment rates for meals served to children attending day care homes were implemented on September 1, 1981, as mandated by Pub. L. 97–35, the Omnibus Reconciliation Act of 1981. The Department is currently enjoined from applying the administrative costs reimbursement rates implemented January 1, 1982. Pending a stay or appeal, the 1981 rates will be in effect by order of the court.

Therefore, for rate adjustment purposes, the period being adjusted by this notice is considered to have begun on July 1, 1982. The adjustments announced in this notice are based on the change in the CPI for the 12-month period from May 1981 (the month used for the last CPI adjustment on July 1, 1981) and May 1982. Adjustments to all reimbursement rates in the Child Care Food Program are made once each year, on July 1, in compliance with Pub. L. 97–35.

All States Except Alaska and Hawaii

Meals served in centers—per meal payment rates in cents:	
Breakfasts:	
Paid	8.75.
Free	60.00.
Reduced	30.00.
Lunches and suppers:	
Paid	11.00.[1]
Free	104.00 + paid = 115.00.[1]
Reduced	115.00 − 40.00 = 75.00.[1]

All States Except Alaska and Hawaii—
Continued

Supplements:	
Paid	3.00.
Free	31.50.
Reduced	15.75.
Meals served in day care homes—per meal payment rates in cents:	
Breakfasts	50.25.
Lunches and suppers	98.50.
Supplements	29.50.

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

Pursuant to Section 12(f) of the NSLA, the Department adjusts the payment rates for participating institutions in the States of Alaska and Hawaii. The new payment rates for Alaska are as follows:

Alaska

Alaska—Meals served in centers—per meal payment rates in cents:	
Breakfasts:	
Paid	14.00.
Free	97.25.
Reduced	67.25.
Lunches and Suppers:	
Paid	18.00.[1]
Free	168.50+paid=186.50.[1]
Reduced	186.50−40.00=146.50.[1]
Supplements:	
Paid	4.75.
Free	51.25.
Reduced	25.50.
Alaska—Meals served in day care homes—per meal payment rates in cents:	
Breakfasts	81.50.
Lunches and Suppers	159.75.
Supplements	47.50.

[1] These rates do not include the value of commodities (or cash-in-lieu of commodities) which institutions received as additional assistance for each lunch or supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

The new payment rates for Hawaii are as follows:

Hawaii

Hawaii—Meals served in centers—per meal payment rates in cents:	
Breakfasts:	
Paid	10.25.
Free	70.25.
Reduced	40.25.
Lunches and Suppers:	
Paid	13.00.[1]
Free	121.75+paid=134.75.[1]
Reduced	134.75−40.00=94.75.[1]
Supplements:	
Paid	3.50.
Free	37.00.
Reduced	18.50
Hawaii—Meals served in day care homes—per meal payment rates in cents:	
Breakfasts	58.75.
Lunches and Suppers	115.50.
Supplements	34.50.

[1] These rates do not include the value of commodies (or cash-in-lieu of commodities) which institutions receive as additional assistance for each lunch or supper served to children under the Program. Notices announcing the value of commodities and cash-in-lieu of commodities are published separately in the FEDERAL REGISTER.

The changes in the national average payment rates and the food service payment rates for day care homes reflect a 5.36 percent increase during the 12 month period May 1981 to May 1982 (from 289.3 in May 1981 to 304.8 in May 1982) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.

The total amount of payments available to each State agency for distribution to institutions participating in the Program is based on the rates contained in this notice.

Definitions: The terms used in this notice shall have the meanings ascribed to them in the regulations governing the Child Care Food Program (7 CFR Part 226) published on November 27, 1981 at 46 fR 57980–58006.

(Catalog of Federal Domestic Assistance Program No. 10.558)

Authority: (Sec. 810 and 820, Pub. L. 97–35, Omnibus Reconciliation Act of 1981; Sec. 2, Pub. L. 95–627, 92 Stat. 3603 (42 U.S.C. 1766); Sec 10(a), Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1760).

Dated: July 15, 1982.

Robert E. Leard,

Associate Administrator Food and Nutrition Service.

[FR Doc. 82–19526 Filed 7–19–82; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

International Trade Administration

Bicycle Tires and Tubes From the Republic of Korea; Preliminary Results of Administrative Review of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Results of Administrative Review of Countervailing Duty Order.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on bicycle tires and tubes from Korea manufactured by Korea Inoue Kasei Co., Ltd. The review covers the period January 1, 1980 through December 31, 1980. As a result of this review, the Department has preliminarily determined the amount of net subsidy to be 0.95 percent of the f.o.b. invoice price of the merchandise. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT:

Charles L. Anderson or Joseph A. Black, Office of Compliance, Room 2096, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202–377–1774).

SUPPLEMENTARY INFORMATION:

Background

On July 29, 1981 the Department of Commerce ("the Department") published in the **Federal Register** (46 FR 38736) the final results of its first administrative review of the countervailing duty order on bicycle tires and tubes from Korea (44 FR 25701) and announced its intent to conduct the next administrative review by the end of January 1982. As required by section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department has now conducted that administrative review.

Scope of the Review

Imports covered by the review are pneumatic bicycle tires and tubes, of rubber or plastic, whether such tires and tubes are sold together as units or separately, manufactured by Korea Inoue Kasei Co., Ltd. ("KIK"). Bicycle tires and tubes are currently classifiable under items 772.4800 and 772.5700, respectively, of the Tariff Schedules of the United States Annotated. The review covers the period January 1, 1980 through December 31, 1980 and includes the three countervailable programs cited in the final determination and four other programs. We found that KIK took advantage of two of the countervailable programs during the period: the Foreign Capital Inducement Law ("FCIL"), and short-term preferential financing. The other five programs, tax exemptions for land acquisition and imported capital equipment, accelerated depreciation, and reserve funds for export market development and export losses, were not utilized by KIK in 1980.

Analysis of the Programs

Under the FCIL program, KIK receives partial forgiveness of its income and property tax liabilities. In 1980 KIK received a 62.68 percent exemption from its total income tax liability and a 50 percent exemption from its total property tax liability. The *ad valorem* benefits attributable to this program are 0.76 percent and 0.01 percent, respectively.

The short-term preferential financing program provides short-term loans at preferential rates to manufacturers for the purpose of acquiring imported raw materials used in production for export. Our calculations are based upon the total amount of short-term preferential loans KIK received in 1980 and the

weighted average difference between comparable commercial interest rates and the preferential rates. We have preliminarily determined that the benefit bestowed under this program is 0.18 percent *ad valorem*. Because KIK is located in a free enterprise zone, it is not permitted to sell in the domestic market. Therefore, the export and total production values are identical; hence the same number was used as the denominator in calculating the *ad valorem* benefit attributable to the FCIL program, a domestic subsidy, and the preferential financing program, an export subsidy.

Verification

We verified the information presented by KIK, through examination of Korean government laws and documents, company books and records, and consultation with economic officials of the United States Embassy in the Republic of Korea.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the rate of net subsidy conferred by the two programs cited above during the period of review for KIK is 0.95 percent *ad valorem*.

Accordingly, the Department intends to instruct the Customs Service to assess countervailing duties of 0.95 percent of the f.o.b. invoice price on all shipments by KIK of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1980 and exported on or before December 31, 1980.

Further, as provided by section 751(a)(1) of the Tariff Act, we intend to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.95 percent of the f.o.b. invoice price on all shipments by KIK of bicycle tires and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any request for an administrative protective order must be made no later than July 26, 1982. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

This administrative review and notice publication are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: July 15, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19571 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

High Power Microwave Amplifiers From Japan Antidumping Duty Order

AGENCY: Administration, Commerce International Trade.

ACTION: Antidumping Duty Order.

SUMMARY: In separate investigations, the U.S. Department of Commerce ("the Department") and the U.S. International Trade Commission ("the ITC") have determined that high power microwave amplifiers from Japan are being sold at less than fair value and that these sales are materially injuring, or threatening to materially injure, a U.S. industry. Therefore, all unappraised entries, or warehouse withdrawals, for consumption of this merchandise made on or after December 31, 1981, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, it will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register**.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Steven Morrison, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION: For purposes of this investigation, HPA's are radio-frequency power amplifier assemblies and components thereof, specifically designed for uplink transmission in the C, X, and Ku bands from fixed earth stations to communication satellites and having a power output of one kilowatt or more. HPA's may be imported in subassembly form, as complete amplifiers, or as a component of higher level assemblies (generally earth stations). They are currently classified under item 685.29 of the Tariff Schedules of the United States.

In accordance with section 733 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673b), on December 31, 1981, the Department preliminarily determined that there was reason to believe or suspect that high power microwave amplifiers from Japan are being sold at less than fair value (46 FR 63364). On May 21, 1982, the Department made its final determination that these imports were being sold at less than fair value (47 FR 22134).

On July 1, 1982, in accordance with section 735(b) of the Act (19 U.S.C. 1673(b)), the ITC determined and notified the Department that such importations are materially injuring, or threatening to materially injure, a U.S. industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 167e), the Department directs U.S. Customs officers to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of high power microwave amplifiers from Japan. These antidumping duties will be assessed on all of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after December 31, 1981, the date on which the Department published its "Suspension of Liquidation" notice in the **Federal Register**, and all future entries of said merchandise.

On and after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers deposit their estimated normal customs duties on the merchandise, an additional cash deposit of estimated antidumping duties equal to the following rates:

25.4% TWT high power amplifiers

41.1% Klystron high power amplifiers

41.4% For parts of high power amplifiers unless such parts are dedicated exclusively for use in TWT high power amplifiers, in which case the margin is 25.4%.

Since many parts of Klystron HPA's are interchangeable with TWT HPA's, the security deposit for HPA parts shall be the same as for Klystron HPA's, unless the importer can demonstrate that the parts are dedicated solely for use in TWT HPA's.

This determination constitutes an antidumping duty order with respect to high power microwave amplifiers from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). The Department intends to conduct an administrative review within twelve months of publication of this order, as

provided in section 751 of the Act (19 U.S.C. 1675).

We have deleted from the Commerce Regulations, Annex 1 to 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Department of Commerce Regulations (19 CFR 353.48).

Dated: July 14, 1982.

Judith Hippler Bello,

Acting Assistant Secretary for Import Administration.

[FR Doc. 82-19568 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

Pectin From Mexico; Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of pectin receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will announce a preliminary determination on or before September 17, 1982.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigations, Import Administration, International Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1279.

SUPPLEMENTARY INFORMATION:

Petition

On June 24, 1982, we received a petition from Hercules, Inc. of Wilmington, Delaware, on behalf of a the U.S. industry producing pectin. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that the manufacturer, producer, or exporter of pectin in Mexico receives, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, and the pectin is dutiable, the domestic industry is not required to allege that, and the U.S. International Trade Commission ("ITC") is not required to determine whether, imports of this product cause or threaten material injury to the U.S. industry in question.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on pectin, and we have found that the petition meets these requirement.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of pectin receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by September 17, 1982.

Scope of the Investigation

The merchandise covered by this investigation is pectin from Mexico. The imported merchandise is currently provided for in item 455.04 of the *Tariff Schedules of the United States.* Pectin is used as an ingredient in foods and drugs. In food, pectin is used principally as a jelling agent for jams. jellies, and confectionery and as an ingredient in dairy products.

Allegations of Bounties or Grants

The petition alleges that manufacturer, producer, or exporter in Mexico of pectin receives the following benefits that constitute bounties or grants: tax certificates under the Certificado de Devolucion de Impuesto ("CEDI") program on exports; tax certificates under the Certificates of Fiscal Promotion ("CEPROFI") program for "priority" industrial activities; and preferential financing under the Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX").

Dated: July 14, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19569 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

Polypropylene Film From Mexico; Initiation of Countervailing Duty Investigation

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in Mexico of polypropylene film receive benefits which constitute bounties or grants within the meaning of the countervailing duty law. If our investigation proceeds normally, we will announce a preliminaray determination on or before September 17, 1982.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Mary A. Martin, Office of Investigation, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 377-1279.

SUPPLEMENTARY INFORMATION:

Petition

On June 24, 1982, we received a petition from Hercules, Inc. of Wilmington, Delaware, on behalf of the U.S. industry producing polypropylene film. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Mexico of polypropylene film receive, directly or indirectly, bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act").

Since Mexico is not a "country under the Agreement" within the meaning of section 701(b) of the Act, section 303 of the Act applies to this investigation. Because the merchandise is nondutiable and there is no "international obligation" within the meaning of section 303(a)(2) of the Act which requires an injury determination for nondutiable merchandise from Mexico, the domestic industry is not required to allege that, and the U.S. International Trade Commission ("ITC") is not required to determine whether, imports of this product cause or threaten material injury to a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on polypropylene film, and we have found

that the petition meets these requirements.

Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Mexico of polypropylene film receive bounties or grants. If our investigation proceeds normally, we will make our preliminary determination by September 17, 1982.

Scope of the Investigation

The merchandise covered by this investigation is polypropylene film, which is a thin transparent film made from polypropylene resin. It is currently provided for in items 774.5590 and 771.4316 of the Tariff Schedules of the United States Annotated.

Polypropylene film is used for packaging a wide variety of articles and in the manufacture of pressure sensitive packaging tape, dielectric material in electrical capacitors, and for wrapping power and communication cables.

Allegations of Bounties or Grants

The petition alleges that manufacturers, producers, or exporters in Mexico of polypropylene film receive the following benefits that constitute bounties or grants: tax certificates under the Certificado de Devolucion de Impuesto ("CEDI") program on exports; tax certificates under the Certificates of Fiscal Promotion ("CEPROFI") program for "priority" industrial activities; and preferential financing under the Fund for the Promotion of Exports of Mexican Manufactured Products ("FOMEX").

Dated: July 14, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19570 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

Initiation of Countervailing Duty Investigation; Railcars From Canada

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether producers, manufacturers, or exporters in Canada of railcars receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission ("ITC") of this action so that it may determine whether imports of railcars are materially injuring, or threatening to materially injure, a U.S. industry. If the investigation proceeds normally, the ITC will make its preliminary determination on or before August 9, 1982, and we will make ours on or before September 17, 1982.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: Paul Nichols, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377-5497.

SUPPLEMENTARY INFORMATION: .

Petition

On June 24, 1982, we received a petition from counsel for the Budd Company ("Budd") on behalf of the U.S. industry producing passenger railway cars. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petitioner alleges that producers, manufacturers or exporters of railcars in Canada receive subsidies within the meaning of section 771(5) of the Tariff Act of 1930, as amended (19 U.S.C. 1677(5)) (the "Act"), and that these imports are materially injuring, or threatening to materially injure, a U.S. industry.

In addition, on July 14, 1982, we received a request from the Industrial Union Department, AFL-CIO, the United Automobile and Aerospace Workers, and the United Steelworkers of America (the "unions") to be co-petitioners in this proceeding. This request stated that these labor organizations represent members in the United States subway car manufacturing industry and supplying industries, and specifically the Budd Company and its suppliers for the construction of subway cars for the New York Metropolitan Transit Authority. Budd and the unions appear to be "interested parties" within the meaning of section 771(9) of the Act.

Since Canada is a "country under the Agreement" within the meaning of section 701(b) of the Act, Title VII of the Act applies to this investigation, and an injury determination is required.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioners supporting these allegations. We have examined the petition on railcars and have found that it meets these requirements.

Therefore, in accordance with section 702(c) of the Act, we are initiating a countervailing duty investigation to determine whether manufacturers, producers or exporters in Canada of railcars receive benefits that constitute subsidies within the meaning of section 771(5) of the Act. If our investigation proceeds normally, we will make our preliminary determination by September 17, 1982.

Scope of Investigation

The merchandise covered by this investigation consists of rail passenger cars, assembled or unassembled, finished or unfinished, components, and parts and accessories thereof and/or to be used therewith. This merchandise appears to be currently classifiable under the following *Tariff Schedules of the United States* numbers, *inter alia:* 690.40, 688.06-688.07, 680.14-680.28, 647.01-10, 646.92, 646.95, 690.40, 690.30, 680.30-36, 690.40, 685.90, 690.40, 772.35, 772.36, 690.40, 653.41, 690.40, 640.71-640.72, 682.95-683.16.

The rail passenger cars named in this petition are primarily used as subway car.

Value of Imports

No imports of the railcars referred to in the petition have taken place up to this time. Information supplied in the petition indicates that deliveries to the U.S. market will begin in July, 1984. Nevertheless, a binding agreement for 825 passenger railcars was executed on June 10, 1982. Although the effective date of the actual "award" of the contract is apparently contingent upon the Canadian producer's entry into a specified financing agreement, ratification of the contract by purchaser's Board of Directors, and approval of the contract by a specified New York state agency, each of these conditions is essentially ministerial in nature. The contract becomes effective within seven days after the conditions are satisfied (if satisfaction occurs on or before July 23, 1982). Given the nature of this transaction and the peculiarities of the railcar industry, we determine that a sale to the United States of the subject merchandise has occurred. This industry, like others involved in manufacturing costly, technologically complex products, requires substantial lead time between the negotiation of a sale and actual delivery. Inventories of the finished merchandise are seldom or never maintained because of the frequent need to customize the product to meet the particular customer's

engineering and design specifications. Lead time is also required because such production involves large financial commitments which are seldom feasible in the absence of a binding agreement. Under these circumstances, the lack of actual entries of the subject merchandise will not deter our initiating an investigation. To do otherwise would effectively negate the intended effect of the countervailing duty law when expensive, high technology merchandise is being subsidized, but imported only once (or in very few shipments) long after the sales have occurred. If actual entries were a prerequisite to an investigation, domestic industries would receive no relief between the time the transaction is consummated and entry occurs. In the meantime, the relevant domestic industry could suffer material injury with no recourse available under this law. Furthermore, subsidized export financing like that alleged by petitioner would not be investigated until long after capital allocation has been distorted by foreign and domestic manufacturers' investment decisions made in reliance on, or in response to, such subsidies. Congress did not intend that the statute be interpreted so restrictively as to eviscerate its impact in such transactions. Thus, we conclude that for purposes of initiating this countervailing duty investigation, a sale exists because a contract mandating delivery of the subject merchandise in the United States has been executed. In the event that the issue of subsidized imports becomes moot because all conditions precedent to the "award" of the contract have not been satisfied by July 23, 1982, or the purchaser's right to cancel matures and is exercised prior to July 22, 1982, this investigation will terminate (assuming the terms of the agreement between the Canadian producer and the purchaser have not been changed).

Allegations of Subsidies

The petitioners allege that producers, manufacturers, or exporters in Canada receive the following benefits that constitute subsidies from the government of Canada: preferential financing and Department of Regional Economic Expansion grants ("DREE" grants).

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by August 9, 1982, whether there is a reasonable indication that imports of railcars from Canada are materially injuring, or threatening to materially injure, a U.S. industry. If its determination is negative, this investigation will terminate; otherwise, it will continue according to the statutory procedures.

July 14, 1982.

Judith Hippler Bello,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 82-19629 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council and its Administrative Subcommittee; Public Meetings

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice.

SUMMARY: The Caribbean Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94-265), has established an Administrative Subcommittee. The Council and its Administrative Subcommittee will hold separate public meetings. The Council will hold its 42nd regular meeting to consider status reports on fishery management plans (FMPs) under development; draft FMP framework for the shallow-water reef fish fishery; draft FMP for coastal pelagics resources; draft FMP for the fishery resources of the Puerto Rican and St. Croix Geological Platforms; elect a chair and vice-chair for the Council, as well as discuss other administrative and Council matters. The Administrative Subcommittee will meet to consider matter related to the Council's budget and to discuss regular administrative operations.

DATES: The Council's public meeting will convene on Wednesday, August 25, 1982, at approximately 9 a.m., adjourn at approximately 5 p.m.; reconvene on Thursday, August 26, 1982 at approximately 9 a.m., adjourn at approximately noon. The Council's Administrative Subcommittee public meeting will convene on Tuesday, August 24, 1982, at approximately 1:30 p.m., and will adjourn at approximately 5 p.m.

ADDRESS: The public meetings will take place at the Conference Room of the St. Thomas Hotel and Marina, Long Bay, in St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918, telephone: (809) 753-4926.

Dated: July 15, 1982.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 82-19619 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Johnson-Matthey Inc., having a place of business at Wayne, Pennsylvania 19087 an exclusive right in the United States and in certain foreign countries to manufacture, use and sell products embodied in the invention, "A Short Total Synthesis of Dihydrothebainone, Dihydrocedeinone, and Nordihydrocodeinone and Preparation of Chiral 1-Benzyl-1, 2,3,4,-Tetra-Hydroisoquinolines Optical Resolution, U.S. Patent Application Serial Nos. 6-165,600 and 6-265,469 (dated July 3, 1980 and May 20, 1981). Copies of the Patent Applications may be obtained from the Office of Government Inventions and Patents, NTIS, Box 1423, Springfield, VA 22151. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1 The proposed license may be granted unless, within sixty days from the date of this Notice, NTIS receives written evidence and argument which establishes that the grant of the proposed license would not serve the public interest.

Inquires, comments and other materials relating to the proposed license must be submitted to the Office of Government Inventions and Patents, NTIS, at the address above. NTIS will maintain and make available for public inspection a file containing all inquiries,

comments and other written materials received in response to this Notice and a record of all decisions is made in this matter.

Dated: July 12, 1982.

George Kudravetz,

Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 82-19545 Filed 7-19-82; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Commodity Exchange, Inc.; Proposed Rules Relating to Exchange Speculative Position Limits

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Proposed Adoption of Contract Market Rules.

SUMMARY: The Chicago Mercantile Exchange ("CME") and the Commodity Exchange, Inc. ("Comex") have submitted to the Commission proposed rules, bylaws or resolutions setting speculative position limits for currently designated contract markets pursuant to Commission Rules 1.61 and 1.41, 46 FR 50938, 50945 (October 16, 1981), 17 CFR 1.41, and Section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (Supp. IV 1980). The Commodity Futures Trading Commission ("Commission") has determined that for currently designated contracts, initial exchange proposals to set speculative limits are potentially of major economic significance. Accordingly, the Commission has determined that publication of these proposals is in the public interest, that receipt of public comment will assist the Commission in its consideration of the exchange submissions, and that publication is consistent with the purposes of the Commodity Exchange Act.

SUPPLEMENTARY INFORMATION: The CME has submitted to the Commission pursuant to Commission Rules 1.61 and 1.41, 46 FR 50938, 50945 (October 16, 1981), 17 CFR 1.41, and Section 5a(12) of the Commodity Exchange Act, as amended, 7 U.S.C. 7a(12) (Supp. IV 1980) proposed exchange rules setting speculative position limits in seventeen designated contract markets. They are: 90-Day T-Bills, One-YearT-Bills, Four-Year T-Notes, Domestic CDs, Eurodollars, gold, British Pound, Canadian Dollar, Deutsche Mark, Japanese Yen, Mexican Peso, Swiss Franc, Dutch Guilder, French Franc, U.S. Silver Coins, copper, and platinum. Comex has submitted to the Commission proposed exchange resolutions establishing speculative limits in designated contract markets in gold, copper, GNMAs, 2-Year T-Notes, 90-Day T-Bills, and zinc.[1]

The Commission, in accordance with Section 5a(12) of the Act, has determined that the proposed rules or resolutions setting exchange speculative position limits on currently designated contracts are potentially of major economic significance.[2] Accordingly, the Commission seeks to receive comments from interested persons with respect to these proposed exchange rules. The text of the proposed exchange rules submitted by CME and the proposed resolutions submitted by Comex appear below. In addition, CME Rule 543, and Comex Rule 524, which are referenced in, or are otherwise applicable to, the speculative position limit rules or resolutions are also printed below:

Rules Submitted by the Chicago Mercantile Exchange

Rule 3010. *Pound Sterling.*—

* * * * *

E. Position Limits. A person shall not own or control more than 6,000 contracts net long or net short in all contract months combined.

F. Accumulation of Positions. A person purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B.

Rule 3011. *Canadian Dollar.*

* * * * *

E. Position Limits. A person may not own or control more than 6,000 contracts net long or net short in all contract months combined.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B.

Rule 3012. *Deutsche Mark.*

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E. Position Limits. A person shall not own or control more than 6,000 contracts net long or net short in all contract months combined.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B.

Rule 3013. *Japanese Yen.*

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E. Position Limits. A person shall not own or control more than 6,000 contracts net long or net short in all contract months combined.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B.

Rule 3014. *Mexican Peso.*

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E. Positions Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the spot month on or after the day one week prior to the termination of trading.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except

[1] In addition, five other domestic boards of trade have submitted for Commission approval speculative position limits for currently designated contract markets. The staff of the Commission has divided randomly the submissions into groups and will be reviewing the remaining proposals following its consideration of this initial group of proposals.

Pursuant to Commission Rule 1.61, the Commission also received amendments to various pending designation applications setting speculative position limits for those proposed contracts markets. Those provisions will be considered in connention with the designation application of which they are a part.

[2] This determination is based upon a finding that the initial imposition of speculative position limits for designated contract markets which currently do not have such limits may be of economic significance to those currently trading in a contract which has no existing speculative limits. However, the Commission believes that the subsequent adjustment of existing exchange speculative limits generally would not be of major economic significance.

that spot month position limits shall apply to intercommodity spread positions.

Rule 3015. *Swiss Franc.*

* * * * *

E. Position Limits. A person shall not own or control more than 6,000 contracts net long or net short in all contract months combined.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B.

Rule 3016. *Dutch Guilder.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the spot month on or after the day one week prior to the termination of trading.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that spot month position limits shall apply to intercommodity spread positions.

Rule 3017. *French Franc.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the spot month on or after the day one week prior to the termination of trading.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that spot month position limits shall apply to intercommodity spread positions.

Rule 3202. *Futures Call—13 Week U.S. Treasury Bills.*

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E. Position Limits. A person shall not own or control more than 5,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 2,500 contracts in the lead month on or after the day three weeks prior to first delivery day nor more than 750 contracts in the lead month on or after the day one week prior to the first delivery day.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B., except that lead month position limits shall apply to intercommodity spread positions.

Rule 3602. *Futures Call—One Year U.S. Treasury Bills.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the lead month on or after the day one week prior to the termination of trading.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the reqirements of Regulation 1.3(a)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and inatercommodity spread positions subject to Rule 543.B, except that lead month position limits shall apply to the intercommodity spread positions.

Rule 3702. *Futures Call—Four-Year U.S. Treasury Notes.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the lead month on or after the day one week prior to the termination of trading.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that lead month position limits shall apply to intercommodity spread positions.

Rule 3802. *Futures Call—Domestic Certificates of Deposit.*

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E. Position Limits. A person shall not own or control more than 5,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 4,000 contracts in the spot month nor more than 750 contracts in the spot month on or after the first notice day.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that spot month position limits shall apply to intercommodity spread positions.

Rule 3902. *Futures Call—Three-Month Eurodollars.*

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E. Position Limits. A person shall not own or control more than 5,000 contracts net long or net short in all contract months combined.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B.

Rule 3402. *Futures Call—Gold.*

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E. Position Limits. A person shall not own or control more than 6,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 3,000 contracts in the spot month.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 453.B, except that spot month position limits shall apply to intercommodity spread positions.

Rule 3102. *Futures Call—U.S. Silver Coins.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the lead month on or after the day one week prior to the first notice day.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that lead month positions shall apply to intercommodity spread positions.

Rule 3302. *Futures Call—Copper.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the lead month on or after the day one week prior to the first notice day.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that lead month position limits shall apply to intercommodity spread positions.

Rule 3502. *Futures Call—Platinum.*

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E. Position Limits. A person shall not own or control more than 1,000 contracts net long or net short in all contract months combined, except that in no event shall he own or control more than 500 contracts in the lead month on or after the day one week prior to the first notice day.

F. Accumulation of Positions. For purposes of this rule, the positions of all accounts owned or controlled by a person or persons acting in concert or in which such person or persons have a proprietary or beneficial interest shall be cumulated.

G. Exemptions. The foregoing position limits shall not apply to bona fide hedge positions meeting the requirements of Regulation 1.3(z)(1) of the CFTC and the rules of the Exchange, and shall not apply to arbitrage positions and intercommodity spread positions subject to Rule 543.B, except that lead month position limits shall apply to intercommodity spread positions.

Rule 543. *Bona Fide Hedging, Intercommodity Spread and Arbitrage Positions.*

A. Bona Fide Hedging Positions—Rules establishing speculative position limits with respect to futures contracts shall not apply to bona fide hedging positions as defined in CFTC Regulation 1.3(z)(1).

A clearing member shall not maintain or carry a customer's hedge account which by itself or in accumulative total with any other accounts of the owner exceeds the speculative trading or position limits of the Exchange, unless the President approves and unless:

A. The prospective hedger has made application to the President on forms provided by the Exchange wherein he states under oath that:

1. The intended positions will be bona fide hedges;

2. The hedges are necessary or advisable as an integral part of his business (fully explaining the nature and extent of his business;

3. The applicant has complied with all federal requirements relating to hedging and has received approval for this purpose from the CFTC wherever necessary.

b. The hedge positions are kept in a special hedge account on the books of a clearing member.

c. The hedger complies with whatever limitations are imposed by the President with relation to said hedges.

d. The hedger agrees to immediately submit a supplemental statement explaining any change in circumstances affecting the reasonableness of his hedge position.

e. The hedger complies with all other Exchange rules and requirements.

f. Hedges are moved in an orderly manner in accordance with sound commercial practices, and are not initiated or liquidated in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. The hedger does not use said hedges in an attempt to violate or avoid Exchange rules, or otherwise impair the good name or dignity of the Exchange.

The President shall, on the basis of the application and supplemental information which the Exchange may request, determine whether the applicant shall be approved as a bona fide hedger. The President may impose such limitations as are commensurate with the applicant's business needs, financial ability and personal integrity. The President and the Business Conduct Committee may, from time to time, review all hedging approvals and, for cause, revoke said approvals or place limitations thereon.

The applicant may appeal any decision of the President or the Business Conduct Committee to the board.

Hedgers shall be exempt from emergency orders reducing speculative limits or restricting trading but only to the extent provided in such order and only if the approvals required by this rule are secured by the hedger.

B. *Arbitrage and Intercommodity Spread Positions*—Rules establishing speculative position limits with respect to IMM and IOM contracts, except Random Length Lumber shall not apply to arbitrage or intercommodity spread positions enumerated by the Exchange.

A clearing member shall not maintain or carry an arbitrage or intercommodity spread account which by itself or in accumulative total with any other accounts of the owner exceeds the speculative or position limits of the Exchange, unless the President approves and unless:

The prospective arbitrageur or spreader has made application to the President on forms provided by the Exchange wherein he states under oath:

a. The intended positions will be arbitrage or spread positions.

b. The positions are kept in a special account on the books of a clearing member.

c. The arbitrageur or spreader complies with whatever limitations are imposed by the President with regard to said positions.

d. The arbitrageur or spreader agrees to immediately submit a supplemental statement explaining any change in circumstances affecting his position.

e. The arbitrageur or spreader complies with all other Exchange rules and requirements.

f. Such positions are moved in an orderly manner and are not initiated or liquidated in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. the arbitrageur or spreader does not use said position in an attempt to violate or avoid Exchange rules, or othewise impair the good name or dignity of the Exchange.

The President shall, on the basis of the application and supplemental information which the Exchange may request, determine whether the applicant shall be approved as an arbitrageur or intercommodity spreader. The President may impose such limitations as are commensurate with the applicant's financial ability and business circumstances. The President and the Business Conduct Committee may, from time to time, review all approvals and, for cause, revoke said approvals or place limitations thereon.

The applicant may appeal any decision of the President or the Business Conduct Committee to the Board.

Arbitrageurs and intercommodity spreaders shall be exempt from emergency order reducing speculative limits or restricting trading but only to the extent provided in such order and only if the approvals required by this rule are secured by the intercommodity spreaders and arbitrageurs.

Rules submitted by COMEX

Rule 524—Position Limits

a. General. The Board, or, upon request and delegation by the Board, the Control Committee, shall have the power and authority, at any time and from time to time, and after consultation with representatives of each of the Board Groups, to determine and establish limits for the Net Position ("Net position limit") and/or the Greater Side Position ("Greater Position Limit") which may be maintained by any accounts or Affiliated Accounts and the period of time for which such Net Position Limit/and or Greater Side Position Limit shall remain in effect.

b. Applicability of Position Limits to Customers' Accounts. The position limits set forth in this Rule 524 shall apply for each customer, to all accounts and all Affiliated Accounts in the manner set forth in this rule.

c. Overall Position Limits. No member of member firm shall allow or permit itself or any account or Affiliated Accounts to maintain a Net Position in excess of the Net Position Limit. A member of member firm maintianing or carrying an account, or Affiliated Accounts, which exceeds a Net Position Limit shall immediately take such steps as may be necessary to reduce the

position of such account or Affiliated Accounts below the Net Position Limit then in effect.

d. Monthly Position Limits. No member or member firm shall allow or permit itself or any account or Affiliated Accounts to maintain a Greater Side Position in the then current delivery month in excess of the Greater Side Position Limit. A member or member firm maintaining or carrying an account, or Affiliated Accounts, which exceeds a Greater Side Position Limit shall immediately take such steps as may be necessary to reduce the position of such account or Affiliated Accounts below the Greater Side Position Limit then in effect.

e. Effect of Deliveries on Monthly Position Limit. In determining whether any account or Affiliated Accounts have exceeded the Greater Side Position Limit, there shall be added to the position of the account or Affiliated Accounts a number of contracts equal to the difference between the contracts against which delivery has been received on Comex during the month minus contracts against which delivery has been made (or vice versa depending upon whether the position is a short or a long position).

f. Overall Position Limits at Different Firms. In the event the Exchange learns that a member, member firm or customer maintains positions in accounts at more than one member of member firm such that the aggregate position in all such accounts exceeds either the Net Postiion Limit or the Greater Side Position Limit then in effect, the Exchange shall notify all members and member firms maintaining or carrying such accounts of the total positions of such accounts. Such notice shall also instruct each such member and member firm to reduce the positions in such accounts, and in any Affiliated Accounts, twenty-four hours after receipt of the notice, proportionately so that the aggregate positions of such accounts or Affiliated Accounts at all such members and member firms shall not exceed either the Net Position Limit or the Greater Side Position Limit then in effect, unless during such 24 hour period a request for an exemption is made and granted pursuant to Rule 524(g) (3). Any member of member firm receiving such notice shall immediately take such steps as may be necessry to liquidate such number of contracts as shall be determined by the Exchange in order to cause the aggregate positions of such accounts or Affiliated Accounts at such members of member firms to comply with the Net Position Limit and Greater Side Position Limit. Notwithstanding the foregoing, the members and member firms may reduce the positions of such accounts or Affiliated Accounts by a different number of contracts than that required by the Exchange notice so long as after all reductions have been accomplished at all members and member firms carrying such accounts or Affiliated Accounts *the positions* at all such members or member firms shall comply with the Net Position Limit and the Greater Side Position Limit then in effect.

g. Exemptions.

(1) Positions resulting from bona fide hedging transactions (as that term is defined in Regulation Sec. 1.3(z)(1) promulgated under the Commodity Exchange Act, as amended) shall not be included in the computation of the Net Position or the Greater Side Position of any accounts or Affiliated Accounts, if the member of member firm maintaining such positions has received prior Exchange notice that such bona fide hedging transactions have been exempted (and not revoked) pursuant to Rule 524(g)(3).

(2) In interpreting Regulation Sec. 1.3(z)(1), generally accepted commercial principles and standards shall apply. In addition, notwithstanding any provisions in Regulation Sec. 1.3(z)(1) to the contrary, the following additional criteria shall apply in determining whether a transaction is a bona fide hedge transaction:

(i) A long position shall not be deemed a bona fide hedging transaction if the party holding such position know or reasonably should have known at the time the position was entered into that the other party to the cash or other party to the cash or other transaction is a person whose principal purpose in entering into the cash or other transaction is to benefit from a rise in the price of a commodity; and

(ii) A futures position shall not be deemed a bona fide hedging transaction if the principal purpose for taking such position was to hedge against the potential adverse economic impact of inflation, recession or other similar economic trend or occurrence.

(3) A member or member firm seeking an exemption for bona fide hedging transactions shall submit a written request to the Exchange which shall include the following:

(a) A description of the size and nature of the proposed transactions;

(b) Information which will demonstrate that the proposed transactions are bona fide hedging transactions;

(c) A statement indicating whether the person on whose behalf the request is made (i) maintains positions in the futures contract for which the exemption is sought with any other member of member firm; and/or (ii) has made a previous or contemporaneous request pursuant to this Rule 524(g)(3) through another member or member firm, and if so, the relationship of the information set forth in such requests.

(d) A statement that the intended transactions will be bona fide hedges;

(e) A statement that the applicant will immediately supply the Exchange with any changes to the information submitted pursuant hereto;

(f) Such further information as the Exchange may request.

Within five (5) business days of the submission of the information set forth above, the President of the Exchange or such officer as he may designate shall notify the member or member firm whether the exemption has been granted and the limitations placed thereon. An exemption will remain in full force and effect until (i) the member of member firm requests a withdrawal; or (ii) the Exchange revokes, modifies or places further limitations thereon.

(h) Failure to Reduce Positions. In addition to other powers, remedies and sanctions contained in the By-Laws and Rules, the Board, or upon request and delegation by the Board, the Control Committee, may require every member of member firm that maintains an account or Affiliated Accounts having a position in excess of Net Position Limit or the Greater Side Position Limit then in effect, to take immediate steps to reduce positions in such accounts to levels that do not violate such position limits and to take such other actions, within such time periods and upon such terms, with respect to such accounts, as the Board or the Control committee may deem necessary or desirable.

B. Resolutions

Resolved, that pursuant to Rule 523(a)(5) of the By-Laws and Rules of the Exchange, the Board of Governors hereby reduces the reportable position level for futures contracts and futures options for all commodities from 500 contracts or options to 250 contracts or options; and

Further resolved, that pursuant to Rule 524(a) of the By-Laws and Rules of the Exchange, the Board of Governors hereby establishes the following position limits:

Commodity	Overall position limit (net position limit)	Spot position limit (greater side position limit)
Gold	6,000	3,000
Copper	6,000	2,500
Silver	6,000	1,500
Gold Coins	6,000	3,000
Zinc	1,000	1,000
90-Day T-Bills	1,000	500
GNMA's	1,000	500
2-Year T-Notes	1,000	500

Other materials submitted by the CME or by Comex in support of these proposed rules may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1981)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed exchange rules or resolutions should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by (30 days). Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C., on July 15, 1982.

Jane K. Stuckey,

Secretary to the Commission.

[FR Doc. 82-19630 Filed 7-19-82; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)
Dates of meeting: 16-25 August 1982
Place: National Academy of Sciences Study Center, Woods Hole, Massachusetts
Times: 0830-1700 hours, 16-25 August 1982 (Closed)
Agenda: The Army Science Board 1982 Summer Study Group on Science and Engineering Personnel will hold classified discussions of briefings they have received and will develop their report addressing the Army's problem of recruiting civilian S&E personnel, retaining such people, and maintaining a reasonably balanced age profile. While this problem is most vivid relative to the civilian employees in the Army, the shortages of high quality enlisted technicians, technical warrant officers, and S&E trained and experienced commissioned officers contribute to decreased readiness, generally less knowledgeable program and technical management capabilities, and increased reliance on contractor/consultant advice and assistance in lieu of in-house staff supervision. The Group is examining the current and projected shortages of scientists, engineers, and technicians, seeking to find policy program initiatives that the Army can adopt (or recommend to higher authority if not achievable with the Army). The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or 697-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-19578 Filed 7-19-82; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)
Dates of meeting: 16-25 August 1982
Place: National Academy of Sciences Study Center, Woods Hole, Massachusetts
Times: 0830-1700 hours, 16-25 August 1982 (Closed)
Agenda: The Army Science Board 1982 Summer Study Group on Chemical Warfare will hold classified discussions of briefings they have received and will develop their report addressing the following Terms of Reference:

—Are current Army programs appropriately balanced (offensive/defensive), considering threats, national policy, Defense guidance, and the Army's key chemical role in DoD?

—Are reserach, development and acquisition programs adequately funded and managed?

—Are Army and contractor research and development capabilities adequate to meet projected systems acquisition and fielding milestones?

—What technical and management initiatives should be implemented?

—What costs are involved (people, facility, funding)?

—What changes to the current Chemical Action Plan, if any, are required?

This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695-3039 or 697-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-19679 Filed 7-19-82; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB)
Date of meeting: Thursday, 5 August 1982
Time: 0830-1700 hours (Closed)
Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board 1982 Summer Study Group on Science and Engineering Personnel will meet for a final Plenary Session before the writing session in August. There will be classified briefings and discussions addressing the Army's problem of recruiting, retaining, and maintaining a reasonably balanced age profile of civilian S&E personnel. The group will also finalize an agenda for the writing session. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and non-classified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for futher information at (202) 695-3039 or 697-9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 82-19580 Filed 7-19-82; 8:45 am]

BILLING CODE 3710-08-M

U.S. DEPARTMENT OF ENERGY

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

NAME: High Energy Physics Advisory Panel.

DATE AND TIME: Monday, August 9, 1982, 9:00 a.m.-6:00 p.m.; Tuesday, August 10, 1982, 9:00 a.m.-4:00 p.m.

PLACE: Room B, Berkner Hall, Brookhaven National Laboratory, Upton, New York.

CONTACT: Dr. P. K. Williams, Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, Mail Stop J-309, Washington, D.C. 20545, telephone: 301-353-3367.

PURPOSE OF COMMITTEE: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

- Discussions of the status of the FY 83 National Science Foundation and Department of Energy Budgets
- Scenarios for future budgets
- HEPAP Review of High Energy Physics at Brookhaven National Laboratory
- Status of U.S. participation at CERN/LEP
- Division of Particles and Fields (DPF) Aspen Summer Study on Future Physics and Facilities

Public Participation

The meeting is open to the public. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so either before or after the meeting.

Members of the public who wish to make oral statements pertaining to agenda items should contact Gloria Decker at 202–252–8990. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on July 14, 1982.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 82–19627 Filed 7–19–82; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM–FRL 2173–3]

Agency Forms Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: § 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 requires the Agency to publish in the Federal Register notice of proposed information collections. The purpose of this notice is to inform the public of proposed information requirements that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Kuhn, Information Management Section, U.S Environmental Protection Agency, 401 M Street, S.W., Washington, D.C., telephone number (202) 382–2742 or FTS (8) 382–2742.

SUPPLEMENTARY INFORMATION:

Air Programs

• Title: Compliance Demonstration by Importers of Non-Complying Motor Vehicles and Engines (EPD ID 0010).

Abstract: Importers of non-Complying motor vehicles and engines are required to submit documentation that the imported vehicle (or engine) is exempt from Clean Air Act requirements. The importer of a non-exempt vehicle or engine, who wishes to sell or maintain the vehicle/engine in the U.S. must bring it into conformity with Federal emission requirements or export it.

Respondent: Individuals or households, businesses or other institutions, SIC Code 371.

• Title: Review of PLans for Construction and Modification Under New Source Performance Standards (EPA ID 0058).

Abstract: At an owner's request, EPA will determine whether a source is subject to a New Source Performance Standard and will provide technical advice on proposed control equipment and methods. Respondent: Businesses or other institutions, SIC Codes 495, 281, 324, 333, 491, 142, 327, 331, 121, and 287.

• Title: National Emission Standard for Hazardous Air Pollutants (NESHAP)—Application for Approval of Construction or Modification (EPA ID 0108).

Abstract: Written applications are required in order to obtain EPA approval for the construction or modification of a source subject to the regulations in 49 CFR Part 61.

Respondent: Businesses or other institutions, SIC Codes 149, 109, 329, 333, 281, 296, 161, 495, 348, and 282.

• Title: National Emission Standard for Hazardous Air Pollutants (NESHAP)—Notification of Startup (EPA ID 0109).

Abstract: Owners or operators of sources subject to regulation in 40 CFR Part 61 must furnish written notification of anticipated startup and actual startup.

Respondent: Businesses or other institutions, SIC Codes 109, 149, 161, 281, 282, 286, 329, 333, 348, and 495.

• Title: National Emission Standard for Hazardous Air Pollutants (NESHAP)—Source Reporting and Waiver Request (EPD ID 0110).

Abstract: Owners or operators of a source subject to 40 CFR Part 61 must submit an initial report verifying compliance and/or request a waiver (if the source is unable to operate in compliance). EPA uses this information to conform compliance or to determine if a waiver is appropriate.

Respondent: Businesses or other institutions, SIC Codes 109, 149, 161, 281, 282, 286, 329, 333, 348, amd 495.

• Title: Notification and Recordkeeping for Demolition and Renovation of Asbestos Sources (EPA ID 0111).

Abstract: An owner or operator of an asbestos source must provide EPA notification prior to demolition or renovation to allow EPA the opportunity to schedule an observer at the operation.

Respondent: Businesses or other institutions, SIC Code 179.

• Title: National Emission Standard for Hazardous Air Pollutants (NESHAP) Subpart E—Stack and Sludge Sampling (EPA ID 0013).

Abstract: An owner or operator must report and keep records of emission tests to allow EPA the opportunity to schedule an observer to assure the compliance of the source.

Respondent: Businesses or other institutions, SIC Codes 281, 109, 495.

• National Emission Standard for Hazardous Air Pollutants (NESHAP)—Subpart F—Vinyl Chloride (EPA ID 0186).

Abstract: Owners or operators of sources subject to the Vinyl Chloride Emissions Limits must perform continuous monitoring and prepare semiannual reports to ensure continuing compliance. Records must be maintained to support the data and reports.

Respondent: Businesses or other institutions, SIC Code 282.

• Title: Relief Valve Discharges at Vinyl Chloride Sources (EPA ID 0191).

Abstract: Owners or operators of sources subject to 40 CFR Part 61 must submit a report detailing relief valve discharges to EPA.

Respondent: Businesses or other institutions, SIC Code 282.

• Title: National Emission Standard for Hazardous Air Pollutants (NESHAP)—Subpart C Beryllium Source Emission Test Report—Request for Alternative Procedures (EPA ID 0193).

Abstract: Owners or operators of Beryllium Sources are required to perform an emission test, report results to EPA and retain records of the test to demonstrate compliance with the Beryllium Standard.

Respondent: Businesses or other institutions, SIC Codes 333, 325, 286.

• Title: New Source Performance Standards (NSPS)—Performance Tests and Monitoring Systems Performance (EPA ID 0304).

Abstract: Owners or operators of sources subject to a NSPS must conduct an emission test and a test of its continuous monitoring system, if applicable. Results of the test must be submitted to EPA to determine whether a source has initially met the standard and whether it can adequately monitor for continuing compliance.

Respondent: Businesses or other institutions, SIC Codes 333, 491, 142, 327, 331, 121, 287, 495, 324 and 281.

• Title: Mobile Source Emission Factor Survey (EPA ID 0619).

Abstract: The information is required to determine the extent of air pollution attributable to mobile sources and to measure progress toward its control.

The data are used to characterize exhaust emissions and to determine the benefits of control programs.

Respondent: Individuals or households.

• Title: New Source Performance Standards (NSPS) for Rotogravure Printing (EPA ID 0657).

Abstract: Owners or operators of Rotogravure Printing Facilities subject to the NSPS are required to submit written notification as facilities become subject to the standard and report results of performance tests. Owners or operators must collect data monthly, but are not required to report test results to EPA. EPA will audit the data yearly to assure compliance with the NSPS.

Respondent: Businesses or other institutions, SIC Code 275.

• Title: New Source Performance Standards (NSPS) for Metal Furniture Surface Coating (EPA ID 0649).

Abstract: Owners or operators of metal furniture surface coating facilities subject to the NSPS are required to submit written notification as facilities become subject to the standard and to report results of initial performance tests. Owners or operators must collect data monthly, but are not required to report the results to EPA. EPA will audit the records yearly to assure compliance with the NSPS.

Respondent: Businesses or other institutions, SIC Code 251.

• Title: New Source Performance Standards (NSPS) for Large Appliances: Surface Coating (EPA ID 0659).

Abstract: Owners or operators of large applicance surface coating facilities subject to the NSPS are required to submit notification as facilities become subject to the standard and to report results of initial performance tests. Owners or operators must collect data monthly, but are not required to report the results to EPA. EPA will audit the records on a yearly basis to assure compliance with the NSPS.

Respondent: Businesses or other institutions, SIC Code 363.

• Title: New Source Performance Standards (NSPS) for Metal Coil Surface Coating (EPA ID 0660).

Abstract: Owners or operators of metal coil surface coating facilities subject to the NSPS are require to keep EPA informed of new sources that become subject to the standard and report results of initial performance tests of each source. Owners or operators must collect data monthly, but are not required to report the results to EPA. EPA will audit the records on a yearly basis to assure compliance with the NSPS.

Respondent: Businesses or other institutions, SIC Code 347.

• Title: Survey to Estimate the Benefits of Controlling Diesel Particulates (EPA ID 0974).

Abstract: Data are needed for a study of the relationship of property values to ambient air pollution which will contribute information on the benefits of controlling emissions from diesel powered vehicles.

Respondent: Individuals or households.

Hazardous Waste Programs

• Title: Submission of Annual Reports by Hazardous Waste Generators and Treatment, shortage and Disposal Facilities (EPA ID 0976).

• Abstract: Owners or operators of hazardous waste treatment, storage and disposal facilities must submit an annual report containing information on location, amount and description of hazardous waste handled. This information is being collected to define the population of the regulated community and to expand the Agency's data bases for rulemaking purposes.

Respondent: Businesses or other institutions.

• Title: States Priorities for Remedial Action (EPA ID 0331).

Abstract: Section 105(8)(B) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires the States to list, in priority order, sites of known or threatened hazardous substances release. The States must apply criteria specified in the National Contingency Plan, EPA will use the States' priority lists to set national priorities for remedial actions.

Respondent: States or local governments.

Pesticides Programs

• Title: Survey of Petsticide Use on Golf Courses (EPA ID 0605).

Abstract: The purpose of this survey is to collect data on the pesticide use practices of golf courses. Data are used to evaluate exposure and to support regulatory programs.

Respondent: Businesses or other institutions, SIC Code 799.

• Title: Pesticide Registration Standards Bibliography (EPA ID 0614).

Abstract: Before a pesticide registration standard is prepared, a bibliography of all data in EPA's possession is prepared and sent to current registrants to update.

Respondent: Businesses or other institutions, SIC Code 287.

• Title: Registration Standards/Data Call In Notices Issued for Data to be Submitted for Pesticide Chemicals (EPA ID 0922).

Abstract: This is a resubmittal of a disapproved ICR. Under Section 3 of FIFRA, EPA requests test data necessary for determinations concerning the re-registration of pesticide chemicals. These data determine whether these persticide chemicals cause unreasonable adverse effects on humans and the environment.

Respondent: Businesses or other institutions, SIC Code 287.

• Title: Approval of State Plans to Issue Experimental Use Permits at the State Level (EPA ID 0594).

Abstract: FIFRA permits States to issue experimental use permits if their State plan is approved by EPA. These permits allow an applicant to test an unregistered product for effectiveness and assist in the gathering of data needed for registration.

Respondent: State governments, SIC Code 941.

Toxics Programs

• Title: Chemical Specific Information: Request for Resubmission of PCB Exemptions (EPA ID 0857).

Abstract: This is the first ICR of a generic clearance which informs chemical companies that they must renew their PCB exemption within 45 days from day of notice. Companies would be requested to submit updated information.

Respondent: Chemical companies who manufacture, process, or distribute PCBs.

• Title: Cooperative Agreements for Remedial Planning/Implementation (EPA ID 0864).

Abstract: These agreements specify the State's role in the response actions, site operations and maintenance, and enforcement actions. Consultation with the affected State(s) prior to determining any appropriate remedial action is also included.

Respondent: State and local governments.

• Title: Asbestos Reporting and Recordkeeping Requirements (EPA ID 0577).

Abstract: Procedures, importers and processors of asbestos are required to submit data on emission and waste disposal of asbestos to identify activities for which control of asbestos exposure is necessary and to judge how regulatory or voluntary actions would affect exposure levels and competitive markets.

Respondents: Businesses or other institutions (except farms), SIC Codes 329, 289, 295.

Comments on this notice should be sent to:

David Kuhn, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM–223), 401 M Street, SW., Washington, D.C. 29460; and

Robert Shelton, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: July 14, 1982.

C. Ronald Smith,

Director, Office of Standards and Regulations.

[FR Doc. 82–19626 Filed 7–19–82; 8:45 am]

BILLING CODE 6560–50–M

[SAB FRL 2174–4]

Science Advisory Board, Environmental Health Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Agency has expressed a desire to have an immediate Science Advisory Board review of three draft health assessment documents prepared by EPA's Office of Research and Development. A two-day emergency meeting of the Environmental Health Committee of the Science Advisory Board will be held on August 2 and 3, 1982 in Conference Room S353, U.S. Environmental Protection Agency, 401 M Street, Southwest, Washington, D.C. The meeting will start at 9:00 a.m. on August 2 and adjourn not later than 4:30 p.m. on August 3, 1982.

The principal purpose of the meeting will be to expedite the Science Advisory Board's review and comment on the scientific adequacy of three draft health assessment documents prepared by the Office of Health and Environmental Assessment of EPA's Office of Research and Development. The titles and publication numbers of the three documents are:

Title	EPA No.
Carcinogen Assessment of Coke Oven Emissions.	EPA–600/6–82–003, January 1982.
Health Assessment Document for Acrylonitrile.	EPA–600/8–82–007, March 1982.
Health Assessment Document for Toluene.	EPA–600/8–82–008, March 1982.

For information on how to obtain copies of these documents please call or write the Center for Environmental Research Information, 20 West St. Clair, Cincinnati, Ohio 45268, (513) 684–7562.

The meeting will be open to the public. Any member of the public wishing to attend, participate, submit a paper, or wishing further information should contract Mr. Ernst Linde, Executive Secretary, Environmental Health Committee, Science Advisory Board at (202) 382–2552, or Dr. Terry F. Yosie, Acting Director, Science Advisory Board, at (202) 382–4119 by close of business July 27, 1982.

EPA has recently instituted new visitor control procedures. In order to minimize any inconvenience, persons wishing to attend are requested to call Mrs. Patti Howard at (202) 382–2552 in order that they may be included on a roster that will be prepared for the building security guards. Attendees are also requested to enter the building through the West Tower entrance.

Terry F. Yosie

Acting Staff Director, Science Advisory Board.

July 15, 1982.

[FR Doc. 82–19666 Filed 7–19–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 80–286]

Federal-State Joint Board on Jurisdictional Separations To Meet in Seattle, Washington; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board

July 9, 1982.

The Federal-State Joint Board in this proceeding will hold its next meeting on July 26, 1982 in Seattle, Washington. The meeting will take place in the Chinook-Taku Room of the Seattle Hilton Hotel from 9:00 a.m. to approximately 4:00 p.m. The Seattle Hilton is located at 6th and University Streets and can be reached at (206)624–0500.

At this meeting the Joint Board Staff will present reports concerning the regional hearings on the allocation of nontraffic sensitive plant as well as the staff and industry studies concerning the high cost factor. The staff will also report on the activities of the Joint Board staff subcommittees.

For further information contact James W. McConnaughey of the Common Carrier Bureau at (202)632–9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82–19518 Filed 7–19–82; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Copies of these submissions are available from Richard D. Goodfriend, Agency Clearance Officer, (202) 632–7513. Comments should be sent to Edward H. Clarke, Office of Management and Budget, OIRA, Room 3201 NEOB, 726 Jackson Place, NW., Washington, D.C. 20503.

Title: Assignment of Authorization
Form No.: FCC 1046
Action: New Submission
Burden: 20,000 Responses; 1,680 Hours
Abstract: Used to assign authorization of radio station to another individual as the assignor must assign, in wirting, all right, title and interest of the authorization to the other individual.

Title: Common Carrier and Satellite Radio Licensee Qualification Report
Form No.: FCC 430
Action: Extension
Burden: 2,300 Responses; 4,600 Hours.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 82–19519 Filed 7–19–82; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwerders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Transoceanic Shipping Co., Inc., 2190 North Loop West, Suite 401, Houston, TX 77018. Officers; Basil J. Rusovich, Jr., President/Director/Chief Executive Officer, Erwin M. Melzer, Vice President/Director; Richard W. Castaing, Secretary; Arval D. Headrick, Vice President/Director

B.A. McKenzie & Co. of Missouri, Inc., P.O. Box 1435, 813 Pacific Avenue, Tacoma, WA 98401. Officers: Theodore W. Kennard, President/Director/Treasurer; George E. Tylen, Vice President; Robert M. Kennard, Secretary

Leonardo Martinez Rivera, d.b.a Leonardo Martinez, Calle Taft #105, Santurce, PR 00911
Clyd Ross Albright, Jr., d.b.a. Cross International, 6106 Kirkwood Court, Louisville, KY 40229
Garrison International Trade Services, Inc., c/o North Star Imports, Inc., 7600 23rd Avenue South, Minneapolis, MN 55450. Officers: Larry P. Garrison, President/Director/Stockholder; Carolyn Jean Garrison, Vice President/Director; Wayne Bachman, Vice President—Exports/Director; June Oatins, Vice President—Imports
CBE USA International Inc., 2700 Greens Road, Bldg, K., Houston, TX 77032. Officers: R. Ross Dinyari, President/Director; Preston D. Turpin, Vice President; C.C. Stiles, Secretary/Treasurer
Owen Anderson, d.b.a. Anderson Shipping Co., Inc., Suite No. 2323, No. Tustin Avenue, Santa Ana, CA 92705. Officers: Owen Anderson, President, Angela Green, Officer, Joe Williams, Officer.

Dated: July 14, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-19524 Filed 7-19-82; 8:45 am]

BILLING CODE 6730-01-M

[Fact Finding Investigation No. 9]

Possible Rebates and Similar Malpractices in the United States Foreign Commerce; Extension of Investigation

By Order of August 1, 1980, the Federal Maritime Commission extended for a term of two years Fact Finding Investigation No. 9. This nonadjudicatory proceeding was instituted by Order of the Commission on July 9, 1976 (**Federal Register** Vol. 41, No. 141, p. 30062, July 21, 1976), into the practices of rebates, absorptions, allowances in excess of those set forth in the tariff, and any other method of obtaining or allowing other persons to obtain transportion or property at less than the rates or charges which would otherwise be applicable in the United States foreign commerce.

Since its institution, Fact Finding Investigation No. 9 has been utilized as an integal part of the Commission's program into rebates and other malpractices in the foreign commerce of the United States. The Commission's continuing investigation into these matters raises the possibility that the compulsory processes authorized by Fact Finding Investigation No. 9 may have to be utilized to fully develop cases still pending final resolution.

In view of the above, the Commission has determined to extend the term of Fact Finding Investigation No. 9 for an additional two years.

Therefore, It Is Ordered, That pursuant to sections 22 and 27 of the Shipping Act, 1916 (46 U.S.C. 821 and 826) and section 214(a) of the Merchant Marine Act of 1936 [46 U.S.C. 1124(a)], Fact Finding Investigation No. 9 is extended for two years after publication of this Order in the **Federal Register.**

It Is Futher Ordered, That Notice of this Order be published in the **Federal Register.**

By the Commission, July 8, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-19555 Filed 7-19-82; 8:45 am]

BILLING CODE 6730-01-M

Cancellation of Transshipment Agreements

Agreement Nos. 10139 and 10151.

Agreement No. 10139 covers a transshipment agreement between Iran Express Lines (Iran) and the Scandinavian East Africa Line governing the transportation of general cargo from all ports of Madagascar to U.S. Atlantic and Gulf ports with transshipment at Tamatave, or any other Malagasy port.

Agreement No. 10151 covers a transshipment agreement between Iran and Compagnie Malgache De Navigation governing the transportation of general cargo from all ports of Madagascar to U.S. Atlantic and Gulf ports with transshipment at Tamatave, or any other Malagasy port.

Neither Iran, Scandinavian East Africa Line, nor Compagnie Malgache De Navigation maintain tariffs on file with the Federal Maritime Commission and, therefore, apparently are no longer operating as ocean common carriers in the foreign commerce of the United States. Therefore, it appears that the parties to Agreements Nos. 10139 and 10151 are no longer parties subject to the Shipping Act, 1916, and the agreements should be terminated. Accordingly, notice is hereby given that Agreements Nos. 10139 and 10151 will be terminated effective August 4, 1982.

Agreement No. 9668.

Agreement No. 9668, approved by the Federal Maritime Commission pursuant to section 15, Shipping Act, 1916, on November 30, 1967, authorizes Tica Line and Gallen Line to establish a through billing arrangement for movement of cargo from New York to Bluefields, Nicaragua with transshipment at Puerto Limon, Costa Rica. Tica Line and Gallen Line do not maintain tariffs on file with this Commission and, therefore, apparently are no longer operating as ocean carriers in the foreign commerce of the United States. Therefore, it appears that the parties to Agreement No. 9668 are no longer parties subject to the Shipping Act, 1916, and the agreement should be terminated. Accordingly, notice is hereby given that Agreement No. 9668 will be terminated effective August 4, 1982.

Dated: July 15, 1982.

Robert G. Drew,

Director, Bureau of Agreements.

[FR Doc. 82-19621 Filed 7-16-82; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10327; or may inspect the agreements at the Field Office located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before August 9, 1982. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreements Nos.: T-3813-3, T-3813-4, T-3813-5, T-2523-4, and T-2523-5.

Filing party: Ryokichi Higashionna, Ph. D., Director of Transportation, State of Hawaii, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813.

Summary: Agreement No. T-3813-3, between the State of Hawaii (State) and Matson Terminals, Inc. (Matson) amends approved Agreement No. T-3813 which provided for the lease of land and facilities by Matson at the Container Complex located at Sand Island, Honolulu, Hawaii. The amendment enlarges the terminal boundary of the original lease by the addition of container yard CY-10 and wharf 51B. Rentals have been updated to reflect fair rental values. An additional Minimum Annual Guarantee of $300,000 will be charged on the 16.2 acres located on the west side of CY-10 and the Wharf structure of Wharf 51B through July 13, 1986. Minimum Annual Guarantee of $161,776 will charged for the 12.8 acres located on the east side of CY-10 thorugh September 5, 2002.

Agreement No. T-3813-4 provides that certain construction items will be added to the construction provisions of the basic lease. The State will construct at its expense, the extension of Wharf 52 and will pave 11.4 acres of container yard area designated as CY-2. The State, at Matson's expense, will construct crane rail bolts and crane securing sockets. The State is responsible for future installation of curved rails, and switching device for container gantry crane, transit between Wharf 52 and Wharf 51, at Matson's expense. The State and Matson will construct various other items for crane usage.

Agreement No. T-3813-5 provides for the construction by the State of the Wharf 52 extension, grading and paving of the 11.4 acre container yard CY-2, and the construction of a special facility extension to Wharf 52. The Minimum Annual Guarantee to be adjusted when the extension of Wharf 52 and CY-2 are ready for operational use.

Agreement No. T-2523-4 modifies the basic agreement between the State and Matson which provides for the 20-year lease of a container facility at Sand Island Container Yard Complex, Honolulu, Hawaii. The purpose of the modification is to eliminate Wharf 51B, Parcel II, Easement A, and CY-10, from the lease. Parcel I containing the Matson office building, parking area and ships store warehouse will be retained under the lease. Wharf 51B, Easement A and CY-10 will be made part of Agreement No. T-3813 by an amendment.

Agreement No. T-2523-5 provides for the assignment by Matson Terminals, Inc., of the lease and amendments thereto under Agreement No. T-2523 to Matson Navigation Company.

Agreement No.: T-4016-1.

Filing party: Mr. Richard L. Landes, Deputy City Attorney, City of Long Beach, Harbor Branch Office, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-4016-1, between the City of Long Beach (City) and Pacific Maritime Services, Inc. (PMC) amends the basic agreement between the parties which provides for the 20-year nonexclusive preferential assignment to PMS by City of certain premises at Pier J, Long Beach, for operation as a contract marine terminal warehouse and rail and truck facility. The purpose of the amendment is to correct an inadvertent overcharge of rental which was contained in the original agreement.

Agreement No.: T-4055.

Filing party: Mr. Robert W. Goethe, Assistant Executive Director, Georgia Ports Authority, P.O. Box 246, Savannah, Georgia 31402.

Summary: Agreement No. T-4055, between the Georgia Ports Authority (Lessor) and Moller Steamship Company, as Agent for Maersk Line (Lessee) provides for the Authority's 3 year lease to Moller/Maersk on an exclusive basis, of certain premises located within the Containerport at Garden City Terminal, Chatham County, Georgia. The premises will be used for the storage and handling of containers moving in ocean transportation across Lessor's dock facilities. Lessee will pay to Lessor a fixed monthly rental charge as set forth in the agreement and will also pay for terminal services at Lessor's tariff rates, with certain exceptions.

By order of the Federal Maritime Commission.

Dated: July 15, 1982.

Francis C. Hurney,

Secretary.

[FR Doc. 82-19620 Filed 7-19-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 354]

Nato Forwarding Co., Inc.; Order of Revocation in Part

On July 6, 1982, Nato Forwarding Co., Inc., One World Trade Center, Suite 2147, New York, New York 10048, voluntarily surrendered its right to operate under Independent Ocean Freight Forwarder License No. 354.

Notwithstanding this, Inter-Maritime Forwarding Co., Inc. will continue to hold FMC License No. 354 in its name only.

Therefore, by virtue of authority vested in me by the Federal Maritme Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(f) dated November 12, 1981;

Notice is hereby given, that Nato Forwarding Co., Inc.'s authority to use Independent Ocean Freight Forwarder License No. 345 issued to Inter-Maritime Forwarding Co., Inc. and Nato Forwarding Co., Inc. be and is hereby revoked effective July 6, 1982.

It is ordered, that a copy of this Order be published in the **Federal Register** and served upon Nato Forwarding Co., Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 82-19622 Filed 7-19-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies: Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or 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 Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated for each application.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation,* New York, New York (mortgage banking and related lending and insurance activities; Pennsylvania): To make or acquire, for its own account or for the account of others, loans and other extensions of credit secured by real estate, including but not limited to, first and second mortgage loans secured by mortgages on one-to-four family residential properties, to service loans and other extensions of credit for any person, to sell mortgage loans in the secondary market, and to offer mortgage term life insurance, accident and health insurance and disability insurance directly related to such lending and servicing activities. These activities will be conducted from an office located in Wayne, Pennsylvania, serving Eastern Pennsylvania, of which the primary market areas will be the counties of Philadelphia, Chester, Montgomery, Bucks and Delaware. Comments on this application must be received not later than August 13, 1982.

2. *The Chase Manhattan Corporation,* New York, New York (finance, servicing, and leasing activities; Northeastern U.S.): To engage through its indirect subsidiary, Chase Commercial Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a commercial finance, equipment finance or factoring company, including factoring accounts receivable, making advances and over-advances on receivables and inventory and business installment lending as well as unsecured commercial loans; servicing loans and other extensions of credit; leasing personal property on a full payout basis and in accordance with the Board's Regulation Y, or acting as agent, broker or advisor in so leasing such property, including the leasing of motor vehicles. These activities would be conducted from an office in Buffalo, New York, serving the states of western New York State, Connecticut, Maine, New Hampshire, Rhode Island, Massachusetts and Vermont. Comments on this application must be received not later than August 13, 1982.

3. *The Chase Manhattan Corporation,* New York, New York (finance, servicing, and leasing activities; Southwestern U.S.): To engage through its indirect subsidiary, Chase Commercial Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a commercial finance, equipment finance or factoring company, including factoring accounts receivable, making advances and over-advances on receivables and inventory and business installment lending as well as unsecured commercial loans; servicing loans and other extensions of credit; leasing personal property on a full payout basis and in accordance with the Board's Regulation Y, or acting as agent, broker or advisor in so leasing such property, including the leasing of motor vehicles. These activities would be conducted from an office in Longview, Texas serving the States of Texas, Arkansas, Colorado, Kansas, Louisiana, New Mexico and Oklahoma. Comments on this application must be received not later than August 13, 1982.

Board of Governors of the Federal Reserve System, July 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19542 Filed 7-19-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Birnamwood Bancshares, Inc.,* Birnamwood, Wisconsin; to become a bank holding company by acquiring 81 percent of the voting shares of The Bank of Birnamwood, Birnamwood, Wisconsin. Comments on this application must be received not later than August 13, 1982.

2. *Columbus Corporation,* Columbus, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares (less directors' qualifying shares) of the successor by merger to Columbus Bank and Trust Company, Columbus, Indiana. Comments on this application must be received not later than August 13, 1982.

3. *Dunlap Iowa Holding Co.,* Dunlap, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Dunlap Savings Bank, Dunlap, Iowa. Comments on this application must be received not later than August 13, 1982.

4. *Princeton National Bancorp, Inc.,* Princeton, Illinois; to become a bank holding company by acquiring 100 percent (less directors' qualifying shares) of the voting shares of the successor by merger to Citizens First National Bank of Princeton, Princeton, Illinois. Comments on this application must be received not later than August 13, 1982.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Edmonton Bancshares, Inc.,* Edmonton, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of the successor by merger to Edmonton State Bank, Edmonton, Kentucky. Comments on this application must be received not later than August 13, 1982.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Amsterdam Bancshares, Inc.,* Amsterdam, Missouri; to become a bank holding company by acquiring 86 percent of the voting shares of Citizens Bank, Amsterdam, Missouri. Comments on this application must be received not later than August 13, 1982.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Oaklawn Financial Corporation,* Texarkana, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Oaklawn Bank, Texarkana, Texas. Comments on this application must be received not later than August 13, 1982.

Board of Governors of the Federal Reserve System, July 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19543 Filed 7-19-82; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have 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 voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Central Wisconsin Bankshares, Inc.,* Wausau, Wisconsin; to acquire 51 percent or more of the voting shares of Tri-County State Bank of Marshfield, Marshfield, Wisconsin. Comments on this application must be received not later than August 13, 1982.

2. *Milford Bancorporation,* Milford, Iowa; to acquire 100 percent of the voting shares of San Bancorp., Sanborn, Iowa, and thereby indirectly acquire 85 percent or more of the voting shares of Sanborn Savings Bank, Sanborn, Iowa. Comments on this application must be received not later than August 13, 1982.

3. *Mt. Zion Bancorp, Inc.,* Mt. Zion, Illinois; to acquire 100 percent of the voting shares (less directors' qualifying shares) of The Hight State Bank, Dalton City, Illinois. Comments on this application must be received not later than August 13, 1982.

B. Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551:

1. *Texas Commerce Bancshares, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares or assets of Chemical Bank & Trust Company, Houston, Texas. This application may be inspected at the Federal Reserve Bank of Dallas. Comments on this application must be received not later than August 13, 1982.

Board of Governors of the Federal Reserve System, July 14, 1982.

Dolores S. Smith,

Assistant Secretary of the Board.

[FR Doc. 82-19544 Filed 7-19-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting: Baltimore District Office, Chaired by Thomas L. Hooker, District Director.

DATE: Tuesday, July 27, 1982, 10 a.m. to 12 noon.

ADDRESS: Virginia Beach Recreation Center—Kempville, Rm. 117, 800 Monmouth Lane, Virginia Beach, VA 23464.

FOR FURTHER INFORMATION CONTACT: Charity E. Singletary, Consumer Affairs Officer, Food and Drug Administration, 701 W. Broad St., Rm. 309, Falls Church, VA 22046, 703–285–2578.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance understanding and exchange information between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: July 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-19461 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82M-0094]

Genetic Laboratories, Inc.; Premarket Approval of Bioflow®

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Bioflow® device, a vascular access graft, sponsored by Genetic Laboratories, Inc., Roseville, MN. After reviewing the recommendation of the Gastroenterology—Urology Device Section of the General Medical Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by August 19, 1982.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles Kyper, Bureau of Medical Devices (HFK–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On June 8, 1981, Genetic Laboratories, Inc., Roseville, MN, submitted to FDA an application for premarket approval of the Bioflow® device, a specially processed human umbilical cord arterial graft intended for use as a vascular access graft. The application was reviewed by the Gastroenterology-Urology Device Section of the General Medical Devices Panel, an FDA advisory committee, which recommended approval of the application for grafts not less than 6 millimeters in diameter, for the use of this device for patients who require an arterio-venous graft. On March 10, 1982, FDA approved the application by a letter to the sponsor from the Acting Director of the Bureau of Medical Devices.

A summary of the safety and effectiveness data on which FDA's approval is based is on file in the Dockets Management Branch (address above) and is available upon request from that office. A copy of all approved final labeling is available for public inspection at the Bureau of Medical Devices. Contact Charles Kyper (HFR–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d) (3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(d) (3)) authorizes any interested person to petition under 515(g) of the act (21 U.S.C. 360e(g)) for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative

practices and procedures regulations or a review of the application and of FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 19, 1982, file with the Dockets Management Branch (address above), four copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 12, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-19589 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 82D-0164]

New Animal Drugs for Use in Poultry Feed for Pigmentation; Availability of Proposed Revised Guidelines

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of proposed revised guidelines prepared by the Bureau of Veterinary Medicine (BVM). The proposed guidelines, revised March 1982, describe the type of data required to establish effectiveness of drugs used in poultry feed for pigmentation. Interested persons are invited to review and submit written comments on the proposed revised guidelines.

DATE: Submit comments on or before November 16, 1982.

ADDRESS: The proposed revised guidelines are available for public examination at, written comments may be submitted to, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV-147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4317.

SUPPLEMENTARY INFORMATION: The Federal Food, Drug, and Cosmetic Act (the act) requires that a new animal drug be the subject of an approved new animal drug application (NADA) before it may be marketed. Section 512(b)(1) of the act (21 U.S.C. 360b(b)(1)) requires that each NADA include full reports of investigations which show that the drug is safe and effective for use. Section 512(d) of the act (21 U.S.C. 360b(d)) describes the criteria that must be met before a new animal drug may be approved, including that it be safe and effective for use as labeled.

The proposed revised guidelines prepared by BVM describe the type of data required to establish the effectiveness of drugs used in poultry feed for pigmentation. The proposed revised guidelines would supersede the 1975 Preclearance Guidelines for Production Drugs as they relate to pigmentation uses. The proposed revised guidelines allow for the new animal drug to enhance carcass or egg yolk pigmentation independent of other production uses, and for use of a Roche color fan to provide for a color standard.

This notice of availability is issued under § 10.90(b) (21 CFR 10.90(b)), which provides for use of guideline to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guidelines is assured that his or her conduct will be acceptable to the agency. A person may also choose to use alternative procedures even though they are not provided for in the guideline. Persons are advised to consult with BVM prior to initiating studies to prevent expenditure of money and effort for work that may later be determined to be unacceptable.

The guidelines are available for public examination at, and requests for single copies may be sent to, the Dockets Management Branch (HFA-305) (address above).

Interested persons may submit written comments on the guideline to the Dockets Management Branch (HFA-305), on or before November 16, 1982. Such comments will be considered in determining whether revision of the guideline is warranted. Respondents should submit two copies (except that individuals may submit single copies) identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Managements Branch from 9 a.m. to 4 p.m., Monday through Friday.

Dated: July 13, 1982.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 82-19588 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

Oelwein Chemical Co.; Tylosin Premix; 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 Oelwein Chemical Co., Inc., providing for a tylosin premix used in manufacturing complete swine feeds. The firm requested the withdrawal of approval.

EFFECTIVE DATE: July 30, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Oelwein Chemical Co., Inc., Second Ave. SE., Oelwein, IA 50662, is the sponsor of NADA 111-638 for Occo Swine Fortipak TY 2000 Medicated which contains tylosin phosphate 2,000 grams per ton (equivalent to 1.0 gram per pound). The premix is used in manufacturing complete swine feeds for increased rate of weight gain and improved feed efficiency.

The sponsor, by letter dated April 13, 1982, requested withdrawal of approval of the NADA because it has not manufactured nor marketed the product and has no intention to do so.

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) 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 111-638 and all supplements thereto is hereby withdrawn, effective July 30, 1982.

In a separate document published elsewhere in this issue of the **Federal Register**, § 558.625 *Tylosin* is amended to remove that portion that reflects approval of this NADA.

Dated: July 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-19587 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

Doboy Feeds, Domain Industries, Inc.; Doboy Tylan 10 Premix; 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 Doboy Feeds, Doman Industries, Inc., providing for use of Doboy Tylan 10 Premix in manufacturing complete swine feeds. The firm requested withdrawal of approval.

EFFECTIVE DATE: July 30, 1982.

FOR FURTHER INFORMATION CONTACT: Howard Meyers, Bureau of Veterinary Medicine (HFV-218), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Doboy Feeds, Domain Industries, Inc., 215 N. Knowles Ave., P.O. Box 248, New Richmond, WI 54017, is the sponsor of NADA 98-430 which provides for use of a premix containing 10 grams of tylosin per pound in manufacturing complete swine feeds. The swine feeds are used for increased rate of weight gain and improved feed efficiency.

The application originally became effective on November 21, 1974. By letter of March 29, 1982, the sponsor requested withdrawal of approval of the NADA because the product is no longer being manufactured or marketed.

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) and redeletated to 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 98-430 and all supplements for Doboy Tylan 10 Premix is hereby withdrawn, effective Friday, July 30, 1920.

In a separate document published elsewhere in this issue of the **Federal Register**, Parts 510 and 558 are amended to remove those portions of the regulations reflecting this approval.

Dated July 14, 1982.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 82-19517 Filed 7-19-82; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part F (Health Care Financing Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, 46 FR 56911 of November 19, 1981, to abolish the Medicaid/Medicare Mangement Institute in the Bureau of Program Operations. Functions concerning the distribution of publications, and scheduling conferences and workshops with State Medicaid agencies and Medicare contractors are reassigned to the Office of Intergovernmental Affairs.

Part FP.20 is amended by deleting section FP.20.A.6 in its entirety. This section includes the Medicaid/Medicare Management Institute (FPA6) and its three subordinate components.

Part FG.20.D. is amended by adding the following sentence at the end of this section:

Prepares and disseminates publications and schedules conferences and workshops to provide information to Medicaid State agencies and in some instances, to Medicare contractors.

Date: July 12, 1982

Richard S. Schweiker,

Secretary.

[FR Doc. 82-19556 Filed 7-19-82; 8:45 am]

BILLING CODE 4120-3-M

Health Services Administration

Health Education Assistance Loan Program; Maximum Interest Rates for Quarter Ending September 30, 1982

Section 727 of the Public Health Service Act (42 CFR Part 60, previously 45 CFR Part 126) authorizes the Secretary of Health and Human Services to establish a Federal program of student loan insurance for graduate students in health professions schools. Section 60.13(a)(4) of the program's implementing regulations provides that the Secretary will announce the interest rate in effect on a quarterly basis.

The Secretary announces that for the period ending September 30, 1982, two interest rates are in effect for loans executed through the Health Education Assistance Loan (HEAL) program.

1. For loans made before January 27, 1981, the variable interest rate is 11 percent. Using the regulatory formula (45 CFR 126.13(a)(2)(3)), in effect prior to January 27, 1981, the Secretary would normally compute the variable rate for this quarter by finding the sum of the fixed annual rate (7 percent) and a variable component calculated by subtracting 3.50 percent from the average bond equivalent rate of 91-day U.S. Treasury Bills for the preceding calendar quarter (12.96 percent), and rounding the result (9.46 percent) upward to the nearest ⅛ percent (9½ percent). Thus, the variable rate for this 3-month period would normally be at the annual rate of 16½ percent (9½ percent plus 7 percent). However, the regulatory formula also provides that the annual rate of the variable interest for a 3-month period shall be reduced to the highest one-eighth of 1 percent which would result in an average annual rate not in excess of 12 percent for the 12-month period concluded by those 3 months. For the previous 3 quarters the variable interest at the annual rate was as follows: 11⅛ percent for the quarter ending December 31, 1981; 12⅞ percent for the quarter ending March 31, 1982; and 13¾ percent for the quarter ending June 30, 1982. Therefore, in order to maintain an average annual rate of 12 percent for the 12-month period ending September 30, 1982, the variable interest rate for the quarter ending September 30, 1982, would be at an annual rate of 11 percent.

2. For fixed rate loans executed during the period of July 1 through September 30, 1982, and for variable rate loans executed after January 27, 1981, the interest rate is 16½ percent. Using the regulatory formula (42 CFR 60.13 (a)(3)), in effect since January 27, 1981, the Secretary computes the maximum interest rate at the beginning of each calendar quarter by determining the average bond equivalent rate for the 91-day U.S. Treasury Bills during the preceding quarter (12.96 percent); adding 3.50 percent (16.46 percent); and rounding that figure to the next higher one-eighth of 1 percent (16½ percent).

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: July 9, 1982.

John H. Kelso,

Acting Administrator.

[FR Doc. 82-19541 Filed 7-19-82; 8:45 am]

BILLING CODE 4/60-16-M

National Institutes of Health

Biometry and Epidemiology Contract Review Committee; Amended Notice of Meeting

Notice is hereby given of the cancellation of the second day of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, July 30, 1982; which was published in the Federal Register on June 22, 1982, (47 FR 26911–2). The meeting will still be held in Building 31C, Conference Room 9, National Institutes of Health, Bethesda, Maryland 20205. The open portion of the meeting will remain from 9:00 a.m. to 9:30 a.m., on July 29 to review administrative details. Attendance by the public will be limited to space available. The closed portion of the meeting will begin at 9:30 a.m. and continue through adjournment.

For further information, please contact Dr. Wilna A. Woods, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 822, National Institutes of Health, Bethesda, Maryland 20205 (301/496–7153).

Dated: July 13, 1982

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–19520 Filed 7–19–82; 8:45 am]

BILLING CODE 4140–01–M

Meeting of Environmental Health Sciences Review Committee

Pursuant to Pub L. 92–463, notice is hereby given of the meeting of the Environmental Health Sciences Review Committee on August 2–3, 1982 in Building 101 Conference Room, Research Triangle Park, North Carolina. This meeting will be open to the public from 8:30 a.m. to approximately 10:30 a.m. on August 2, 1982, for general discussions. Attendance by the public is limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 10:30 a.m., August 2, to adjournment on August 3, 1982, for the review, discussion and evaluation of individual grant applications and contract proposals. These applications and proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Carol Shreffler, Executive Secretary, Environmental Health Sciences Review Committee, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (telephone 919–541–7826), will provide summaries of meeting, rosters of committee members, and substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.892, Prediction, Detection and Assessment of Environmental Caused Diseases and Disorders; 13.893, Mechanisms of Environmental Diseases and Disorders; 13.894, Environmental Health Research and Manpower Development Resources, National Institutes of Health)

NIH programs are not covered by OBM Circular A–95 because they fit the description of "programs not considered appropriate" in section 8(b)(4) and (5) of that Circular.

Dated: July 8, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–19522 Filed 7–19–82; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Advisory Board Subcommittee on Environmental Carcinogensis; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Cancer Advisory Board Subcommittee on Environmental Carcinogenesis, National Cancer Institute, September 23, 1982, Building 31, Conference Room 4, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20205. The meeting will be open to the public on September 23, 1982, from 9:00 a.m. to adjournment to discuss quantitative risk assessment of environmental carcinogens. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708), will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Richard H. Adamson, Executive Secretary, National Cancer Advisory Board Subcommittee on Environmental Carcinogenesis, National Cancer Institute, Building 31, Room 11A03, National Institutes of Health, Bethesda, Maryland 20205 (301/496–6618), will furnish substantive program information.

Dated: July 13, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–19521 Filed 7–19–82; 8:45 am]

BILLING CODE 4140–01–M

President's Cancer Panel; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the President's Cancer Panel, September 14, 1982, at the Westin Hotel, Cascade Room, 5th and Westlake, Seattle, Washington 98101. The entire meeting will be open to the public from 7:30 p.m. to adjournment. Agenda items include reports by the Director, National Cancer Institute, and the Chairman, President's Cancer Panel; and discussions to obtain information on research supported by the National Cancer Institute from scientists of the universities in the Seattle area and those scientists attending the International Cancer Congress. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496–5708) will provide summaries of the meeting and rosters of Panel members, upon request.

Dr. Elliott Stonehill, Executive Secretary, President's Cancer Panel, National Cancer Institute, Building 31, Room 11A35, National Institutes of Health, Bethesda, Maryland 20205 (301/496–1148) will furnish substantive program information.

Dated: July 13, 1982.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 82–19523 Filed 7–19–82; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Announcement of Vacancies; Osage Education Committee

July 9, 1982.

Second Announcement of Vacancy

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

On September 14, 1981 an announcement of one vacancy on the Osage Education Committee was published in the Federal Register (46 FR 45425). No applicants applied in

response to the first announcement. A second vacancy has occurred recently due to a member changing his place of residence. This announcement includes the second vacancy.

Paragraph (e)(5), Committee vacancies, of 25 CFR 112a.5, Establishment of Osage Tribal Education Committee, recently redesignated as Part 122 (47 FR 13326) on March 30, 1982, states that any vacancies shall be filled in the same manner described by this section for the selection of committee members. The period of time for receiving applicaitons shall not exceed 30 days with the expiration date to be announced by the Assistant Secretary. The Assistant Secretary may appoint any individual to serve for a temporary period ot time until the vacancy is filled. However, such an appointment shall not exceed 45 days.

This notice announces that two vacancies have occurred on the Osage Education Committee. The purpose of this announcement is to solicit nominations from individuals or from Osage organizations on behalf of nominees for the vacancies. The vacancies represent the unexpired portion (approximately two years) of a four year term for the Pawhuska Village Area and the Hominy Village Area. Nominees must meet the requirements of residing within a 20 mile radius of the Pawhuska or Hominy Villages. Other requirements state that the nominee must be an adult person of Osage Indian blood, who is an allottee or a descendant of an allottee. The nominee or his representative organization should submit a brief statement requesting that he/she be considered a candidate for the vacancy and the reason for desiring to serve on the committee. If nominated by an Osage organization, a written statement from the nominee stating his/her willingness to serve on the committee must be included with the Osage organization nomination.

Applications and nominations shall be made on or before August 19, 1982 and shall be mailed to: Assistant Secretary—Indian Affairs, Attention: Director, Office of Indian Education Programs, Code 500, 18th & C Streets, NW., Washington, D.C. 20240.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-19527 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-02-M

Confederated Tribes of the Umatilla Reservation; Plan for the Use of the Judgment Funds Awarded to the Confederated Tribes of the Umatilla Reservation of Oregon in Dockets 342-70 and 343-70 Before the United States Court of Claims

July 9, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on March 28, 1981, in satisfaction of the award granted to the Confederated Tribes of the Umatilla Reservation in United States Court of Claims Dockets 342-70 and 342-70. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated December 22, 1981, and was received (as recorded in the Congressional Record) by the House of Representatives on January 25, 1982, and by the Senate on January 26, 1982. The plan became effective on April 25, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated on March 28, 1981, in satisfaction of an award granted to the Confederated Tribes of the Umatilla Reservation of Oregon in Dockets 343-70 and 343-70 before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

1. *Land Acquisition:* Fifty (50) percent of the funds shall be utilized for land acquisition including, but not limited to, land for tribal development and to consolidate fractionated individual land interests.

2. *Program Development:* Twenty-five (25) percent of the funds shall be utilized for tribal program development including, but not limited to, the implementation of the tribal reorganization plan, development of a tribal relief program, a recreation program and an oral history project.

3. *Economic Development:* Twenty-five (25) percent of the funds shall be utilized for tribal economic development."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-19529 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-02-M

Kalispel Indian Community; Plan for the Use of the Judgment Funds Awarded to the Kalispel Indian Community of Washington in Dockets 523-71 and 524-71 Before the United States Court of Claims

July 9, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93-134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on March 24, 1981, in satisfaction of the award granted to the Kalispel Indian Community in United States Court of Claims Dockets 523-71 and 524-71. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated December 17, 1981, and was received (as recorded in the Congressional Record) by the House of Representatives on January 25, 1982, and by the Senate on January 28, 1982. The plan became effective on April 27, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt resolution disapproving it.

The plan reads as follows:

"The funds appropriated on March 24, 1981, in satisfaction of an award granted to the Kalispel Indian Community of Washington in Dockets 523-71 and 524-71 before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

The funds shall be invested by the Secretary of the Interior and shall be utilized by the Kalispel Business Committee, subject to the approval of the Secretary, on an annual budgetary basis for tribal governing expenses, including, but not limited to, governing body expenses, tribal rights protection, educational assistance and community development."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-19546 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-02-M

Spokane Tribe; Plan for the Use and Distribution of Spokane Tribe Judgment Funds in Dockets 523–71 and 524–71 Before the United States Court of Claims

July 9, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on March 24, 1981, in satisfaction of the award granted to the Spokane Tribe in United States Court of Claims Dockets 523–71 and 524–71. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated December 10, 1981, and was received (as recorded in the Congressional Record) by the House of Representatives on January 25, 1982, and by the Senate on January 28, 1982. The plan became effective on April 27, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt resolution disapproving it.

The plan reads as follows:

The funds appropriated on March 24, 1981, in satisfaction of an award granted to the Spokane Indian Tribe of the Spokane Reservation, Washington in Dockets 523–71 and 524–71 before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

A. *Per Capita Distribution.* The Spokane Indian Tribe's latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of this Plan.

Subsequent to the preparation and approval by the Secretary of this roll, the Secretary shall make a per capita distribution of eighty (80) percent of the funds, in a sum as equal as possible, to each enrollee. Any amount remaining after the per capita payment to the enrollees shall be utilized pursuant to the provisions of Part B of this Plan.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be handled pursuant to 25 CFR 115.5 The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D. The per capita shares of minors shall be handled pursuant to 25 CFR 87.10 (a) and (b)(1) and 115.4 (25 CFR 104 redesignated to 25 CFR Part 115 and 25 CFR Parts 60 to 87, as published in **Federal Register** of March 30, 1982, page 13327).

B. *Land purchase.* The remaining twenty (20) percent of these funds shall be utilized by the Tribe in its land purchase program.

None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-19547 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-02-M

Akima Indian Nation; Plan for the Use and Distribution of the Confederated Tribes and Bands of the Yakima Indian Nation Judgment Funds in Docket 310–74 Before the United States Court of Claims

July 9, 1982.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

The Act of October 19, 1973 (Pub. L. 93–134, 87 Stat. 466), requires that a plan be prepared and submitted to Congress for the use or distribution of funds appropriated to pay a judgment of the Indian Claims Commission or Court of Claims to any Indian tribe. Funds were appropriated on May 20, 1981, in satisfaction of the award granted to the Confederated Tribes and Bands of the Yakima Indian Nation in United States Court of Claims Docket 310–74. The plan for the use and distribution of the funds was submitted to the Congress with a letter dated February 12, 1982, and was received (as recorded in the Congressional Record) by the House of Representatives on February 22, 1982, and by the Senate on February 23, 1982. The plan became effective on May 12, 1982, as provided by Section 5 of the 1973 Act since Congress did not adopt a resolution disapproving it.

The plan reads as follows:

"The funds appropriated on May 20, 1981, in satisfaction of the award granted to the Confederated Tribes and Bands of the Yakima Nation of the Yakima Reservation, Washington, in Docket 310–74 before the United States Court of Claims, including all interest and investment income accrued, less attorney fees and litigation expenses, shall be distributed as herein provided.

A. *Per Capita Distribution.* The Confederated Tribes and Bands of the Yakima Indian Nation's latest approved membership roll shall be brought current to include all eligible members born on or prior to and living on the effective date of the plan.

Subsequent to the preparation and approval by the Secretary of this roll, the Secretary shall make a per capita distribution of eighty (80) percent of the funds, in a sum as equal as possible, to each enrollee. Any amount remaining after the per capita payment to the enrollees shall be utilized pursuant to the provisions of Part B of this Plan.

The per capita shares of living competent adults shall be paid directly to them. The per capita shares of legal incompetents shall be handled pursuant to 25 CFR 115.5. The per capita shares of deceased individual beneficiaries shall be determined and distributed in accordance with 43 CFR, Part 4, Subpart D.

The minors' shares will be retained in individual segregated IIM Accounts. Upon reaching the age of eighteen years, unless under a legal disability, the beneficiary shall be entitled to withdraw the per capita shares and accrued investment income thereon as provided in 25 CFR 115.3. If a beneficiary is under a legal disability upon attaining the age of eighteen years, the per capita share and accrued investment thereon shall be handled pursuant to 25 CFR 115.5 (25 CFR Part 104, redesignated to 25 CFR Part 115, as published in **Federal Register** of March 30, 1982, page 13327).

Minors' per capita shares, including all investment income accruing thereto, may be disbursed pursuant to Pub. L. 95–433 (92 Stat. 1047) and under the plan adopted by the Yakima Tribal Council through Resolution T–17–79 dated January 17, 1979, as follows:

This plan is prepared to comply with Sections C and D of Pub. L. 95–433, which provides for the disbursing of 'minor's share' of the per capita of judgment awards for the minor's health, education, welfare and emergencies. Since per capita distributions are made on or about the first day of March and the first day of September each year, and are intended to provide in part for the minor's needs, it is preferable that no plan for distribution of minor's funds be in effect until at least 45 days after each per capita distribution. It has been determined that the school years beginning with the fifth (5th) grade and continuing through high school are the most tryng and frustrating if students' needs are not met. This can and does

often contribute to the school drop-out problem.

Therefore, it is preferable that funds not be disbursed for educational purposes until the minor reaches 10 years of age and/or the fifth (5th) grade. Parents may withdraw funds from minor's special I.I.M. accounts for the following purposes and in accordance with following criteria:

1. Health—

(a) There is no minimum age requirement.

(b) Parents must have exhausted all other resources.

(c) Funds can be used for special cases; such as orthodontic treatment, eye glasses, etc.

(d) For other special health related needs.

2. Education—

(a) Minor must be at least ten (10) years of age and/or in the fifth (5th) grade.

(b) Parents must have exhausted all other resources; such as JOM, Title IV, Tribal Emergency Assistance, Per Capitas, BIA, VA, Social Security, etc..

(c) Aceptable purposes include Boy and Girl Scouts, Blue Birds, Camp Fire Girls, 4–H, etc..

(d) Special activities, such as, sports insurance, special clothing, shoes, school clubs, etc..

(e) Special expenses, such as, graduation related expenses, musical instruments, etc.

3. Welfare—

(a) There is no minimum age requirement.

(b) Parents must have exhausted all other resources.

(c) Acceptable purposes include special clothing, dietary food related needs, etc.

(d) Needs of under 18 years of age mothers and/or fathers.

(e) Special needs.

4. Emergency Purposes—

(a) There is no minimum age requirement.

(b) Parents must have exhausted all other resources.

Applications, on a special form, will be reviewed by both Bureau and Tribal Social Services personnel and approval will be made by a member of the H.E.W. Committee, on behalf of the Yakima Indian Nation and the Superintendent on behalf of the Bureau of Indian Affairs.

B. *Heirship Purchase.* The remaining twenty (20) percent of these funds shall be utilized by the Yakima Land Enterprise heirship land purchasing program.

None of the funds distributed per capita or held in trust under the provisions of this Act shall be subject to Federal or State income taxes, and the per capita payments shall not be considered as income or resources when determining the extent of eligibility for assistance under the Social Security Act."

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 82-19548 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Group 795]

California; Filing of Plat of Survey

July 9, 1982.

1. A plat of survey of the following described land accepted June 28, 1982 will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, California

T. 29 S., R. 41 E.,
Section 22
Section 27
Section 36.
T. 29 S., R. 42 E.

2. This plat, representing the dependent resurvey of a portion of the west boundary, T. 29 S., R. 42 E., a portion of the south boundary, and a portion of the subdivisional lines, T. 29 S., R. 41 E., and the survey of the subdivision of sections 22, 27, 36, T. 29 S., R. 41 E., Mount Diablo Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E–2841, Cottage Way, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc. 82-19549 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Group 788]

California, Notice of Filing of Plat of Survey

July 9, 1982.

1. A plat of survey of the following described land accepted June 22, 1982 will be officially filed in the California State Office, Sacramento, California, immediately.

Mount Diablo Meridian, California

T. 25 S., R. 38 E.,
Section 9.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the surve of the subdivision of Section 9, T. 25 S., R. 38 E., Mount Diablo Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E–2841, Cottage Way, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc. 82-19550 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Group 730]

California; Filing of Plat of Survey

July 9, 1982.

1. A plat of survey of the following described land accepted June 28, 1982 will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, California

T. 30 S., R. 42 E.,
Section 5.

2. This plat, representing the dependent resurvey of the west and north boundaries, a portion of the subdivisional lines, and the survey of the subdivision of section 5, T. 30 S., R. 42 E., Mount Diablo Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E–2841,

Cottage Way, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc. 82-19551 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Group 741]

California; Filing of Plat of Survey

July 9, 1982.

1. A plat of survey of the following described land accepted June 17, 1982 will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, California

T. 34 N., R. 11 W.,
Section 27.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, certain boundaries of Mineral Survey Nos. 245 and 246, and the survey of the subdivision of section 27, T. 34 N., R. 11 W., Mount Diablo Meridian.

3. The plat will immediately become the basic record for describing the land for all authorized purposes. The plat has been placed in the open file and is available to the public for information only.

4. This survey was executed to meet certain administrative needs of this Bureau.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, Room E-2841, Cottage Way, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Section of Records and Data Management.

[FR Doc. 82-19552 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

[C-35858]

Colorado; Invitation for Coal Exploration License Application; Empire Energy Corporation

All interested parties are hereby invited to participate with Empire Energy Corporation in its proposed exploration of certain Federal coal deposits in the following described lands in Moffat County, Colorado:

Sixth Principal Meridian, Colorado

T. 6 N., R. 91 W.,
Sec. 18, lots 5 to 19, inclusive.
T. 6 N., R. 92 W.,
Sec. 24, All;
Sec. 25, lots 1 and 2, and N½;
Sec. 35, lot 1 and NW¼.
The area described contains 1878.02 acres.

Any party participating in this exploration license will share all costs on a pro rata basis with Empire Energy Corporation and with any other participants. The exploration plan, as submitted to the Bureau of Land Management, is available under serial number C-35858 for public review during normal business hours at the Colorado State Office, 1037-20th Street, Denver, Colorado.

Any party seeking to participate in the exploration program described in the application must notify both the Bureau of Land Management and Empire Energy Corporation in writing on or before August 18, 1982. Such written notice must be addressed to:

1Leader, Craig Team, Branch of Adjudication, Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202, and

Stuart R. Snow, Vice President & General Manager, Empire Energy Corporation, 6900 South Yosemite Street, Suite 160, Englewood, Colorado 80112.

This Notice of Invitation is published in the Federal Register pursuant to 43 CFR 3410.2-1(d).

Rodney A. Roberts,

Leader, Craig Team Branch of Adjudication.

[FR Doc. 82-19540 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

[Coal Lease Application ES 28564]

Tuscaloosa County, Alabama; Public Hearing and Availability of Environmental Assessment

The Department of the Interior, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304 hereby gives notice that a public hearing will be held on August 6, 1982 at 2:00 p.m., in the Conference Room at the Tuscaloosa Office, 518 19th Avenue, Tuscaloosa, Alabama 35401. Application has been made to the United States that it offer for lease certain federal coal resources in the lands hereinafter described. The purpose of the hearing is to obtain public comments on the Enviornmental Assessment prepared and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal; (2) the impact that mining the coal in the proposed leasehold may have on the area, including but not limited to impacts on the environment; and (3) methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the public hearing should be received at the Tuscaloosa Office, 518 19th Avenue, Tuscaloosa, Alabama 35401, prior to the close of business 4:00 p.m., on August 5, 1982. People who indicate they wish to testify when they check in at the hearing room may have an opportunity to testify if time is available after the listed witnesses have been heard.

Both oral and written comments will be received at the public hearings, but speakers will be limited to a maximum of 10 minutes each depending on the number of persons desiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. Written comments may also be submitted to the Eastern States Office at the above address, prior to close of business on August 5, 1982. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

In addition, the public is invited to submit written comments concerning the fair market value of the coal resource to the Bureau of Land Management and the Minerals Management Service. Public comments will be utilized in establishing fair market value for the coal resources in the described lands.

Comments should address specific factors related to fair market value including, but not limited to: the quantity and quality of the coal resource, the price that the mined coal would bring in the market place, the cost of producing the coal, the probable timing and rate of production, the interest rate of which anticipated income streams would be discounted, depreciation and other accounting factors, the expected rate of industry return, the value of the surface estate (if private surface), and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms, and conditions, may also be submitted at the time.

These comments will be considered in the final determination of fair market value as determined in accordance with 30 CFR 211.63 and 43 CFR 3422.1-2. Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Comments should be sent to the Eastern States Director, Bureau of Land Management, 350 South Pickett

Street, Alexandria, Virginia 22304, and to the Minerals Manager, Minerals Management Service, Tysons Beltway Office Center, 1951 Kidwell Drive, Suite 601, Vienna, Virginia 22180, to arrive no later than 4:00 p.m., August 5, 1982.

Application ES 28564

The coal resource to be offered is to be surface mined from the Brookwood Group in the following lands located in Tuscaloosa County, Alabama:

T. 18 S., R. 9 W.,
Sec. 31, S½NE¼, S½NW¼, SW¼, SE¼;
Sec. 32, S½SW¼.
Containing approximately 560 acres.

The draft Environmental Assessment will be available for review in the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. Single copies are available for distribution upon request from the office at the above address.

A copy of the Environmental Assessment, the case file and the comments submitted by the public on fair market value, except those portions indentified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Eastern States Office, Bureau of Land Management, at the address set out above.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-19525 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

[F-19155-21]

Alaska Native Claims Selections; Correction

In FR Doc. 82-17891 appearing on page 28821 in the issue of July 1, 1982 please make following change.

On page 28822, column 3 paragraph 2 should read as follows:

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513

Beaumont C. McClure,

Chief, Alaska Programs Staff.

[FR Doc. 82-19632 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Mark Runnels, Bradenton, FL—PRT 2-9301.

The applicant requests a permit to purchase in foreign commerce and to import six pairs of scarlet-chested parakeets (*Neophema splendida*) or turquoise parakeets (*N. pulchella*) AND four pairs of hooded parakeets (*Psephotus chrysopterygius dissimilis*) from the following individuals and enhancement of propagation: Bill Hawarth, Bucks, England; Willy De Herdt, Berlaar, Belgium; Ernst Kalf, Landsmeer, Netherlands.

Applicant: Ecosearch, Inc., Mattapoisett, MA—PRT 2-9356.

The applicant requests a permit to take pink mucket pearly mussels (*Lampsilis obiculata*) and tubercled-blossom pearly mussels (*Epioblasma torulosa*) from the Kanawha River, West Virginia for scientific research.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications by August 19, 1982 by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: July 14, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-19565 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications

The applicants listed below wish to conduct certain activities with endangered species:

Applicant: Jonathan R. Reed, Univ. of Wisconsin, Madison, WI—PRT 2-9392.

The applicant requests a permit to take (capture and hold temporarily) Hawaiian dark-rumped petrels (*Pterodroma phaeopygia sandwichensis*) for scientific research concerning the attractiveness to man-made lighting by these birds.

Applicant: Dr. Vivian Casagrande, Vanderbilt Univ., Nashville, TN—PRT 2-9390.

The applicant requests a permit to take (euthanize) two female captive-bred brown lemurs (*Lemur fulvus*) for scientific research. Both animals are injured and cannot be used in a captive-breeding program. The research is to examine the neuroanatomical pathways and optic nerve crossovers on partially blind primates.

Applicant: Dr. Robert Manzies, Nova Univ., Dania, FL—PRT 2-9393.

The applicant requests a permit to import blood and tissue samples of American crocodiles (*Crocodylus acutus*) from the Dominican Republic for scientific research.

Humane care and treatment during transport, if applicable, has been indicated by the applicants.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications by August 19, 1982 by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: July 15, 1982.

R. K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 82-19566 Filed 7-19-82; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Gateway National Recreation Area

AGENCY: National Park Service; Interior.

ACTION: Notice.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: August 9, 1982, 4 p.m.

ADDRESS: Great Kills Bathhouse Conference Room, Staten Island Unit, Staten Island, New York.

FOR FURTHER INFORMATION CONTACT: Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (212) 630-0353.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established

by Pub. L. 92–592 to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include (1) Sandy Hook Beach Nourishment Status; (2) Status of Summer Operations; (3) Budget Update; (4) Miller Field Development Update; (5) Superintendent's Report.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services are requested by deaf or hearing impaired individuals to this agency within five working days before the meeting, it will be provided. Facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recreation Area, Building No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: July 9, 1982

Robert W. McIntosh, Jr.,

Superintendent, Gateway National Recreation Area.

[FR Doc. 82–19554 Filed 7–19–82; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 28, 1982. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by August 4, 1982.

Carol D. Shull,

Acting Keeper of the National Register.

NEBRASKA

Webster County

Bladen vicinity, *Cather, George Farmstead (Willa Cather TR),* SW of Bladen
Red Cloud, *Bentley, Matthew R., House (Willa Cather TR),* 845 N. Cedar St.
Red Cloud, *Cather, William, Homestead Site (Willa Cather TR),* NW of Red Cloud
Red Cloud vicinity, *Chalk Cliffs and Republician River (Willa Cather TR),* S of Red Cloud
Red Cloud, *City Pharmacy (Willa Cather TR),* 410 N. Webster St.
Red Cloud, *Ducker, William, House (Willa Cather TR),* 821 Franklin St.
Red Cloud, *Elm Street Historic District (Willa Cather TR),* Elm St. between 6th and 10th Aves. and Locust St. between 8th and 10th Aves.
Red Cloud vicinity, *Garber Grove (Willa Cather TR),* off US 281
Red Cloud, *Jackson's Reserve (Willa Cather TR),* bounded by Seward, Cedar, and 3rd Sts.
Red Cloud, *Main Street Historic District (Willa Cather TR),* both sides of Webster St. between 3rd and 5th Aves.
Red Cloud, *McKeeby, Dr. Gilbert E., House (Willa Cather TR),* 641 N. Cherry St.
Red Cloud, *Miner Brothers Store (Willa Cather TR),* 3rd and Webster Sts.
Red Cloud, *Miner House (Willa Cather TR),* 241 N. Seward St.
Red Cloud, *Moon Block (Willa Cather TR),* Webster Street
Red Cloud, *Opera House (Willa Cather TR),* 413 N. Webster St.
Red Cloud, *Perkins-Wiener House (Willa Cather TR),* 238 N. Seward St.
Red Cloud, *Railroad Addition Historic District (Willa Cather TR),* Roughly bounded by Division, Seward, Railway, and Walnut Sts. (both sides)
Red Cloud, *Seward Street Historic District (Willa Cather TR),* Seward St. betwen Avenue A and 9th Ave. and Cedar St. between 2nd and 4th, and 6th and 9th Aves. (both sides)
Red Cloud vicinity, *St. Stephenie Evangelical Lutheran Church (Willa Cather TR),* NW of Red Cloud
Red Cloud, *Warner-Cather House (Willa Cather TR),* 541 N. Seward St.

[FR Doc. 82–19553 Filed 7–19–82; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

Motor Carriers, Finance Applications; Decision-Notice

The following applications, filed on or after July 3, 1980, seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by Special Rule 240 of the Commission's Rules of Practice (49 CFR 1100.240). See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.241. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1100.241(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find, with the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto Filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Dated: July 14, 1982.

By the Commission, Review Board Number 3, Members Krock, Joyce, and Dowell. (Board Member Dowell not participating in Nos. MC-F-14887, MC-F-14888 and MC-F-14891.)

Agatha L. Mergenovich,

Secretary.

MC-F-14881, filed June 18, 1982. H. M. Richters (1301 Versailles Road, Russia, OH 45363), T. E. Subler (1070 Woodland Drive, Versailles, OH 45380), D. L. Subler (11692 Conover Road, Versailles, OH 45380), S. C. Subler (8898 Long Road, Versailles, OH 45380), D. E. Sandri (3225 Ziegler Road, Piqua, OH 45356) and D. K. Borchers (108 Moore Parkway, Versailles, OH 45380)—Continuance in Control—Vantage Transport, Inc. (Vantage) (6810 Fleetwood Road, McLean, VA 22101). Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. H. M. Richters, T. E. Subler, D. L. Subler, S. D. Subler, D. E. Sandri, and C. K. Borchers, individuals controlling Carl Subler Trucking, Inc. (Subler), of Versailles, OH, through ownership of its outstanding stock, seek to continue in control of Vantage upon approval of its current application for a permit and institution of operations thereunder. Subler is a motor common carrier operating pursuant to Certificate No. MC-116763 and subnumbers thereunder generally authorizing transportation of general commodities (with named exceptions) between points in the United States. Vantage is applying for contract carrier authority in No. MC-161795 to transport general commodities (with named exceptions) between points in the U.S. under continuing contract(s) with Kraft, Inc., of Glenview, IL. The operating authorities have not been described in their entirety; however, a more complete description is on file at the Commissioin's office in Washington, D.C.

MC-F-14887, filed June 28, 1982. FAST MOTOR SERVICE, INC. (Fast Service) (9100 Plainfield Road, Brookfield, IL 60513)—CONTINUANCE IN CONTROL—FAST MOTOR EXPRESS, INC. (Fast Express) (same address as above). Representative: Arnold L. Burke, 180 N. LaSalle St., Room 3520, Chicago, IL 60601. Fast Service seeks authority to continue in control of Fast Express upon the institution by Fast Express of operations, in interstate or foreign commerce as a motor common carrier. Jerry Cosentino and Charlotte Consentino, joint stockholders of Fast Express, also seek to continue in control through the transaction. Fast Service is a motor contract carrier pursuant to permits issued in MC-126276 and MC-134612 and sub-numbers thereunder. By decision served April 13, 1982, Fast Express was conditionally granted authority in MC-160124 to operate as a common carrier, transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods as defined by the Commission), between points in IL, IN, KY, MO, IA, MN, WI, MI and OH.

MC-F-14888, filed June 29, 1982. CHARLES P. BELUE, SR., d.b.a. BELUE'S TRUCKING (Belue) (Route 1, Box 268, Campobello, SC 29322)—PURCHASE (PORTION)—D. F. BAST, INC. (Bast) (1425 N. Maxwell Street, P.O. Box 2288, Allentown, PA 18001). Representatives: Mitchell King, Jr., P.O. Box 5711, Greenville, SC 29606; and Sander M. Bieber, 1730 Penna. Ave., Suite 1100, Washington, DC 20006. Belue seeks authority to purchase that portion of the interstate operating rights of Bast contained in Certificate No. MC 6078 (Sub-No. 94), which authorizes the transportation of *general commodities* (except class A and B explosives), between those points in the U.S. in and east of MN, IA, NE, KS, OK, and TX; and *transportation equipment*, between points in the U.S. Impediment: The authority to be transferred duplicates the authority to be retained. In order to avoid an objectionable split of authority, D. F. Bast, Inc., must request, in writing, cancellation of its retained authority, or, in the alternative, submit evidence warranting the existence of the duplicating authority in two separate carriers.

Notes.—Belue holds authority under MC 134978. TA has been filed.

MC-F-14891, filed July 1, 1982. L. L. SMITH TRUCKING (Smith) (P.O. Box 987, Riverton, WY 82501)—purchase—CARLSON TRANSPORT, INC. (Carlson) (P.O. Box 20214, Billings, MT 59104). Representative: Mark A. Davidson, 601 E. 18th Ave., #107, Denver, CO 80203. Smith seeks authority to purchase the interstate operating rights and property of Carlson. Operating rights sought to be purchased are: Certificate No. MC-106523 authorizing *feed, salt, building materials, fencing material and farm machinery, farm implements and parts thereof*, between points in Beaverhead, Big Horn, Broadwater, Carbon, Custer, Deer Lodge, Gallatin, Golden Valley, Jefferson, Madison, Meagher, Musselshell, Park, Rosebud, Silver Bow, Stillwater, Sweet Grass, Treasure, Wheatland and Yellowstone Counties, MT, and Big Horn, Johnson, Park, Sheridan and Washakie Counties, WY. Restriction: No service shall be performed between any two counties, both of which are incorporated towns or cities; Certificate No. MC-106523, Sub 5, authorizing *commodities, which because of their size or weight require the use of special equipment*, between points in Big Horn County, MT, on the one hand, and, on the other, points in MT, restricted to the transportation of traffic originating at, and destined to, points in MT; Certificate No. MC-106523, Sub 8F, authorizing *salt* in bulk, from points in UT, to points in MT; Certificate No. MC-106523, Sub 9F, authorizing (1) *precast concrete building products*, and (2) *supplies and equipment* used in the erection of the commodities in (1) from Billings, MT, to Williston, ND, and point in Campbell, Hot Springs, Natrona, Fremont and Converse Counties, WY; Certificate No. MC-106523; Sub 10, authorizing (1) *commodities*, the transportation of which because of their size or weight require the use of special equipment, and (2) *construction materials, equipment and supplies* (except the commodities in (1) above, between points in MT, on the one hand, and, on the other, points in CO, ID, ND, SD and WY. Condition: Prior to issuance of an effective notice in this proceeding, Roger Smith and Ronald Smith must submit an affidavit stating that they are the persons in control of Transferee and that they join in this application as parties in control.

Notes.—Smith holds authority under MC-105006 and sub-numbers thereunder. TA has been filed.

MC-F-14892, filed July 1, 1982. BILL & GENE'S TRUCKING, INC. (Bill & Gene) (P.O. Box 303, Madison, SD 57042)—PURCHASE (PORTION)—ECKLEY TRUCKING, INC., (Eckley) (P.O. Box 156, Mead, NE 68041). Representative: A.J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101-1103. Bill & Gene seek authority to purchase a portion of the interstate operating rights of Eckley. William R. Alfson and Gene L. Casanova, equal stockholders of Bill & Gene, also seek authority to acquire control of said rights through this transaction. The authority to be purchased is Certificate No. MC-5227 (Sub-No. 81)X, which authorizes the transportation of *metal products*, (1) between Chicago, IL, Houston, TX, New Orleans, LA, Charleston, SC, Savannah, GA, Camden and Jersey City, NJ, Cannonsburg, PA, and Wilmington, DE, on the one hand, and, on the other, points in the U.S. in and east of ND, SD, NE, CO, and AZ, and (2) between Los Angeles, CA, on the one hand, and, on

the other, points in AZ, CA, CO, and NM.

Notes.—Bill & Gene is authorized to operate as a motor common carrier under MC–141899. TA has been filed.

[FR Doc. 82–19537 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Volume No. 280]

Motor Carriers; Permanent Authority Decisions, Restriction Removals, Decision-Notice

Decided: July 15, 1982.

The following restriction removal applications, filed after December 28, 1980, are governed by 49 CFR 1137. Part 1137 was published in the Federal Register of December 31, 1980, at 45 FR 86747.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1137.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

Canadian Carrier Applicants

In the event an application to transport property, filed by a Canadian domiciled motor carrier, is unopposed, it will be reopened on the Commission's own motion for receipt of additional evidence and further consideration in light of the record developed in Ex Parte No. MC–157, *Investigation Into Canadian Law and Policy Regarding Applications of American Motor Carriers For Canadian Operating Authority.*

Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Restriction Removal Board, Members Shaffer, Ewing, and Williams.

Agatha L. Mergenovich,

Secretary.

MC 113480 (Sub-1)X, filed July 12, 1982. Applicant: SHELDON AUTOMOTIVE, INC., Route 101, Wilton, NH 03086. Representative: William B. Elmer, P.O. Box 801, Traverse City, MI 49684. Lead certificate: Broaden (1) commodity description from wrecked or disabled motor vehicles to "transportation equipment" and (2) Manchester and Nashau to Hillsborough, Merrimack, and Rockingham Counties, NH; and points in New Jersey within 35 miles of New York, NY, to Monmouth, Mercer, Middlesex, Somerset, Morris, Passaic, Bergen, Essex, Hudson, and Union Counties, N.J.

MC 119558 (Sub-8)X, filed July 6, 1982. Applicant: GLEN PHILLIPS and CECIL BLANTON, d.b.a. ALASKA MOBILE HOME MOVERS, 3150 Mountain View Drive, Anchorage, AK 99501. Representative: Robert C. Holmes, Suite 200, 750 W. Second Ave., Anchorage, AK 99501. Sub 6 certificate: (1) broaden to "lumber and wood products, except furniture, but including buildings" from buildings, in sections mounted on wheeled undercarriages with hitch-ball connector, part A; (2) remove the restriction prohibiting the transportation of traffic (a) between points southeast of Yakutat Bay, parts B and C; and (b) originating at or destined to points in Canada, part B.

MC 128497 (Sub-22)X, filed July 2, 1982. Applicant: JACK LINK TRUCK LINE, INC., P.O. Box 127, Dyersville, IA 52040. Representative: Jack H. Blanshan, 205 W. Touhy Ave., Suite 200–A, Park Ridge, IL 60068. MC–72818 (acquired in No. MC–FC–79684); (1) broaden from general commodities, except those of unusual value, Classes A and B explosives, commodites requiring special equipment, and those injurious or contaminating to other lading to "general commodities (except Classes A and B explosives)"; from coal to "coal and coal products"; and from inedible cheese trimmings to "food and related products"; (2) authorize service on all intermediate points on regular route authority; (3) expand points within 12 miles of Mediapolis, IA, to Des Moines, Louisa, and Henry Counties, IA, regular routes (as off-route points), and irregular routes; and (4) change one way to radial authority, irregular routes.

MC 135203 (Sub-1)X, filed July 6, 1982. Applicant: TEPICO, INC., 150 Lincoln Boulevard, Middlesex, NJ 08846. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904. Lead permit: Broaden (1) paint, clay, talc, resin and calcium carbonate, in containers, to "chemicals and related products and clay"; and (2) territorial description to between points in the US under continuing contract(s) with a named shipper.

MC 144532 (Sub-4)X, filed July 12, 1982. Applicant: ANDERSON POTATO CO., INC., 2179 Route 112, Box 190, Medford, NY 11763. Representative: John L. Alfano, Esq., 550 Mamaroneck Avenue, Harrison, NY 10528. Sub 2 permit. Broaden: bakery products and bakery product ingredients to "food and related products"; and to between points in US (except AK and HI) under continuing contract(s) with named shipper.

MC 146787 (Sub-7)X, filed June 25, 1982. Applicant: DEAN ALBAUGH and MICKEY ALBAUGH, d.b.a. ALBAUGH FARMS, R.R. #2, Ankeny, IA 50021. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. Subs 2, 4 and 6, broaden: (1) to "automotive parts and accessories" from wheels, hubs, tires, brakes, spindles and parts thereof, Subs 2 (part 1), and 6 (part 1), (2) remove (a) "originating at/destined to" restriction, Subs 2 and 6, (b) facilities limitation, Sub 4, (3) Des Moines, IA to Polk, Dallas and Warren Counties, all subs; Slinger, WI to Washington County; and Dresden, TN to Weakley County, Subs 2 and 6.

[FR Doc. 82–19538 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

Motor Carrier; 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. OP1–118

Decided: July 9, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 19260 (Sub-5), filed June 29, 1982. Applicant: SHALLCROSS EXPRESS, INC., 527 Springfield Rd., Kenilworth, NJ 07033. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048, (212) 466–0220. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between New York, NY, and points in NJ, on the one hand, and, on the other, points in CT, DE, PA, NY and NJ.

MC 35831 (Sub-33), filed June 28, 1982. Applicant: E. A. HOLDER, INC., P.O. Box 69, Kennedale, TX 76060. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103, (817) 332–4718. Transporting *concrete products*, between points in AL, AR, CO, KS, LA, MO, MS, NM, OK, TN, and TX.

MC 35831 (Sub-34), filed June 28, 1982. Applicant: E. A. HOLDER, INC., P.O. Box 69, Kennedale, TX 76060. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103, (817) 332–4718. Transporting (1) *building materials*, and (2) *lumber and wood products*, between points in AL, AR, CO, KS, LA, MO, MS, NM, OK, TN, and TX.

MC 109210 (Sub-142), filed July 1, 1982. Applicant: REYNOLDS CONTRACT HAULERS, INC., 400 Parsons St., West Columbia, SC 29171. Representative: James S. Meggs, P.O. Box 1035, West Columbia, SC 29171, (803) 796–7264. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Standard Products Co., of Dearborn, MI.

MC 115491 (Sub-146), filed July 2, 1982. Applicant: COMMERCIAL CARRIER CORPORATION, P.O. Drawer 67, Auburndale, FL 33823. Representative: Tony G. Russell (same address as applicant), (813) 967–1101. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in AL, FL, GA, LA, MS, NC, SC, TN, VA, and WV.

MC 141870 (Sub-8), filed June 28, 1982. Applicant: DIVERSIFIED TRUCKING CORP., 309 Williamson Ave., Opelika, AL 36801. Representative: Robert E. Tate, P.O. Box 517, Evergreen, AL 36401, (205) 578–3212. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 148071 (Sub-3), filed June 28, 1982. Applicant: COFER TRANSPORT, INC., P.O. Box 42, Willard, OH 44890. Representative: E. H. van Deusen, 220 W. Bridge St., P.O. Box 97, Dublin, OH 43017, (614) 889–2531. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148791 (Sub-26), filed June 30, 1982. Applicant: TRANSPORT-WEST, INC., 2125 North Redwood Road, Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting *aluminum and aluminum products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Kaiser Aluminum & Chemical Corporation, of Oakland, CA.

MC 148791 (Sub-27), filed June 30, 1982. Applicant: TRANSPORT-WEST, INC., 2125 N. Redwood Rd., Salt Lake City, UT 84116. Representative: Rick J. Hall, P.O. Box 2465, Salt Lake City, UT 84110, (801) 531–1777. Transporting (1) *paper and paper products;* (2) *plastic articles;* (3) *lighting fixtures;* and (4) *furniture*, between points in the U.S. (except AK and HI), under continuing contract(s) with Scott Paper Company, of Philadelphia, PA.

MC 151641 (Sub-6), filed June 28, 1982. Applicant: WILLIAM E. JOHNSON, d.b.a. WILLIAM E. JOHNSON TRUCKING CO., 11211 Sherman Ave., Dallas, TX 75220. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245, (214) 358–3341. Transporting *food and related products*, between points in Sedwick County, KS, on the one hand, and, on the other, points in NV, CA, ID, OR, WA, CO, UT, OK, NM, AZ, AR and TX.

MC 152490 (Sub-2), filed June 28, 1982. Applicant: SABINE TRUCKING, INC., 322 Freeman St., Mineola, TX 75773. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112, (817) 457–0804. Transporting *such commodities* as are dealt in or used by grocery stores and food business houses, between points in the U.S. (except AK and HI).

MC 152730 (Sub-20), filed June 28, 1982. Applicant: DEPENDABLE TRANSIT, INC., P.O. Box 349, County Rd. 300 South, Hartford City, IN 47348–0349. Representative: Larry Garrett (same address as applicant), (317) 348–0051. Transporting (1) *pulp, paper, and related products;* and (2) *lumber and wood products*, between points in IL, OH, IN, MO, MI and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 154981 (Sub-1), filed July 1, 1982. Applicant: SNAPS ENTERPRISES, LTD., 105 Amfesco Drive, Plainview, NY 11803. Representative: Morton D. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, NY, NJ, PA, DE, MD and DC.

MC 159220 (Sub-3), filed July 2, 1982. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1170 Niagara Street, Buffalo, NY 14240. Representative: Charles H. White, Jr., 1019 19th Street, NW., Suite 800, Washington, DC 20036, (202) 785–3420. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Culinary Arts Specialties, of Buffalo, NY.

MC 159220 (Sub-4), filed July 2, 1982. Applicant: REFRIGERATED INTERNATIONAL CARGO HAULERS, INC., 1170 Niagara St., Buffalo, NY 14240. Representative: Charles H. White, Jr., 1019 19th St. NW., Suite 800, Washington, DC 20036, (202) 785–3420. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Charles McAlpin Brokerage, Inc., of Decatur, AL.

MC 160271, filed July 1, 1982. Applicant: NESS & CO., 6645 N. Ensign, Portland, OR 97217. Representative: Steve Ness (same address as applicant), (503) 283–1234.Transporting *food and related products,* between points in OR, WA and ID.

MC 162411, filed June 25, 1982. Applicant: TETON TRANSPORTATION, INC., P.O. Box 1929, Cheyenne, WY 82001. Representative: John T. Wirth, 2600 Petro-Lewis Tower, 717–17th St., Denver, CO 80202–3357, (303) 892–6700. Transporting *lumber and wood products,* between points in the U.S., under continuing contract(s) with Teton West Lumber, Inc., of Cheyenne, WY, and its affiliates and subsidiaries, namely: Western States Forest Products, Inc.; Woodworks, Inc.; and Teton Sales, Inc., all of Cheyenne, WY.

MC 162580, filed June 21, 1982. Applicant: RAPID UNITED STEEL HAULERS, INC., 3170 Highland Ave., Warren, OH 44485. Representative: Richard L. Goodman, 852 Ann St., P.O. Box 312, Niles, OH 44446, (216) 530–4342. Transporting (1) *metal products,* between points in Trumbull County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI); and (2) *refractory products,* between points in Trumbull County, OH, on the one hand, and, on the other, points in IN, MI, PA, WV and IL.

MC 162601, filed June 21, 1982. Applicant: AGRICULTURAL DEALERS SUPPLY, INC., 2323 Commerce Street, Tacoma, WA 98402. Representative: Rowland B. Gibson (same address as applicant), (206) 383–5741. Transporting (1) *pulp containers,* between Corvallis, OR, on the one hand, and, on the other, points in OR and WA; (2) *plastic containers,* between points in OR and WA; and (3) *salt,* between points in Salt Lake County, UT and Alameda County, CA, on the one hand, and, on the other, points in OR and WA.

MC 162671, filed June 25, 1982. Applicant: JOHN MONTGOMERY, 1006 Virginia, El Dorado, AR 71730. Representative: Thomas B. Staley, 1550 Tower Bldg., Little Rock, AR 72201, (501)–375–9151. Transporting *metal products,* between points in the U.S., under continuing contract(s) with Amercable, Inc., of El Dorado, AR.

MC 162691, filed June 28, 1982. Applicant: MID STATE TRUCK & RIGGING, INC., 2650 North 32nd Avenue, Phoenix, AZ 85009. Representative: Andrew V. Baylor, 337 E. Elm Street, Phoenix, AZ 85012, (602) 274–5146. Transporting *fabricated metal products and machinery,* (1) between points in AZ; and (2) between points in AZ, on the one hand, and, on the other points in CA, CO, ID, MT, NV, NM, OR, TX, WA and WY. Condition: Issuance of a certificate in this proceeding is subject to the coincidental cancellation, at applicant's written request of its Certificate of Registration in MC–143883, and Certificate of Public Convenience and Necessity in MC–143883 Sub 1.

MC 162700, filed June 28, 1982. Applicant: MYRON A. CAMPBELL; d.b.a. M.A.C. ENTERPRISES, 1036 W. Santa Barbara Ave., Los Angeles, CA 80037. Representative: Donald R. Hedrick, P.O. Box 4334 Santa Ana, CA 92702, (714)–667–8107. Transportation (1) *transportation equipment;* and (2) *machinery* between points in Los Angeles County, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162710, filed June 28, 1982. Applicant: HARRY SCHUBBE; d.b.a. H & H TRUCKING CO., P.O. Box 1103, Bloomington, IL 61701. Representative: Edward D. McNamara, Jr., 907 South Fourth St., Springfield, IL 62703, (217)–528–8476. Transporting *food and related products,* between points in Fresno and Merced Counties, CA, Morgan County, IL, Sherman County, TX, Gibson County, TN, and Monroe, Waupaca and Dodge Counties, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162720, filed June 28, 1982. Applicant: ENDO FREIGHT FORWARDERS, INC., 428 West Redondo Beach Blvd., Gardena, CA 90248. Representative: Uoshihisa Takeda (same address as applicant), (213) 532–7636. Transporting *Household goods* as defined by the Commission, between points in CA.

MC 162741, filed June 30, 1982. Applicant: A. L. SASNETT d.b.a. SASNETT, TRANSPORTATION SERVICE, 1301 Aultman St., Ely, NV 89301. Representative: Robert G. Harrison, 4299 James Drive, Carson City, NV 89701, (702)–882–5649. Transporting (1) over regular routes, *passengers and their baggage, and express, mail and newspapers:* (a) between Ely, NV and Salt Lake City, UT; from Ely over U.S. Hwy 93 to Wendover, UT, then over Interstate Hwy 80 to Salt Lake City, UT, and return over the same route; and (b) between Ely, NV and Twin Falls, ID over U.S. Hwy 93 serving all intermediate points in (a) and (b) above; and (2) over irregular routes, *passengers and their baggage* in the same vehicle with passengers, in special and charter operations, beginning and ending at points in White Pine, Clark, Lincoln and Elko Counties, NV, and extending to points in the U.S. (excluding AK and HI).

MC 162781, filed July 1, 1982. Applicant: STATEWIDE DELIVERY, a Corporation, 1409 Sportsman Drive, Compton, CA 90220. Representative: Fred R. Covington, 3483 Golden Gate Way, Suite 217, Lafayette, CA 94549, (415) 283–7878. Transporting *general commodites* (except classes A and B explosives, commodities in bulk, and household goods), between points in CA.

MC 162791, filed July 2, 1982. Applicant: BEHLEN'S CONOCO, INC., d.b.a. BEHLEN'S TOWING, 3601 Howard Blvd., Columbus, NE 68601. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, (402)–475–6761. Transporting *wrecked, disabled, repossessed and stolen motor vehicles,* between points in CO, IL, IA, KS, MN, MO, NE, ND, OK, SD, TX, UT and WY.

Volume No. OP2–149

Decided: July 13, 1982.

By the Commission, review Board No. 1, Members Parker, Chandler, and Fortier.

MC 144913 (Sub-8), filed June 24, 1982. Applicant: COMPTON TRUCKING, INC., 5300 Kennedy Rd., Forest Park, GA 30050. Representative: David L. Capps, P.O. Box 924, Douglasville, GA 30133–0924, (404) 949–7756. Transporting *general commodites* (except classes A and B explosives, household goods, and commodities in bulk), between Atlanta, GA, on the one hand, and, on the other, points in AL, FL, GA, MS, NC, SC, and TN.

MC 162653, filed June 21, 1982. Applicant: WILLIAM T. BROWN, EDWARD J. LYNAM, AND FORREST N. SIBURT, JR., d.b.a. AUTO FLORIDA, 833 Briarwood Lane, Camp Hill, PA 17011.

Representative: William T. Brown (same as applicant), (717) 763–0492. As a *broker* at points in Cumberland County, PA, in arranging for the transportation, by motor vehicle, of *passengers and their baggage* and (2) *motor vehicles*, between points in PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP2–151

Decided: July 9, 1982.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 52793 (Sub-94), filed June 28, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *used household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Chrysler Corporation, of Highland Park, MI.

MC 52793 (Sub-95), filed June 28, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *used household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Ingersoll-Rand Company, of Piscataway, NJ.

MC 52793 (Sub-98), filed June 28, 1982. Applicant: BIKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), (312) 547–2184. Transporting *used household good*, between points in the U.S. (except AK and HI), under continuing contract(s) with First City National Bank, of Houston, TX.

MC 52793 (Sub-100), filed July 1, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A Gallagher (same address as applicant), 312–547–2184. Transporting *used household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with The Home Insurance Company, of New York, NY.

MC 52793 (Sub-103), filed July 1, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184). Transporting *used household goods*, between points in the U.S. (except AK and HI), under continuing contract(s) with Bath Iron Works, Inc., of Bath, ME.

MC 52793 (Sub-105), filed July 1, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *computer systems, peripheral equipment and parts*, between points in the U.S. (except AK and HI), under continuing contract(s) with Modular Computer Systems, Inc., of Ft. Lauderdale, FL.

MC 121463 (Sub-2), filed June 28, 1982. Applicant: LEGGETT EXPRESS, INC., 95 Leggett St., East Hartford, CT 06108. Representative: John E. Fay, 663 Maple Ave., Hartford, CT 06114, (203) 525–2661. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CT, on the one hand, and, on the other, points in MA, ME, NH, NJ, NY, RI, and VT.

MC 140302 (Sub-7), filed June 28, 1982. Applicant: AMERICAN TANK TRANSPORT, INC., 6350 Ordnance Point Rd., Baltimore, MD 21225. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, 201–572–5551. Transporting *commodities in bulk*, between points in the U.S., under continuing contract(s) with Dutch Boy (Consumer Division) Sherwin-Williams Company, of Baltimore, MD.

MC 142672 (Sub-190), filed June 28, 1982. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Representative: Harry Keifer (same address as applicant), 501–997–1683. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 144102 (Sub-1), filed June 29, 1982. Applicant: DEAKIN FINE ART TRANSPORT LIMITED, 291 Lakeshore Blvd. East, Toronto, Ontario, Canada M5A 1B9. Representative: Robert D. Gunderman, Can-Am Bldg., 101 Niagara St., Buffalo, NY 14202, 716–854–5870. Transporting *fine are objects and original works of art*, between points in CT, NJ, and NY.

MC 144112 (Sub-3), filed June 25, 1982. Applicant: PHILP, INC., 10550 Canyon Rd., Omaha, NE 68112. Representative: Edward A. O'Donnell, 1004 29th St., Sioux City, IA 51104, (712) 255–3127. Transporting *food and related products*, between points in Dakota and Cummings Counties, NE; Crawford, Webster and Woodbury Counties, IA; Rock County, MN, Lyon and Finney Counties, KS; Potter County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 146602 (Sub-9), filed June 28, 1982. Applicant: ODEAN DUANE BAKKEN, d.b.a. BAKKEN TRUCK LINE, 1301 Third Ave. South, Northwood, IA 50459. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440, 612–542–1121. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 147712 (Sub-43), filed June 29, 1982. Applicant: MID-WEST TRANSPORT, INC., 511 South Mapleton St., Columbus, IN 47201. Representative: Stephen J. Coulter (same address as applicant), (812) 376–9768. Transporting *general commodities* (except commodities in bulk, classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Crown Zellerbach Corporation, of South Glen Falls, NY.

MC 148543 (Sub-2), filed June 25, 1982. Applicant: K. T. TRANSPORT, INC., 2320 Coyle Dr., New Albany, IN. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, 317–846–6655. Transporting (1) *malt beverages*, between Houston County, GA, Milwaukee County, WI, Wayne County, MI, Hennepin County, MN, Peoria County, IL, Campbell County, KY, Butler County, OH and Ramsey County, MN, on the one hand, and, on the other, points in IN on and south of U.S. Hwy 40, and (2) *plastic products*, between Cincinnati, OH, on the one hand, and, on the other, Louisville, KY and Wolsworth, WI.

MC 148833 (Sub-10), filed June 25, 1982. Applicant: REBEL EXPRESS, INC., Box (98, Dawson, IA 50066. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309, (515) 245–4300. Transporting (1) *chemicals* (except in bulk), between points in TX, MS, IN, MO and CA, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *automobile parts and accessories* between points in KS, MO, NY, MN, CO, OR, IL, OH and IA, on the one hand, and, on the other, Omaha, NE.

MC 148872 (Sub-5), filed June 29, 1982. Applicant: H.O.H. COMPANY, INC., P.O. Box 637, Rossville, GA 30741. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Ave. NW., Washington, DC 20036, 202–785–0048. 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 Georgia Shippers Association, Inc., of Dalton, GA.

MC 152572 (Sub-4), filed June 25, 1982. Applicant: BILL J. BILLINGS, d.b.a. BILLINGS TRUCKING COMPANY, P.O.

Box 393, Nocona, TX 76255. Representative: James R. Boyd, 1000 Perry Brooks Bldg., Austin, TX 78701, (512) 476–8066. Transporting *metal products* between points in CO, LA, NM, OK, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 153273 (Sub-7), filed July 1, 1982. Applicant: SCHREIBER TRANSIT, INC., 425 Pine St., Green Bay, WI 54305. Representative: John H. Sage (same address as applicant), 414–437–7601.Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Proficient Foods Co., of Irvine, CA.

MC 155223 (Sub-6), filed June 28, 1982. Applicant: HIGHWAY EXPRESS, INC., 5742 W. Maryland, Glendale, AZ 85301. Representative: Robert Fuller, 13215 E. Penn St., Ste. 310, Whittier, CA 90602, 213–945–3002. Transporting *electrical metal cable and metal wire, fittings or attachments therefor,* between points in the U.S. (except AK and HI), under continuing contract(s) with CCS Cable, of Phoenix, AZ.

MC 161012 (Sub-1), filed June 25, 1982. Applicant: E.D.D.E. TRUCKING CORP., 2676 Ray Place, N. Bellmore, NY 11710. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415, 212–263–2078. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI) under continuing contract(s) with (a) Advertising Displays Company, of Englewood Cliffs, NJ, (b) Colton Creators, Inc., of Mineola, NY, (c) Royal Guard Fence Co., Inc., of Westbury, NY, (d) Western Union International, Inc., of New York, NY, and (e) Woodbourne Cultural Nurseries, Inc., of Melville, NY.

MC 161412 (Sub-1), filed June 28, 1982. Applicant: CPI, INC., 5411 South 31st St., Fort Smith, AR 72903. Representative: William S. Jones (same address as applicant), 501–646–6579. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in Leflore County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 161462 (Sub-3), filed June 25, 1982. Applicant: MIDLAND EXPRESS, INC., 29 South LaSalle St., Suite 350, Chicago, IL 60603. Representative: Anthony E. Young (same address as applicant), 312–782–8880. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IA, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162663, filed June 25, 1982. Applicant: J & M TRUCKING, INC., Route 3, Long Prairie, MN 56347 Representative: W. E. Seliski, 2 Commerce St. P.O. Box 8255, Missoula, MT 59807, (406)–543–8369. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 162673, filed June 25, 1982. Applicant: A.D.S. BROKERS, INC., RR No. 1, 24 Tollview Court, Gilberts, IL 60136. Representative: Alexander J. Spolar (same address as applicant), (312) 426–7133. As a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 162682, filed June 25, 1982. Applicant: BARCLAY-MOORE, INC., 512 Delaware, Suite 305, Kansas City, MO 64105. Representative: Arthur J. Cerra, 2100 Charter Bank Center, P.O. Box 19251, Kansas City, MO 64141, (816)–842–8600. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between Kansas City, MO, on the one hand, and, on the other, points in IA, IL, KS, MO, and NE.

MC 162683, filed June 25, 1982. Applicant: DON GEORGE TRUCKING, 730 Quay St., Wilmington, CA 90748. Representative: Donald E. George (same address as applicant), 213–518–0969. Transporting *lumber, building materials and related products, and metal and metal products,* between points in AZ, CA, ID, NV, OR, UT and WA.

MC 162692, filed June 25, 1982. Applicant: SUPERPORT TRANSPORT, INC., 406 Carol St., Lockport, LA 70374. Representative: Janet Boles Chambers, 8211 Goodwood Blvd., Suite C–1, Baton Rouge, LA 70806, 504–924–2686. Transporting (1) *contractor's machinery and equipment,* and (2) *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, equipment, materials and supplies used in or in connection with the construction, operations, repair, servicing, maintenance, and dismantling of pipelines, including the stringing and picking up thereof,* between points in LA and TX, on the one hand, and, on the other, points in AL, AR, CA, FL, GA, KS, MD, MS, NC, OK, SC, VA, WY, and DC.

MC 162703, filed June 28, 1982. Applicant: CARGO MOTOR FREIGHT LINE, INC., P.O. Box 24625, Houston, TX 77015. Representative: C. W. Ferebee, 3910 FM 1960 W., Suite 106, Houston, TX 77068, 713–537–8156. Transporting *general commodities* (except Classes A and B explosives, and commodities in bulk), between points in TX, on the one hand, and, on the other, points in LA, OK, AR and TX.

Volume No. OP2–153

Decided: July 13, 1982.

By the commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 52793 (Sub-101), filed July 1, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Micro-Poise Division of Ransburg Corporation, of Indianapolis, IN.

MC 52793 (Sub-104), filed July 1, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Loral Electronic Systems, of New York, NY.

MC 52793 (Sub-106), filed July 1, 1982. Applicant: BEKINS VAN LINES CO., 333 South Center St., Hillside, IL 60162. Representative: David A. Gallagher (same address as applicant), 312–547–2184. Transporting *household goods,* between points in the U.S. (except AK and HI), under continuing contract(s) with Anacomp, Inc., of Indianapolis, IN.

MC 129712 (Sub-76), filed July 1, 1982. Applicant: GEORGE BENNETT MOTOR EXPRESS, INC., P.O. Box 569, McDonough, GA 30253. Representative: Guy H. Postell, Suite 675, 3384 Peachtree Rd., NE., Atlanta, GA 30326, 404–237–6472. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with International Harvester Company, of Chicago, IL.

MC 143702 (Sub-24), filed July 1, 1982. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th St., Kansas City, KS 66105. Representative: Donald J. Quinn, Commerce Bank Bldg., 8901 State Line-Suite 232, Kansas City, MO 64114,

816–444–7474. Transporting *food and related products,* between points in the U.S., under continuing contract(s) with Royal American Food Company, of Blue Springs, MO.

MC 151173 (Sub-16), filed July 1, 1982. Applicant: HAR-BET, INC., 7209 Tara Blvd., Jonesboro, GA 30236. Representative: O. L. Godfrey, Jr., (same address as applicant), 404–478–4115. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 154963 (Sub-3), filed July 1, 1982. Applicant: BLACK FOX TRANSIT LINES, INC., 2615 Guthrie St., NW., Cleveland, TN 37311. Representative: Robert L. Baker, Sixth Floor, U.S. Bank Bldg., Nashville, TN 37219, 615–244–8100. Transporting *passengers and their baggage,* in the same vehicle, with passengers, in special or charter operations, between points in AL, FL, GA, LA, MS, NC, SC, and TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 162693 filed June 28, 1982. Applicant: WONDERLAND TOURS, P.O. Box 6268, Greensboro, NC 27405. Representative: Alice Grubbs Hornady, 2046 Stewart Hutchens Rd., Whitsett, NC 27377, 919–697–0323. As a *broker,* at Greensboro, NC, in arranging for the transportation, by motor vehicle, of *passengers and their baggage,* beginning and ending at points in NC and extending to points in the U.S.

MC 162732, filed June 30, 1982. Applicant: X-CEL TRANSPORT, INC., 1617 Godfrey Ave., SW., Wyoming, MI 49509. Representative: Jack Q. Magnuson (same address as applicant), 616–245–2177. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in KY, MI, and OH, on the one hand, and, on the other, points in the U.S. (except AK and HI),

MC 162753, filed July 1, 1982. Applicant: TED I. WIGGINS, d.b.a. TED'S GARAGE, 8984 Normandy Blvd., Jacksonville, FL 32205. Representative: Sol H. Proctor, 1101 Blackstone Bldg., Jacksonville, FL 32202, 904–632–2300. Transporting *motor vehicles and trailers,* in wrecker service, and *replacement motor vehicles and trailers,* between points in Duval County, FL, on the one hand, and, on the other, points in AL, GA, SC, and NC.

Volume No. OP4–253

Decided: July 13, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 99896 (Sub-11), filed July 6, 1982. Applicant: ATKINSON TRANSFER, INC., 1475 W. River Rd., Dayton, OH 45418. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215, (614) 228–1541. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IN, KY, MI, NY, OH, PA, and WV, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 148126 (Sub-5), filed July 6, 1982. Applicant: E. W. L. TRUCKING, INC., 2055 Johns Dr., (P.O. Box 86), Glenview, IL 60025. Representative: Donald S. Mullins, 1033 Graceland Ave., Des Plaines, IL, (312) 298–1094. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL, IA, MO, OH, and WI, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO, OH, and WI.

MC 148966 (Sub-11), filed July 6, 1982. Applicant: DROTZMANN, INC., P.O. Box 667, Yankton, SD 57078. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *food and related products,* between points in IA, MN, NC,NY, PA, and WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 149406 (Sub-16), filed July 2, 1982. Applicant: E. W. WYLIE CORPORATION, P.O. Box 1188, Fargo, ND 58107. Representative: Robert D. Gisvold, 1600 TCF Tower, 121 S 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting *lumber and wood products, metal products, and building materials,* (1) between points in AL, AZ, AR, CA, KS, KY, LA, MI, MS, MO, NV, NM, OH, OK, PA, TN, TX, UT and WV, and (2) betwen points in AL, AZ, AR, CA, KS, KY, LA, MI, MS, MO, NV, NM, OH, OK, PA, TN, TX, UT and WV, on the one hand, and, on the other, points in CO, ID, IL, IN, IA, MN, MT, NE, ND, OR, SD, WA, WI and WY.

MC 150836 (Sub-2), filed July 6, 1982. Applicant: JOHN A. FOWLER d.b.a. JOHN FOWLER TRUCKING, Route 4, #12 Robin Dale Lane, Burleson, TX 76128. Representative: A. William Brackett, 623 S. Henderson, 2nd Floor, Ft. Worth, TX 76104; (817) 332–4415. Transporting *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with the Kroger Co., of Cincinnati, OH.

MC 156506, filed July 6, 1982. Applicant: LYNCHBURG STORAGE COMPANY, INC., 1323 Jefferson St., Lynchburg, VA 24505. Representative: Joseph S. Krajewski (same address as applicant), (804) 845–6812. Transporting *communication equipment,* between points in VA.

Volume No. OP4–254

Decided: July 7, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher and Williams.

MC 53237 (Sub-3), filed June 28, 1982. Applicant: ST. LOUIS TRANSPORTATION CO., 3548 Valleywood, St. Louis, MO 63114. Representative: C.C. Miller (same address as applicant), (314) 428–8391. Transporting (1) *chemicals and related products, petroleum and petroleum products, ores and minerals, and paper and paper products,* between points in MO and IL, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *electronic equipment,* between points in the U.S. (except AK and HI).

MC 116717 (Sub-1), filed June 9, 1982, and previously noticed in the **Federal Register** issue of June 28, 1982. Applicant: RALPH C. HUTTICK, 4931 N. Fairhill St., Philadelphia, PA 19120. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113; (215) 365–5141. Transporting *general commodities* (excet classes A and B explosives, household goods and commodities in bulk), between Philadelphia, PA, points in Bucks and Montgomery Counties, PA, and points in New Castle County, DE, on the one hand, and, on the other, points in DE, MD, NJ, NY, PA, VA and DC.

Note.—The purpose of this republication is to accurately reflect the scope of authority sought.

MC 145777 (Sub-1), filed July 1, 1982. Applicant: CARROLL MOVING & TRANSFER COMPANY, P.O. Box 314, 618 Canton Rd. NW., Carrollton, OH 44615. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215; (614) 228–1541. Transporting *coal and mining machinery and equipment,* between points in IN, KY, MI, OH, PA and WV.

MC 161447, filed July 1, 1982. Applicant: CARA LINES, 500 Devon Ct., Rio Rancho, NM 87124. Representative: Veronica F. DiZinno (same address as applicant), (505) 892–8723. Transporting *lumber and building materials,* between points in the U.S. (except AK and HI), under continuing contract(s) with Sagebrush Sales Co., of Albuquerque, NM.

MC 162157, filed June 28, 1982. Applicant: DELTA TRANSPORTATION, LTD., P.O. Box 8043, Madison, WI 53708. Representative: Stanley C. Olsen, Jr.,

5200 Willson Rd., Suite 307, Edina, MN 55424, (612) 927–8855. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Alpha Distributors, Ltd., of Madison, WI.

MC 162197, filed July 1, 1982. Applicant: G.E.M. TRANSPORTATION, INC., P.O. Box 426, Magna, UT 84044. Representative: Macoy A. McMurray, 35 S State St., Salt Lake City, UT 84111, (801) 532–5125. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Monoroc, Inc., of Salt Lake City, UT. 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 appropriate application for common control to Team 4, Room 2410.

MC 162747, filed July 1, 1982. Applicant: E.S.I. OF INDIANA, INC., P.O. Box 577, Crown Point, IN 46307. Representative: Norman R. Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204–3491; (317) 638–1301. Transporting *transportation equipment,* in drive-away service, between points in the U.S. (except AK and HI).

MC 162767, filed July 1, 1982. Applicant: CENTRAL ILLINOIS EXPRESS, INC., 2509 Westpark Way Circle, Euless, TX 76039. Representative: Paul E. Peldyak, 120 W. Madison St., Chicago, IL 60602, (312) 263–0143. 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 Caradco Corp., Rantoul, IL.

Volume No. OP4–255

Decided: July 8, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams.

MC 106887 (Sub-11), filed July 6, 1982. Applicant: A. D. RAY TRUCKING, INC., d.b.a. NORTHWESTERN COLORADO PIPE AND STORAGE CO., P.O. Box 883, Craig, CO 81625. Representative: M. A. Andrade, 770 Grant St., Suite 228, Denver, CO 80203; (303) 861–4273. Transporting (1) *Mercer commodities* (a) between points in NM and TX, on the one hand, and, on the other, points in CO, NM, UT and WY, and (b) between points in CO, on the one hand, and, on the other, those points in the U.S. in and west of ND, SD, NE, KS, OK and TX; (2) *machinery, equipment and supplies* used in or in connection with the discovery, development, production and manufacture of coal, electrical energy, geothermal energy and nuclear energy, between points in CO, KS and UT, on the one hand, and, on the other, points in AZ, CO, ID, KS, MT, NM, ND, SD, UT, and WY; (3) *machinery, equipment and supplies* used in or in connection with mining, between points in CO, and KS, on the one hand, and, on the other, points in AZ, CO, ID, KS, MT, NM, NC, SD, UT, and WY; (4) *equipment, materials and supplies* used in or in connection with the manufacture and installation of air pollution control systems, between points in CO and WY, on the one hand, and, on the other, points in UT and CA; (5) *coal,* between points in CO, MT, NM and WY.

MC 110567 (Sub-31), filed July 6, 1982. Applicant: SOONER TRANSPORT CORPORATION, 666 Grand Ave., Des Moines, IA 50309. Representative: Kenneth L. Kessler, P.O. Box 855, Des Moines, IA 50304; (515) 245–2725. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Sunstar Foods, Inc., of Streator, IL.

MC 16024 (Sub-1), filed July 6, 1982. Applicant: SOUTH LOS ANGELES TRUCKING AND MOVING SERVICE CO., INC., 2181 E. 25th St., Vernon, CA 90058. Representative: Miles L. Kavaller, 315 S. Beverly Dr., Suite 315, Beverly Hills, CA 90212; (213) 277–2323. Transporting *furniture,* between points in Los Angeles, San Diego, Orange, Riverside, San Bernardino and Ventura Counties, CA, on the one hand, and, on the other, points in AZ, CO, ID, MT, NV, OR, UT, and WA.

MC 162517, filed July 6, 1982. Applicant: DECKER BROS., INC., P.O. Box 635, Worland, WY 82401. Representative: James B. Hovland, 525 Lumber Exchange Bldg., Minneapolis, MN 55402; (612) 340–0808. Transporting *Mercer commodities,* between those points in the U.S. in and west of ND, SD, NE, KS, OK, and TX.

MC 162817, filed July 6, 1982. Applicant: NORTHWEST CONTRACT CARRIERS, INC., 2050 Antelope Rd., White City, OR 97503. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210; (503) 226–3755. 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 Crown Zellerbach Corporation, of San Francisco, CA.

MC 147207 (Sub-3), filed July 1, 1982 Applicant: KLASSEN TRUCKING LTD., P.O. Box 1797, Winkler, Manitoba, Canada ROG 2XO. Representative: Robert N. Maxwell, POB 2471, Fargo, ND 58108; (701) 237–4223. Transporting (1) *chemicals and related products,* between the United States and Canada on the International Boundary line at points in MN, MT, and ND, on the one hand, and, on the other, points in ID, IA, MN, MT, ND, SD, and WI, and (2) *food and related products,* between port of entry on the International Boundary line between the United States and Canada MN and ND, on the one hand, and, on the other, points in IA, MN, NE, ND, SD and WI.

Volume No. OP4–257

Decided: July 14, 1982.

By the Commission, Review Board No. 2, members Carleton, Fisher, and Williams.

MC 150526 (Sub-4), filed July 7, 1982. Applicant: YARMOUTH LUMBER, INC., North St., Box 46, Yarmouth, ME 04096. Representative: William H. Phipps (same address as applicant) (207) 846–4853. Transporting *motor oil and lubricants,* between points in PA and NJ, on the one hand, and, on the other, points in ME, under continuing contract(s) with Maine Lubrication Services, Inc., of Portland, ME.

MC 162826, filed July 6, 1982. Applicant: CIRCLE S STEEL TRANSPORT, INC., 111 Pacific Hwy 99 North, Eugene, OR 97402. Representative: James W. Kirk, 1717 Centennial Blvd., Springfield, OR 97477; (503) 741–2311. Transporting (1) *iron* and *steel articles,* (2) *plastic products,* (3) *lumber products,* and (4) *commodities* for recycling, between points in WA, OR, and CA.

MC 162836, filed July 6, 1982. Applicant: J. KENNETH KATZMAN, JR., INC., 31029 Bushnell Rd., Burlington, WI 53105. Representative: Fred H. Figge, 513 Lewis St., Burlington, WI 53105; (414) 763–6296. Transporting *general commodities* (except classes A and B explosives and household goods), between points in IL, IN, IA, MI, MN, and WI, under continuing contract(s) with Elko Liquid Fertilizer Inc., of Elkhorn, WI.

Volume No. OP4–258

Decided: July 14, 1982.

By the Commission, Review Board No. 2, Members Carleton, Fisher, and Williams. (Member Williams not participating.)

MC 149576 (Sub-17), filed May 24, 1982, previously noticed in the Federal Register issue of June 15, 1982, and republished this issue. Applicant: TRANS AMERICAN TRUCKING SERVICE, INC., P.O. Box 1247, Nixon Station, Edison, NJ 08818. Representative: R. M. McGraw (same address as applicant) (201) 985–2182. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with National Starch & Chemical Corp., of Bridgewater, NJ. Note: The purpose of this republication is to include the contracting shipper.

MC 154646 (Sub-13), filed July 8, 1982. Applicant: A & O ENTERPRISES, INC., d.b.a. GREATWEST TRANSPORTATION SYSTEMS, 2022 Kent Ave., Grand Island, NE 68801. Representative: Jack L. Shultz, P.O. Box 82028, Lincoln, NE 68501; (402) 475–6761. Transporting *lumber and wood products, metal products,* and *building materials,* between points in the U.S. (except AK and HI).

MC 154716 (Sub-5), filed July 8, 1982. Applicant: WALGREEN OSHKOSH, INC., 200 Wilmont Rd., Deerfield, IL 60015. Representative: Edmund P. Choroski (same address as applicant) (312) 948–5000 X–2454. Transporting *general commodities* (except classes A and B explosives, and household goods), between points in the U.S., under continuing contract(s) with United Forwarding, Inc., of Omaha, NE.

MC 161476, filed July 6, 1982. Applicant: LONNIE KNUTSON, 1520 Ashley Lake Rd., Kalispell, MT 59901. Representative: John B. Dudis, P.O. Box 759, Kalispell, MT 59901; (406) 755–6644. Transporting *forest products, and lumber and wood products,* between points in MT, on the one hand, and, on the other, points in ND, SD, NE, MN, WI, IL, IA, OH, KS, OK, WY, and CO.

MC 162856, filed July 7, 1982. Applicant: DAMON'S ESCORTED TOURS, P.O. Box 4562, Wilmington, NC 28406. Representative: Damon G. Helms, 102 LaSalle St., Wilmington, NC 28405; (919) 686–9700. To operate as a *broker,* at Wilmington, NC, in interstate or foreign commerce, in arranging for the transportation of *passengers and their baggage,* between points in NC, on the one hand, and, on the other, points in the U.S.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19539 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Release Rates Application MC 1528]

Motor Carrier; Motor Freight Classification

SUMMARY: The National Motor Freight Traffic Association, Inc., Agent, on behalf of carriers participating in the National Motor Freight Classification seeks to amend Release Rates Order MC–615 to double the release values, clarify the terms of the order by making the release value apply "per watch or watch movement" instead of "per article" and to limit the carriers' maximum liability to the highest release value in the event a shipment is inadvertently accepted without a release value.

ADDRESSES: Anyone seeking copies of this application should contact: Mr. William W. Pugh, 1616 "P" Street, NW., Washington, DC 20036, Telephone 202–797–5310.

FOR FURTHER INFORMATION CONTACT: Max Pieper, Unit Supervisor, Informal Rate Cases Branch, Bureau of Traffic, Interstate Commerce Commission, Washington, DC 20423, Telephone (202) 275–0781.

The relief sought is from 49 U.S.C. 10730.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19530 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte 387 (Sub-177)]

Rail Carriers; Ashley, Drew & Northern Railway Co.; Exemption for Contract Tariff ICC–ADN–C–0001–A

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: Tom Smerdon (202) 275–7277.

SUPPLEMENTARY INFORMATION: The Ashley, Drew & Northern Railway Company (ADN) filed a petition on June 24, 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 ICC–ADN–C–0001–A filed on June 24, 1982, to become effective on one day's notice. The contract provides for the track storage of pulp, paper, and paper products.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. However, relief may be granted under 49 U.S.C. 10505.

The petition shall be granted. Due to excess production, the shipper requires additional storage capacity. Short notice effectiveness of the contract tariff will enable the petitioner to provide the needed storage in cars that are presently idle. Car supply will therefore not be adversely affected. An exemption will obviously be in the public interest.

Petitioner's contract ICC–ADN–C–0001–A 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 Commisssion approved contract for purposes of 49 U.S.C. 10713(e) 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 this instance 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(d) if protests showing good cause are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commisssion, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19532 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte 387 (Sub-171)]

Rail Carriers; Atchinson, Topeka & Santa Fe Railway Co.; Exemption for Contract Tariff ICC-ATSF-C-0083

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.

SUPPLEMENTARY INFORMATION: The Atchinson, Topeka and Santa Fe Railway Company (ATSF) filed a petition on June 25, 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 ICC-ATSF-C-0083 filed on June 23, 1982, to become effective on one day's notice. The contract involves the movement of new covered hopper cars.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. However, relief may be granted under 49 U.S.C. 10505.

The petition shall be granted. The shipper had originally intended to move the covered hopper cars to its place of business in revenue service. However, due to a surplus of such cars in the origin area, the anticipated revenue movement is not feasible. Short notice effectiveness of the contract will enable the shipper to reduce the unexpected cost of moving the cars empty. An exemption will obviously be in the public interest.

Petitioner's contract ICC-ATSF-C-0083 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(e) 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 this instance 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(d) if protests showing good cause are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19535 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-179)]

Rail Carrier; Baltimore & Ohio Railroad Co., Exemption for Contract Tariff ICC-BO-C-0042

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: Tom Smerdon (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Baltimore and Ohio Railroad Company (BO) filed a petition on July 6, 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 ICC-BO-C-0042 filed on July 6, 1982, to become effective on one day's notice. The contract involves the movement of concrete pipe and fittings.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. However, relief may be granted under 49 U.S.C. 10505.

The petition shall be granted. The concrete pipe and fittings to be moved under the contract will be used in a city drinking water line project. Short notice effectiveness of the contract tariff will allow for the early delivery of the pipe and fittings and will thus enable the project contractor to take advantage of the favorable summer weather conditions. An exemption will obviously be in the public interest.

Petitioner's contract ICC-BO-C-0042 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(e) 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(d) if protests showing good cause are filed within 15 days of publication in the Federal Register.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19533 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte 387 (Sub-173)

Rail Carrier; Louisville & Nashville Railroad Co., Exemption for Contract Tariff ICC-L&N-C-0029

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: Petitioners are 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: Tom Smerdon (202) 275-7277.

SUPPLEMENTARY INFORMATION: The Louisville and Nashville Railroad Company (L&N) and the Seaboard Coast Line Railroad Company (SCL) filed a petition on June 24, 1982, seeking an exemption under 49 U.S.C. 10505 from the statutory provisions of 49 U.S.C. 10713(e). They request that we permit contract ICC-L&N-C-0029 filed on June 23, 1982, to become effective on one day's notice. The contract involves the

movement of coal from Kentucky to electric generating plants.

Under 49 U.S.C. 10713(e), contracts must be filed on not less than 30 days' notice. However, relief may be granted under 49 U.S.C. 10505.

The petition shall be granted. The shipper's electric rates depend in part on the transportation charges for coal. By reducing these charges, short notice effectiveness of the contract will enable the shipper to offer its customers the lowest possible electric rates. An exemption is obviously in the public interest.

Petitioners' contract ICC–L&N–C–0029 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(e) 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 this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101(a) 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(d) if protests showing good cause are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commiasion, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–19534 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte 387 (Sub-174)]

Rail Carrier, Seaboard Coast Line Railroad Co. Exemption for Contract Tariff ICC–SCL–C–0032

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 tariffs 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: Douglas Galloway (202) 275–7248.

SUPPLEMENTARY INFORMATION: The Seaboard Coast Line Railroad Company filed a petition on June 28, 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 ICC–SCL–C–0032 to become effective on one day's notice. The contract was filed to become effective on July 18, 1982 and involves the storage of pulpboard.

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. Due to the current recession, sales of pulpboard have fallen requiring shipper to seek additional storage space. The carrier has cars available for storage use and the SCL will obtain shipments of the pulp board at a later date. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

SCL's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although 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 this instance is not necessary to carry out the transportation policy of 49 U.S.C. 10101(a) 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(d) if protests are filed within 15 days of publication in the **Federal Register.**

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, 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. 82–19536 Filed 7–19–82; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte 387 (Sub-176)]

Rail Carriers; Union Pacific Railroad Co. Exemption for Contract Tariff ICC–UP–C–0055

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: Douglas Galloway (202) 275–7278.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad Company (UP) filed a petition on July 1, 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 ICC–UP–C–0055 to become effective on July 15, 1982. The contract was filed to become effective on July 29, 1982 and involves the movement of foodstuffs.

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. However, the Commission has granted relief under our section 10505 exemption authority in exceptional situations.

The petition shall be granted. Shipper may encounter storage problems and a disruption to its accounting system if the contract's effective date is not advanced. We find this to be the type of exceptional circumstance which warrants a provisional exemption.

UP's contract may become effective on one day's notice. We will apply the following conditions which have been imposed in similar exemption proceedings:

Although 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(e) 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 this instance 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(d) 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 conservation of energy resources.

(49 U.S.C. 10505)

Dated: July 13, 1982.

By the Commission, Division 2, Commissioners Andre, Gilliam, and Taylor. Commissioner Taylor is assigned to this Divison 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. 82-19531 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 137]

Contracts for Protective Services

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to notice of proposed exemption.

SUMMARY: In the Federal Register notice of June 18, 1982 (47 FR 26463), the date comments were due in this proceeding on the proposed exemption of contracts for protective services against heat or cold provided to or on behalf of rail carriers and express companies and the related proposed removal of regulations was July 19, 1982. At the request of the Chessie System Railroads, the due date has been postponed to August 2, 1982. Parties who have already filed comments are free to file supplemental statements by that date; however, such comments cannot reply to previously filed comments. The proposed exemption and the proposed removal of regulations published at 47 FR 26409, June 18, 1982, will be considered in a single proceeding and parties need not file duplicating comments.

DATE: Comments are due August 2, 1982.

ADDRESS: Send original and 15 copies to: Ex Parte No. 137, Interstate Commerce Commission, Room 5340, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

Dated: July 15, 1982.

By the Commission, Reese H. Taylor, Jr., Chairman.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-19864 Filed 7-19-82; 8:45 am]

BILLING CODE 7035-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-182 (Preliminary)]

Certain Rail Passenger Cars and Parts Thereof Imported From Canada

AGENCY: International Trade Commission.

ACTION: Changes in the scope of the preliminary countervailing duty investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of changes in the scope of its investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of allegedly subsidized imports from Canada of rail passenger cars, assembled or unassembled, finished or unfinished, components, and parts and accessories thereof and/or to be used therewith.

EFFECTIVE DATE: July 16, 1982.

FOR FURTHER INFORMATION CONTACT: Ms. Vera Libeau, Office of Investigations, U.S. International Trade Commission; telephone 202-523-0368.

BACKGROUND: The purpose of these changes in the scope of the Commission's investigation is to conform the scope of this investigation with that initiated by the Department of Commerce on July 14, 1982.[1]

This notice is published pursuant to § 207.12 of the Commission's rules of practice and procedure (19 CFR 207.12).

Issued: July 16, 1982.

Kenneth R. Mason,

Secretary.

[FR Doc. 82-19767 Filed 7-19-82; 10:24 am]

BILLING CODE 7020-02-M

[1] Published elsewhere in this issue.

DEPARTMENT OF LABOR

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 July 5, 1982—July 9, 1982.

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.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separate,

(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 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-12,867; Maid Lingerie, Inc., North Troy, NY

TA-W-12,866; Chester County Sportswear, Henderson, TN

TA-W-12,864; Aurora Undergarments Co., Inc., Brooklyn, NY

TA-W-12,863; Anita Foundations, Inc., New York, NY

TA-W-12,850; Urethane Rubber Corp., Port Huron, MI

TA-W-12,838; Press Formed Products, Inc., Centerline, MI

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-12,853; Solvent Finishers Inc., Westbury, NY

TA-W-12,857; Charles M. Reeder & Co., Inc., Highland Park, MI

TA-W-12,672; Ford Motor Co., Ford Export Div., Wixom, MI

TA–W–12,695; Ford Motor Co., Dealer Development Office, Pittsburgh, PA

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–12,871; Roller Bearing Co. of America, West Trenton, NJ

Aggregate U.S. imports of roller bearings did not increase as required for certification.

TA–W–12,746; The Toro Co., Shakopee Div. Cast Plant, Skokopee, MN

Aggregate U.S. imports of lawnmowers and snow throwers are negligible.

TA–W–12,770; Canton Textile Mills, Inc., Canton, GA

Affirmative Determinations

TA–W–12,361; Laconia Shoe Co., Inc., Laconia, NH

A certification was issued in response to a petition received on February 20, 1981 covering all workers separated on or after December 1, 1980.

TA–W–12,839; Consumer Electronics Div., Indianapolis, IN

A certification was issued in response to a petition received on July 6, 1981 covering all workers separated on or after March 1, 1981 and before December 31, 1981.

TA–W–12,848; Stylemaster, Inc., Norfolk, VA

A certification was issued in response to a petition received on June 24, 1981 covering all workers separated on or after January 1, 1981 and before June 30, 1981.

TA–W–12,018; Westboro Shoe Co., Dexter, MO

A certification was issued in response to a petition received on December 22, 1980 covering all workers separated on or after December 17, 1979 and before December 31, 1980.

TA–W–12,669; Aquarius Shoe Co., Parma, MO

A certification was issued in response to a petition received on April 27, 1981 covering all workers separated on or after January 1, 1981.

I hereby certify that the aforementioned determinations were issued during the period July 5, 1982—July 9, 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: July 13, 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 82–19624 Filed 7–19–82; 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.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. 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.

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 July 30, 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 July 30, 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 12th day of July 1982.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Al Tech. Specialty Steel Corp. (USWA)	Watervliet, NY	7/6/82	6/24/82	TA–W–13,614	Steel—tools, stainless bars, rods, wire.
Crucible Specialty Metals, Inc.,—Colt (USWA)	Syracuse, NY	7/1/82	6/28/82	TA–W–13,615	Steel, specialty products.
Duval Corp., Mineral Park Property (USWA)	Kingman, AZ	7/6/82	7/1/82	TA–W–13,616	Copper, mine.
Marathon Steel Co., Rolling Mills Div. (USWA)	Tempe, AZ	7/6/82	7/1/82	TA–W–13,617	Steel reinforced.
Midland Ross Corp., Capitol Casting Div. (USWA)	Phoenix, AZ	7/6/82	7/1/82	TA–W–13,618	Balls, grinding, copper castings.
Wheeling Pittsburgh Steel Corp. (USWA)	Mingo Junction, OH	6/25/82	6/21/82	TA–W–13,619	Steel, carbon products.
Wheeling Pittsburgh Steel Corp. (USWA)	Follansbee, WV	6/25/82	6/21/82	TA–W–13,620	Steel, carbon products.
Wheeling Pittsburgh Steel Corp. (USWA)	Steubenville, OH	6/25/82	6/21/82	TA–W–13,621	Steel, carbon products.
Wheeling Pittsburgh Steel Corp. (USWA)	Benwood, WV	6/25/82	6/21/82	TA–W–13,622	Steel, carbon products.
Wheeling Pittsburgh Steel Corp. (USWA)	Beech Bottom, WV	6/25/82	6/21/82	TA–W–13,623	Steel, carbon products.
Wheeling Pittsburgh Steel Corp. (USWA)	Yorkville, OH	6/25/82	6/21/82	TA–W–13,624	Steel, carbon products.
Ashland Petroleum Co. (Buffalo Refinery) (Independent Oil Workers Union).	Tonawanda NY	6/25/82	6/21/82	TA–W–13,625	Gasoline, Asphalt.
Babcock & Wilcox Co., Tubular Products Group (USWA).	Alliance, OH	7/1/82	6/28/82	TA–W–13,626	Tubular, welded products.
Buddy Knitwear, Inc. (ILCWU)	Hempstead, NY	6/25/82	6/21/82	TA–W–13,627	Fabrics, knitted.
Chino Mins Co., A Kennecott Mitsubishi Partnership (USWA).	Hurley, NM	6/25/82	6/24/82	TA–W–13,628	Copper—mine concentrate, refine and smelter.
Clinton Corn Processing Company (wkrs)	Montezuma, NY	6/28/82	6/21/82	TA–W–13,629	Syrup, corn furtose high, dextrose.
Jones & Laughlin Steel Corp., Campbell Works (USWA).	Campbell, OH	6/28/82	6/24/82	TA–W–13,630	Pipe, seamless, couplings coke.
Marathon Steel Co., Fabrication Div. (USWA)	Phoenix, AZ	7/6/82	7/1/82	TA–W–13,631	Steel, fabricated.
Marsh Instrument Co. (USWA)	Skokie, IL	6/28/82	6/24/82	TA–W–13,632	Gauges, instruments, needle valves, thermometers, vacuum.
Max Factor & Co. (workers)	Hawthrone, CA	6/29/82	6/22/82	TA–W–13,633	Cosmetics and perfumes.
Norris IN Industries, Inc., Compressed Gas Cylindrers Div., Wisconsin Plant (USWA).	W. Milwaukee, WI	6/30/82	6/24/82	TA–W–13,634	Cylinders, pressure, high.
Verson Allsteel Press (UAW)	Chicago, IL	6/28/82	6/21/82	TA–W–13,635	Presses, metal, forming.
DeSantis Dress Co. (ILGWU)	Vineland, NJ	6/30/82	6/23/82	TA–W–13,636	Dresses—ladies.
Kanner Dress Co., Inc. (ILGWU)	Elizabeth, NJ	7/8/82	6/29/82	TA–W–13,637	Sportswear—Ladies'.

APPENDIX—Continued

Petitioner (Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Talon, Inc. (ILGWU)	Woodland, NC	7/6/82	6/24/82	TA-W-13,638	Zippers—clothing industries.

[FR Doc. 82-19625 Filed 7-19-82; 8:45 am]
BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-121; Exemption Application No. D-3271]

Exemption From the Prohibitions for Certain Transactions Involving the Robert B. Scheidt, M.D., Pension Plan and Trust Located in Van Wert County, Ohio

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption will permit the proposed sale of certain artworks (the Artworks) by the Robert B. Scheidt M.D., Pension Plan and Trust (the Plan) to Robert B. Scheidt (Scheidt), a party in interest with respect to the Plan.

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) 523-7222. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 14, 1982, notice was published in the Federal Register (47 FR 20886) 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 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 section 4975(c)(1)(A) through (E) of the Code, for the above described 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 he has satisfied the notification provisions 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, 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 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 sale of the Art works by the Plan to Scheidt for $74,500 provided that this amount is at least the fair market value of the Artworks 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 of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 14th day of July 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. 82-19591 Filed 7-19-82; 8:45 am]
BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-124; Applications Nos. D-2841 and D-2842]

Exemption From the Prohibitions for Certain Transactions Involving the Jeff Dell Pension and Employee Benefit Plans and Trust Located in New York, New York

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the cash sale of certain improved real property (the Property) by the Jeff Dell Employee Benefit Plan and Trust and the Jeff Dell Pension Plan and Trust (collectively, the Plans) to Jeff Dell Film Services, Inc. (the Employer).

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) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 18, 1982, notice was published in the **Federal Register** (47 FR 21348) 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 exemption application filed in behalf of the Plans. 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 had been furnished to interested persons in accordance 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 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 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 of the Property located at 241 East 51st Street, New York, New York, by the Plans to the Employer, provided: (1) the sales price received by the Plans is not less than the fair market value on the date of sale; and (2) the sales price is no less than the Plans' original cost plus any expenses incurred by the Plans with respect to the Property.

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 15th day of July 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. 82–19592 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–123; Exemption Application No. D–2678]

Exemption From the Prohibitions for Certain Transactions Involving the West Coast Bank Bankers' Participation Acceptances Loan Participation Program Located in Encino, Calif.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption will permit, subject to certain conditions, transactions to be effected by the West Coast Bank (the Bank) in connection with the maintenance, operation, and servicing of the West Coast Bank Bankers' Participation Acceptances Loan Participation Program (the Program) and the investment by certain employee benefit plans (the Plans) in the Program when the Bank is a party in interest with respect to an investing plan.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander 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) 523–8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On June 8, 1982, notice was published in the **Federal Register** (47 FR 24891) 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. 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 of Labor.

Generation 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 following exemption is hereby granted 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. Effective the date of publication of this grant in the **Federal Register** (hereinafter, the Effective Date), 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 sale, exchange, or transfer by the Plans of Loan Participations, as such term is defined in the notice of proposed exemption, in the Program and the holding of such Loan Participations by the Plans provided that:

A. Such sale, exchange, or transfer is expressly approved by a fiduciary independent of the Bank who has authority to manage or control those Plan assets being invested in the Loan Participations;

B. A Plan pays no more for a Loan Participation than would be paid in an arm's-length transaction with an unrelated party;

C. No sales commission or similar compensation is paid to the Bank with regard to such investment by a Plan;

D. At least 50% of all Loan Participations are held by investors other than the Plans; and

E. The following record-keeping requirements are satisfied:

1. The Bank shall maintain for six years from the date any Loan Participation is sold to a Plan pursuant to this exemption, records necessary to enable the persons described in paragraph (2) of this section to determine whether the conditions of this exemption have been met, except that:

a. A prohibited transaction will not be deemed to have occurred, if, due to circumstances beyond the control of the Bank, records are lost or destroyed prior to the end of the six year period.

b. 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 (2) below; and

2. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (1) of this section must be unconditionally available at their customary location for examination, for purposes reasonably related to protecting rights under the Plans, during normal business hours by: any trustee, investment manager, employer of Plan participants, employee organization whose members are covered by a Plan, participant or beneficiary of a Plan, or any duly authorized employee or representative of such person or of the Department or the Internal Revenue Service.

II. Effective upon the Effective Date, the restrictions of section 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) and (E) of the Code shall not apply to the transactions to be effected by the Bank with respect to the maintenance, operation and servicing of the Program, provided that (A) such transactions are effected in accordance with the terms of the Offering Circular, as such term is defined in the notice of proposed exemption, and (B) the Offering Circular is made available to Plan fiduciaries before they invest in Loan Participations in the Program; and (C) the sum of all payments made to, retained by, or inuring to the benefit of the Bank as a result of the administration of the Program represent not more than adequate consideration for its services with respect to the Program.

III. Effective upon the Effective Date, 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) and (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 a party in interest (including a fiduciary) with respect to a Plan or who has a

relationship ot such service provider described in section 3(14) (F), (G), (H), or (I) of the Act, solely because the ownership of a Loan Participation by such Plan.

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 transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of July 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. 82-19583 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-122; Exemption Application No. D-3276]

Exemption From the Prohibitions for a Certain Transaction Involving the Sakas, Inc. Employees Pension Plan Located in Baltimore, Ohio

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption exempts the sale of 15 acres of real property (the Property) by the Sakas, Inc. Employees Pension Plan (the Plan) to George Sakas (Sakas), a party in interest with respect to the Plan.

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 NW., Washington, D.C. 20216. (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 7, 1982, notice was published in the **Federal Register** (47 FR 19827) 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 described 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 was distributed in accordance 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 or 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 cash sale of the Property by the Plan to Sakas for $15,000 provided that the amount received by the Plan is not less than the fair market value of the Property at the time of the 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 of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 14th day of July 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Program, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82-19594 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-129; Exemption Application No. D-3364]

Exemption From the Prohibitions for Certain Transactions Involving the RREEF Fund-II, Inc., Located in San Francisco, Calif.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption exempts the purchase of a shopping center by the RREEF Fund-II, Inc. (the Fund) from an unrelated party, and the assumption by the Fund of an existing lease to Von's Grocery Company (Von's), a party in interest with respect to one of the employee benefit plans participating in the Fund.

EFFECTIVE DATE: This exemption is effective September 12, 1977.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz 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 May 21, 1982, notice was published in the **Federal Register** (47 FR 22246) 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 407(a) of the Employee Retirement Income Security Act of 1974 (the Act) 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 transactions described in an application filed on behalf of the RREEF Corporation, the Fund's investment manager. 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. The applicant has represented that it has complied with the notice to interested persons requirements as set forth in the notice of pendency. 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 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 or 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 Fund and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Fund.

Accordingly the restrictions of section 406(a) 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 (D) of the Code, shall not apply, effective September 12, 1977, to the sale by Tampa Plaza Associates to the Fund of the Loehmann's Plaza Shopping Center (the Shopping Center), located in Los Angeles, California, and the lease of a portion of the Shopping Center to Von's, which began on December 21, 1956, 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 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 transactions which are the subject of this exemption.

Signed at Washington, D.C., this 15th day of July 1982.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Program, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 82–19595 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–128; Exemption Application No. D–3270]

Exemption From the Prohibitions for Certain Transactions Involving the Basic Steel Corporation Employees' Profit Sharing Plan Located in Riverdale, Ill.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits a proposed loan (the Loan) by the Basic Steel Corporation Employees' Profit Sharing Plan (the Plan) to Basic Steel Corporation (the Employer) of 40 percent of the total assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Ms. Jan Broady of the Office of Fiduciary Standards, Pension and Welfare Benefits Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 21, 1982, notice was published in the **Federal Register** (47 FR 22253) 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 by the Employer. The notice set forth a summary of facts and respresentations 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 distributed to interested persons in accordance with the requirements set for in the notice of pendency.

The Department received no requests for a hearing; however, one public comment was received from a Plan participant. The commentator said he supports the proposed transaction.

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 by the Plan to the Employer of 40 percent of the total assets of the Plan, provided the terms of the Loan are at least as equal to those which the Plan 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 15th day of July 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. 82–19596 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 82–127; Exemption Application No. D–3262]

Exemption From the Prohibitions for Certain Transactions Involving the Building Trades United Pension Trust Fund, Milwaukee and Vicinity Located in Milwaukee, Wis.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the loan of $305,000 by the Building Trades United Pension Trust Fund, Milwaukee and Vicinity (the Fund) to Fred E. and Elizabeth Warden (the Wardens), parties in interest with respect to the Fund; and the personal guarantee of repayment by the Wardens.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas 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) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 21, 1982, notice was published in the **Federal Register** (47 FR 22250) 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 transactions described in an application filed by the trustees of the Fund. 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. The applicant has represented that it has complied with the requirements of the notification to interested persons as set forth in the notice of pendency. 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 7, 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 Fund and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Fund.

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 loan of $305,000 by the Fund to the Wardens, provided that the terms and conditions of the loan are at least as favorable to the Fund as those it could obtain from an unrelated party; and to the personal guarantee of repayment by the Wardens.

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 transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of July 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. 82-19597 Filed 7-19-82: 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-126; Exemption Application No. D-3119]

Exemption From the Prohibitions for Certain Transactions Involving Little Rock Diagnostic Clinic, P.A. Profit Sharing Plan Located in Little Rock, Arkansas

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the proposed lease by the Little Rock Diagnostic Clinic, P.A. Profit Sharing Plan (the Plan) to LRDC Land Company (Land Company), a party in interest with respect to the Plan; and the subordination of the Plan's interest in the leased premises.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas 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) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 21, 1982, notice was published in the **Federal Register** (47 FR 22251) 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 transactions described in an application filed by legal counsel for the Plan. 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 it has complied with the requirements of the notification to interested persons 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, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

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 maybe 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.

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 sections 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 lease of land located in Little Rock, Arkansas by the Plan to the Land Company, including the subordination of the Plan's interest in the leased premises, provided that 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.

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 transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of July 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. 82-19598 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-125; Exemption Application No. D-3044]

Exemption From the Prohibitions for Certain Transactions Involving the Reisman, Milberg, Abramson & Magro, P.C. Defined Benefit Pension Plan Located in New York, New York

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption exempts the loans by the Reisman, Milberg, Abramson & Magro, P.C. Defined Benefit Pension Plan (the Plan) of funds not to exceed 25% of total Plan assets to Reisman, Milberg, Abramson & Magro, P.C. (the Employer) for a period of five years and the guarantee of the loans by the principal shareholders of the Employer.

TEMPORARY NATURE OF EXEMPTION: This exemption is temporary in nature and will expire five years from the date of grant with respect to the making of loans by the Plan to the Employer. Subsequent to the expiration date of the exemption, the Plan may hold loans to the Employer provided such loans originated during the five year period.

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, NW., Washington, D.C. 20216. (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 14, 1982, notice was published in the **Federal Register** (47 FR 20882) 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 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 has been provided to interested persons in compliance with the provisions 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 by 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 loans by the Plan to the Employer of funds not to exceed 25% of the total assets of the Plan, for a period of five years, and the guarantee of the loans by the principal shareholders of the Employer, so long as the terms of the loans are no less favorable to the Plan than those obtainable in arm's-length transactions 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 transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 15th day of July 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. 82-19599 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-118; Exemption Application No. D-3079]

Exemption From the Prohibitions for Certain Transactions Involving the Group Health Cooperative of Puget Sound Staff Pension Plan Located in Seattle, Washington

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the contribution, sale and purchase of certain fixed income and equity securities between the Group Health Cooperative of Puget Sound Staff Pension Plan (the Plan) and professional and administrative employees (the Participants) of Group Health Cooperative of the Puget Sound (the Employer).

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. 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) 523-8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 9, 1982, notice was published in the **Federal Register** (47 FR 15454) 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 and Plan trustee. 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 provided to interested persons in accordance 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 Participant directed contribution, sale and purchase of certain fixed income and equity securities between the Plan and the Participants of the Plan, provided all purchases and sales are conducted at fair market value and all Participant contributions are valued at their fair market value on the date contributed.

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 14th day of July 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. 82-19600 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-117; Exemption Application No. D-3030]

Exemption From the Prohibitions for Certain Transactions Involving the Wolverine Aluminum Corporation Profit Sharing Plan Located in Lincoln Park, Michigan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption will permit, effective January 1, 1975, the extension of credit between the Wolverine Aluminum Corporation Profit Sharing Trust (the Plan) and Wolverine Aluminum Corporation, the sponsor of the Plan (the Employer). The transaction was entered into before the effective date of the Employee Retirement Income Security Act of 1974 (the Act), but after July 1, 1974, the date specified in the transitional rules contained in sections 414 and 2003 of the Act.

EFFECTIVE DATE: This exemption will be effective from January 1, 1975 to March 15, 1982, the date the extension of credit by the Plan (the Mortgage) was repaid by the Employer.

FOR FURTHER INFORMATION CONTACT: Mr. David Stander 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) 523-881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 14, 1982, notice was published in the Federal Register (47 FR 20888) 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 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 was provided to interested persons in accordance with the provisions of 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, from January 1, 1975 to March 15, 1982, to the Mortgage executed on August 15, 1974, provided that the terms and conditions of the Mortgage were at least as favorable to the Plan as those which the Plan would have received from an unrelated party in a similar 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 which is the subject of this exemption.

Signed at Washington, D.C., this 14th day of July 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. 82-19601 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-116; Exemption Application No. D-3187]

Exemption From the Prohibitions for a Certain Transaction Involving the Massachusetts State Carpenters Pension Fund Located in Burlington, Massachusetts

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption exempts the loan of $500,000 by the Massachusetts State Carpenters Pension Fund (the Plan) to Northampton Hotel Associates (the Partnership). One of the partners in the Partnership, Irwin J. Nebelkopf, is an owner of Nebel Heating Corp. (Nebel),

which is a contributing employer to the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C4526, 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 May 18, 1982, notice was published in the Federal Register (47 FR 21345) 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 a transaction described in an application filed on behalf of Nebel. 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. The applicant has represented that it has complied with the notice to interested persons requirements as set forth in the notice of pendency. One public comment was received by the Department. The commentator stated that he was in favor of granting the exemption as it was proposed.

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 Plan and of its participants and beneficiairies; and

(c) It is protective of the rights of the participants and beneficiaries of the Plan.

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 a loan by the Plan to the Partnership of $500,000, based on the terms and conditions set forth in the notice of pendency, provided that 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 7th day of July 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. 82-19602 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-3381 and D-3382]

Proposed Exemption for Certain Transactions Involving Ritchie Enterprises Pension Plan for Salaried Employees, and Ritchie Enterprises Pension Plan for Hourly Paid Employees Located in Wichita, Kansas

AGENCY: Department of 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 Ritchie Enterprises Pension Plan for Salaried Employees (the Salaried Plan) and the Ritchie Enterprises Pension Plan for Hourly Paid Employees (the Hourly Plan) together (the Plans) to the Ritchie Corporation (the Employer), the sponsor of the Plans. The proposed exemption, if granted, would affect the Employer, the participants and beneficiaries of the Plans 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 August 30, 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 Nos. D–3881 and D–3382. The application 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: Richard Small of the Department,

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 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 be 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 representatives of the applicant.

1. The Salaried Plan as of July 31, 1981 had 90 participants and assests of $1,113,381. The Hourly Plan as of March 31, 1981 had 334 participants and assests of $592,777. The trustees (the Trustees) of the Plans are H.D. Ritchie, E.D. Ritchie, and J.P. Ritchie, all of whom are officers and directors of the Employer and partners in a partnership that own 93% of the stock of the Employer.

2. The Employer is requesting an exemption which will permit the Plans to enter into a loan agreement (the Loan Agreement) with the Employer whereby each of the Plans will periodically lend (the Loans) to the Employer amounts of money up to an aggregate at any point in time of no more than 25% of the total assets of such Plans. The Loans will be made over a five year period, the first day of which will be the date the grant of an exemption for the Loans is published in the **Federal Register**. The maximum length of any Loan will be four years.

3. An independent party, the Central Bank and Trust Co. (the Bank) located in Wichita, Kansas will examine the Loan Agreement. Prior to the Plans entering into any Loan, the Bank must: (1) certify that the Loan is in the best interests of the participants and beneficiaries of the Plans; (2) certify that the terms and conditions of the Loan are at least as favorable to the Plans as those which the Plans could receive in a similar transaction with an unrelated party; and (3) agree to monitor the terms and conditions of the Loan on behalf of the Plans. In addition, prior to the Plans entering into any Loan, the Trustees must certify that the Loan is in the best interests of the participants and beneficiaries of the Plans.

4. The interest rate on the Loans will be the fair market interest rate on similar types of loans as determined by the Bank but no less than 1% above the prime interest rate of the Continental Illinois National Bank and Trust Company (the Continental Bank) located in Chicago. The applicant represents that the Employer regularly borrows from the Continental Bank at a rate 1% over the prime rate of the Continental Bank for certain of its intermediate debts such a those requested in this exemption request.

5. The proceeds of the Loans will be used by the Employer to purchase new equipment (the Equipment) for its construction business. No Loan will be made for more than 75% of the purchase price of the Equipment. The Plans will receive a perfected interest in each piece of Equipment that is financed by a Loan. The applicant represents that the Equipment will be adequately insured with the Plans being named the beneficiary. In addition, each Loan will be collateralized by certain real property (the Property) owned by the Employer. The applicant represents that between the Equipment and the Property, each Loan will be collateralized in an amount equal to at least 200% of the amount of the outstanding balance of such Loan. The Bank will have the responsibility of monitoring the collateral to assure that it is equal to at least 200% of the amount of the outstanding balances of the Loans.

6. The applicant represents that the Loans will enable the Plans to make an investment which will give the Plans a high yield with a high degree of security.

7. In summary, the applicant represents that the Loans will satisfy the statutory criteria of section 408(a) of the Act as follows: (1) the Trustees represent that the Loans will be in the best interests of the participants and beneficiaries of the Plans; (2) an independent fiduciary will approve and monitor the Loans; (3) the Plans will receive a high rate of interest on a secure investment; and (4) the exemption will be for a 5 year period.

Notice to Interested Persons

Within 10 days of its publication in the **Federal Register** a copy of the notice of pendency and a statement advising interested persons of their right to comment or request a hearing will be mailed to each participant and beneficiary of the Plans.

General Information

The attention of interested persons is directed to the following: (1) The fact that a transaction is the subject of and 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 beneficiaies 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 period of five years to the Loans by the Plans to the Employer provided that the terms and conditions of the Loans are at least as favorable to the Plans as those which the Plans could receive in similar transactions 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 transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 14th day of July 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. 82-19603 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-120; Exemption Application No. D-3172]

Exemption From the Prohibitions for Certain Transactions Involving the Retail Clerks Union and Employers Midwest Pension Plan Located in Chicago, Ill.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption will permit the proposed purchase of certain real property (the Property) by the Retail Clerks Union and Employers Midwest Pension Plan (the Plan) from the United Food & Commercial Workers Union Local 1550 (the Union), a party in interest with respect to the Plan.

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) 523–722. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 7, 1982, notice was published in the **Federal Register** (47 FR 19826) 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 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 applicants have represented that they have satisfied the notification provisions 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, 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), 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 purchase of the Property by the Plan from the Union for cash in the amount of $441,000 provided that this amount is 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

of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 14th day of July 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. 82-19605 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 82-119; Exemption Application D-3092]]

Exemption From the Pprohibitions for Certain Transactions Involving the National Reserve Life Insurance Company Pension and Profit Sharing Plan Located in Topeka, Kans.

AGENCY: Department of Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This exemption permits the sale of participations in real estate mortgage loans (the Participations) by the National Reserve Life Insurance Company Pension and Profit Sharing Plan (the Plan) to the National Reserve Life Insurance Company (the Employer).

FOR FURTHER INFORMATION CONTACT: Ms. Linda Hamilton of the Office of the 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 April 13, 1982, notice was published in the **Federal Register** (47 FR 15934) of the pendency before the Department of Labor (the Department) if 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 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 it has complied with the requirements of notification to interested persons 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, 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 proivions 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 cash sale of the Participations by the Plan to the Employer, provided the Plan receives an amount at least equal to the fair market value of the Participations on the date 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 of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 14th day of July 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. 82-19606 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3204]

Proposed Exemption for Certain Transactions Involving the David Evans and Associates Profit Sharing Plan and Retirement Trust Located in Portland, Oreg.

AGENCY: Department of 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 Employe 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 (the Sale) of a parcel of unimproved real property (the property) by the David Evans and Associates Profit Sharing Plan and Retirement Trust (the Plan) to a partnership (the Partnership), which is a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Partnership, the participants and

beneficiaries of the Plan and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department on or before August 30, 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–3204. 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: 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 David Evans and Associates, Inc. (the Employer), the sponsor 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 approximately 20 participants and total assets, as of June 3, 1981, of $222,896. The trustees (the Trustees) of the Plan are officers and shareholders of the Employer. The Partnership is comprised of officers and shareholders of the Employer and trustees of the Plan.

2. The Property is an unimproved parcel of real estate located in Durham, Oregon. The Property was purchased by the Plan on January 15, 1980 under a sales contract (the Contract) from Nu Pacific, Inc., a corporation unrelated to the Plan or the Employer. The total purchase price for the Property was $97,760. The Plan made a cash downpayment of $24,476.96. The balance of $73,288 was to accure interest at a rate of 12% to be made on December 3, 1980 and December 31, 1981. The initial Contract payment of $36,644.43 plus accrued interest was made by the Plan. The final Contract payment of $36,644.43 plus accrued interest due December 31, 1981 was extended to March 5, 1982 and was made by the Plan on that date. Consequently, the total payments made by the Plan toward the purchase of the Property, as of March 5, 1982, totalled $111,655.21 in principal and interest.

3. The applicant represents that the best and most efficient use for the Property is the construction of a commercial office building and that the Property is zoned only for the use. The applicant also represents that developing the Property would involve a large capital outlay in addition to a substantial amount of debt financing. Although the construction of an office building was the original intent of the Trustees in purchasing the Property and subsequently, the Plan incurred certain pre-construction costs (the Pre-construction Costs) related to the project, the Trustees have concluded that because of the depressed state of the Employer's business and decline in the number of employees of the Employer the level of contributions to the Plan are of such an uncertain status that funding of the development of an office building is not possible. The Pre-construction Costs incurred by the Plan related to the development of an office building totalled $14,524 and included appraisal, architectual, legal and accounting fees and real estate taxes.

4. The applicant represents that because of the inability of the Plan to finance the construction of the office building, the alternatives left the Plan are to leave the Property in its unimproved state in the hope of appreciation or to sell the Property. The applicant is therefore requesting an exemption to permit the Sale of the Property by the Plan to the Partnership for the greater of the fair market value of the Property at the time of the Sale plus the Pre-construction Costs or $126,179.21, which represents the Pre-construction Costs incurred by the Plan plus the amount paid by the Plan toward the purchase of the Property of $111,651.21. Donald R. Palmer, MAI, SRPA, an independent appraiser from Portland, Oregon determined the fair market value of the Property, as of March 11, 1981, to be $111,000. No real estate commissions or fees of any kind will be paid by the Plan in connection with the Sale. The Trustees have determined that the Sale would be in the best interests of the Plan and its participants and beneficiaries.

5. In summary, the applicant represents that the Sale satisfies the statutory criteria of section 408(a) of the Act because: (1) it will be a one time transaction for cash; (2) the value of the Property has been determined by an independent appraisal; (3) it is now impossible due to business problems of the Employer and resulting lack of consistent level of contributions to the Plan to develop the Property as originally intended; (4) the Plan will be reimbursed for all expenses incurred related to the development of the Property since the time the Property was purchased; (5) no real estate commissions or fees of any kind will be paid by the plan in connection with the Sale; and (6) the Trustees have determined that the Sale would be in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Notice of proposed exemption will be given to all participants and beneficiaries of the Plan within 10 days of the publication of the notice of pendency in the **Federal Register.** Notice will be posted on bulletin boards in the Employer's places of business where such official notices are usually posted. Notice will include a copy of the notice of pendency as it appears in the **Federal Register** as well as a statement informing all interested persons of their right to comment 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 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 the Sale of the Property by the Plan to the Partnership for the greater of $126,179.21 or the fair market value of the Property at the time of the Sale plus the Pre-construction Costs.

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 14th day of July 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. 82-19607 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3203]

Proposed Exemption for Certain Transactions Involving the Design Master Homes, Inc., Profit Sharing Plan and Trust Located in Phoenix, Ariz.

AGENCY: Department of 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 Design Master Homes, Inc. Profit Sharing Plan and Trust (the Plan) of $300,000 to Design Master Homes, Inc. (the Employer), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, Plan fiduciaries, and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before September 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 Benefits Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–3203. 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) 523–8971. (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 sections 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 Employer is an Arizona corporation, engaged in the development of commercial and residential properties. The Plan is a profit sharing plan whch was established by the Employer in 1969. As of November 30, 1981, the Plan had 74 participants and total assets of $1,495,916. Messrs., Max W. Wilson and W. D. Long, who are employees of the Employer, serve as the Plan trustees (the Trustees). As Trustees, these individuals are authorized to make investment decisions for the Plan.

2. The Employer requests an exemption to borrow $300,000 from the Plan in order to discharge the balance remaining of an $890,000 total indebtedness owed to Wells Fargo Advisors, Inc., a California corporation. The proposed Loan will be for a ten year period, with payments of principal and interest made quarterly based upon a twenty year amortization schedule. At the end of ten years, all remaining principal and accured interest will become due and payable. The Loan will

carry simple interest at the rate of twenty percent per annum.

3. The Employer owns approximately 112 gross acres of unimproved real property (the Real Property), located in Peoria, Arizona. Roughly 15 acres of the Real Property are located on the south side of Olive Avenue, 330 feet west of 107th Avenue; approximately 97 acres are located on the northwest corner of 107th Avenue and Butler Drive. Of the total acreage, the Employer will offer approximately 60 acres of the Real Property as the collateral (the Collateral) for the proposed loan. The Loan will be evidenced by a promissory note and secured by a duly recorded deed of trust, thereby giving the Plan and first lien interest in the Collateral. The deed of trust will contain certain release provisions to the effect that portions of the Collateral will be released as payments of principal and interest are made. However, in no event will the value of the Collateral be permitted to fall below 150 percent of the outstanding Loan balance.

4. The Collateral underlying the proposed Loan has been appraised in 1978 and 1982 by Mr. Jim Homan (Mr. Homan), an M.A.I. appraiser with the firm, Burke, Hansen, and Homan located in Phoenix Arizona. Mr. Homan and his firm are totally unrelated to the Plan, Employer or to any other party in interest to the proposed transaction. In two appraisals prepared by Mr. Homan on October 26, 1978, he placed the value of the land parcel containing the 97 acres at $1,265,000 and the land parcel containing the 15 acres at $196,000 or $13,000 per acre. Based on these computations, the 60 acres of Real Property offered as the Collateral were valued at $780,000.

In a letter of May 7, 1982, Mr. Homan has updated his earlier valuation of the Real Property. Mr. Homan represents he has reviewed the prior appraisal of the 97 acres to ascertain whether or not the value determined is still applicable, but he concludes the figure ascribed at that time is very conservative in the market today. Mr. Homan also says he has studied recent sales of comparable properties within the area of the Real Property and indicates current prices for land range from $15,000 to $35,000 per acre. Based on the data analyzed, Mr. Homan projects the 60 acres comprising the Collateral to fall within a range of $15,000 to $20,000 per acre or an average value of $17,500 per acre. Using the $17,500 amount as his basis, Mr. Homan values the Collateral at $1,050,000.

5. First American Title Insurance Company of America (First American), which is located in Phoenix, Arizona, has formally agreed to serve as the independent fiduciary of the proposed Loan. First American represents it is completely unrelated to the Plan and Employer. First American also states it has expertise in the area of loan administration.

As the independent fiduciary, First American will monitor and service the proposed Loan pursuant to the terms of a servicing agreement (the Agreement) which it will enter into with the Plan and Employer. The agreement empowers First American to take all steps it deems necessary to protect and enforce the interests of the Plan and its participants and beneficiaries. These steps will include having the Collateral appraised as frequently as First American considers it necessary to ensure the fair market value of the Collateral is at all times equal to or in excess of 150 percent of the outstanding Loan balance. In addition, First American will be authorized to approve any release provisions concerning the Collateral. The Employer will pay all costs and expenses incurred in connection with the preparation and execution of the Agreement.

6. Mr. Robert N. Tellier, Jr. (Mr. Tellier), an actuary with the pension, profit sharing and actuarial consulting firm of Scott, Tellier and Company, located in Phoenix, Arizona, has determined, as a Plan fiduciary, that the proposed transaction is in the best interests of the Plan's participants and beneficiaries. Mr. Tellier is unrelated to the Plan and the Employer. In a letter of September 28, 1981, Mr. Tellier says he believes the Plan will have little difficulty in advancing funds to the Employer or in receiving the payments accruing from the transaction. He indicates the Collateral poses no significant difficulty as it relates to the administration of Plan assets. He believes the Collateral should be appraised periodically to provide assurance that the Collateral amounts are an appropriate safeguard for the Plan's participants.

To support his opinion, Mr. Tellier has concluded the proposed Loan will give the Plan a more than fair rate of return. He says the Loan will not impair the Plan's liquidity position as the majority of the Plan's assets are invested in liquid assets. He states that in the event Plan assets are distributed to Plan participants or beneficiaries, sufficient safeguards are in place to allow for the adequacy of payments without a potential nonliquidity problem occurring. He notes that if the Employer continues its practice of making sufficient contributions to the Plan, the proper liquidity for disbursement of benefits will be enhanced and the percentage of assets that would be held in an investment such as the Loan will be diminished.

7. In summary, the applicant has represented that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) the Loan will be secured by real property which has an appraised value of over three times the amount of the funds to be loaned, and in no event will the value of the Collateral be less than 150 percent of the outstanding Loan balance; (b) the Loan will be monitored by an independent fiduciary who will take actions necessary to protect the interests of the Plan and its participants and beneficiaries; and (c) another independent fiduciary, Mr. Tellier, has reviewed the terms of the transaction and believes the Loan will be in the best interests and protective of the Plan's participants and beneficiaries.

Notice to Interested Persons

Notice of the pending exemption will be provided to all Plan participants and the Trustees within fifteen (15) days of the publication of the notice of pendency in the **Federal Register.** The notice shall include a copy of the notice of pendency as published in the **Federal Register** and will inform interested persons of their right to comment and/or request a hearing with respect to the pending exemption. Notice will be provided by posting copies of the pending exemption in conspicuous places within the administrative offices of the Employer and by first class 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 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 Loan of $300,000 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 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 14th day of July 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. 82–19606 Filed 7–19–82; 8:45 am]

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[Application No. D–3499]

Proposed Exception for Certain Transactions Involving the L. Michael Feingold, Inc., Profit Sharing Plan; Located in Huntington Beach, California

AGENCY: Department of 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 to the L. Michael Feingold, Inc. Profit Sharing Plan (the Plan) of an interest in a mortgage note by Dr. L. Michael Feingold (Dr. Feingold), a party in interest with respect to the Plan. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, Dr. Feingold, and any other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received the Department on or before September 2, 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–3499. 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, 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 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 Dr. Feingold, 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 3 participants. As of October, 1981, the Plan had net assets of approximately $287,000. Dr. Feingold is the trustee of the Plan and the person responsible for making investment decisions for the Plan. L. Michael Feingold, Inc., the sponsor of the Plan, is a corporation engaged in the practice of pediatrics and pediatric allergy medicine.

2. Dr. Feingold and his wife Vonne formerly owned a 1/11th shareholder interest in Glacier Falls Ice Arena, Inc. (Glacier Falls), a California corporation. Glacier Falls' principal asset was a two acre parcel of real property developed with an ice skating rink and improvements located at 211 West Katella Avenue, Anaheim, California (the Property). On June 9, 1981, the shareholders of Glacier Falls, including Dr. Feingold, voluntarily elected to wind up and dissolve the corporation. As part of the winding up process Glacier Falls sold the Property on August 20, 1981, to Skate Station Properties (Skate Station), a California general partnership. The Property was sold for a total sales price of $1,200,000. Skate Station paid $300,000 in cash and assumed obligations under a first mortgage on the Property. This

mortgage had, as of August, 1981, an outstanding balance of $60,221 and is due in January, 1984. The balance of the purchase price is represented by a purchase money promissory note dated August 20, 1981, in the amount of $839,778 recorded as a second lien on the Property (the Mortgage).

3. The Mortgage bears interest from August 20, 1981, on the unpaid principal balance at the rate of 15%. Principal and interest payments under the Mortgage are due and payable in 28 quarterly payments with the first payment commencing 15 months from the date of the note. The Mortgage provides for a balloon payment of $358,528 of principal on the date the last quarterly installment is due. The Mortgage assumes a first priority position after the current first mortgage is repaid in January, 1984. The Property is insured with the Empire Life and Marine Insurance Company and designates the holders of the Mortgage as the loss-payees. Dr. Feingold presently has a 1/11th interest in the Mortgage.

4. Dr. Feingold proposes to sell his 1/11th interest in the Mortgage for $76,343.47, a price equal to 1/11th of the Mortgage's face value. The Plan will not incur any expenses with regard to the sale. The Mortgage is currently held under a trust agreement recorded in the County Recorder's Office of Santa Ana, California, and Dr. Feingold is one of the three trustees responsible for administering its repayment. The trustees, other than Dr. Feingold, are not parties in interest with respect to the Plan. The trustees have full power to foreclose on the Property if payments under the Mortgage are not made. Each individual who maintains an interest in the Mortgage has identical rights under the Mortgage.

5. Mr. Michael Joyce (Mr. Joyce), an executive vice president of Newport Interstate Properties located in Newport Beach, California, has agreed to serve as the fiduciary for the Plan with regard to the purchase of Dr. Feingold's interest in the Mortgage. Mr. Joyce is experienced in real estate transactions of this type and is completely independent of Dr. Feingold or any other party in interest to the Plan. Mr. Joyce has determined that the proposed investment is appropriate for the Plan and is in the best interests of the Plan and its participants and beneficiaries. Mr. Joyce represents that because the Property has been substantially improved, and the interest rate of the Mortgage is not less than current interest rates, the value of Dr. Feingold's 1/11th interest in the Mortgage is equal to its face value. Mr. Joyce represents that as of May, 1982, the value of the Property is greater than $2,000,000 because of improvements made by the current owner. Mr. Joyce represents that the interest in the Mortgage is a completely safe investment for the Plan, and considers the investment almost as secure as government bonds and treasury bills. Mr. Joyce believes that the value of the Property will increase during the term of the Mortgage and thus, does not believe that the balloon payment due on the Mortgage is a significant factor in this transaction.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because (a) the interest in the Mortgage will be sold to the Plan at its fair market value as determined by Mr. Joyce; (b) the Plan will not incur any expenses with regard to the sale; (c) the Mortgage is secured by the Property which has an estimated value greatly in excess of its outstanding principal balance; and (d) Mr. Joyce, as a fiduciary to the Plan, has determined that the sale is in the best interests of the Plan and its participants and beneficiaries.

Notice to Interested Persons

Within ten days after publication of this notice in the **Federal Register** notice will be delivered to all participants in the Plan. Such notice will include a copy of the notice of pendency as published in the **Federal Register** and will include a statement informing interested persons of their right to comment on and.or request a hearing with regard to the proposed transaction.

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 sale by Dr. Feingold to the Plan of his 1/11th interest in the Mortgage for $76,343.47, provided that the price paid is not greater than the fair market value of the interest on the date of sale.

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 14th day of July 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. 82-19609 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3318]

Proposed Exemption for Certain Transactions Involving the Peters, Malbon, Greene & Cuttino Associates, Ltd.; Money Purchase Pension Plan; Located in Richmond, Virginia

AGENCY: Department of 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 (the Loan) of $70,000 by the Peters, Malbon, Greene & Cuttino Associates, Ltd. Money Purchase Pension Plan (the Plan), to Peters, Malbon, Greene & Cuttino Associates, Ltd. (the Employer), the sponsor of the Plan; and (2) the personal guarantees concerning repayment of the Loan by the trustees (the Trustees) 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.

DATES: Written comments and requests for a public hearing must be received by the Department on or before August 30, 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-3318. 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: Richard Small of the Department, 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 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, 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 which as of December 31, 1981 had 12 participants and assets of approximately $680,000. The Trustees are Drs. Peters, Malbon, Greene & Cuttino, all of whom are principals of the Employer. The Employer is a medical practice specializing in oral surgery.

2. The applicants are requesting an exemption which will permit the Loan. The proceeds of the loan will be used by the Employer to purchase furniture, fixtures, equipment and leasehold improvements needed to equip expansion of the Employer's office space, and to purchase an in-house computer. The Loan will be for five years with 60 equal monthly payments of principal and interest. The interest rate will be 1% over the prime rate of the Central Fidelity Bank (the Bank) located in Richmond, Virginia. The Loan will be secured by a security agreement granting the Plan a first security interest (the Security Interest) in certain personal property of the Employer, the Employer's in-house computer, all of the Employer's furniture, equipment and fixtures as well as leasehold improvements to be acquired and thereafter acquired with the proceeds of the Loan at any time while the Loan is outstanding. The applicants represent that such collateral will be adequately insured with the Plan being the named beneficiary. The applicants represent that throughout the duration of the Loan the Security Interest will have a value at least equal to 200% of the amount outstanding on the Loan. In addition, repayment of the Loan will be personally guaranteed by the Trustees.

3. An independent party, the Bank, will examine the proposed transaction. Prior to the Plan entering into the Loan, the Bank must: (1) certify that the Loan will be in the best interests of the participants and beneficiaries of the Plan; (2) certify that the terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party; and (3) agree to monitor the terms and conditions of the Loan on behalf of the Plan. In addition, prior to the Plan entering into the Loan, the Trustees must certify that the Loan is in the best interests of the participants and beneficiaries of the Plan.

4. In summary, the applicants represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act as follows: (1) the Trustees represent that the Loan is in the best interests of the participants and beneficiaries of the Plan; (2) the Loan will be approved and monitored by an independent fiduciary; (3) the Loan will be collateralized in an amount at least equal to 200% of the outstanding balance of the Loan; and (4) the Trustees will personally guarantee the Loan.

Notice to Interested Persons

Within 10 days of its publication in the **Federal Register** and a statement advising interested persons of their right to comment or request a hearing will be posted on the employee bulletin board for present employees and mailed within the same period to any interested person who is not a present employee.

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 or 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), 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 Loan of $70,000 by the Plan to the Employer provided that the terms and conditions of the Loan are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party; and (2) the personal guarantees of the repayment of the Loan by the Trustees.

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 14th day of July 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. 82–19610 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Applications Nos. D–3250 and D–3251]

Proposed Exemption for Certain Transactions Involving the Profit Sharing Plan for the Employees of Dekalb-Gwinnett Pathologists, P.C., and Profit Sharing Plan for the Employees of Pathology & Laboratory Medicine, P.C.; Located in Atlanta, Georgia

AGENCY: Department of 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 promissory notes (the Notes) issued by an unrelated party by certain participants (the Applicants) of the Profit Sharing Plan for the Employees of Dekalb-Gwinnett Pathologists, P.C. (the Dekalb Plan) and Profit Sharing Plan for the Employees of Pathology & Laboratory Medicine, P.C. (the Pathology Plan, collectively, the Plans) to the Applicants respective individual Plan accounts. The proposed exemption, if granted, would affect the Plans, the Applicants and other persons involved in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department on or before August 20, 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 Nos. D–3250 and D–3251. The applications 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 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 two applications for exemption from the restriction 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 applications filed by the Applicants, 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 applications contain representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. The Dekalb Plan and the Pathology Plan, both of which are profit sharing plans, have six and seven participants, respectively. Applicants Raphael K. Graves, M.D., L. David Stacy, M.D. and Christopher J. Allan, M.D. are participants in the Dekalb Plan. Applicants Frank Mattews, M.D., Tom D. Raaen, M.D. and Rene A. Tapia, M.D. are participants in the Pathology Plan.

2. Physician's Laboratory, P.C. was the former employer of the Applicants and the sponsor of a profit sharing plan and money purchase pension plan in

which the Applicants and other employees of Physician's Laboratory, P.C. were participants. During the spring of 1981, Pathologists Service Professional Associates, Inc. (PSPA) and Physician's Laboratory P.C., commenced negotiations for the purchase of Physician's Laboratory, P.C. by PSPA, ultimately to be followed by the acquisition of PSPA by Smithline Corporation (Smithline). Each of the Applicants was a shareholder in PSPA. The professional employees of Physician's Laboratory, P.C. formed Dekalb-Gwinnett Pathologists, P.C. and Pathology & Laboratory Medicine P.C., which are the present employers of the Applicants. The two Physician's Laboratory, P.C. plans were subsequently terminated and the account balances of the Applicants in these plans as of May 31, 1981, were as follows:

Applicant	Account balance on May 31, 1981
Graves	$262,653
Matthews	235,632
Raaen	257,404
Stacy	251,134
Tapia	173,768
Allan	200,197

These account balances will be distributed directly to the Applicant's individual account in the Plan in which he is a participant.

3. On November 3, 1981, SmithKline consummated the acquisition of PSPA by purchasing all of the shares of outstanding stock in PSPA for $69.18 per share. The purchase price was paid by the delivery of the Notes, which are promissory notes issued by SmithKline, to each of the shareholders, bearing interest at the rate of 10 percent compounded annually and payable in full on November 3, 1986. The Applicants owned varying numbers of shares and received Notes in the following principal amounts:

Applicant	Amount of note
Graves	$311,310
Matthews	273,952
Raaen	311,310
Stacy	172,950
Tapia	20,754
Allan	69,180

4. The Notes are collateralized by a Letter of Credit issued by Girard Bank, Philadelphia, Pennsylvania. This Letter of Credit guarantees payment of both principal and interest on the Promissory Notes in the event that there is a default in the payment of either principal and interest. SmithKline, the obligor of the Notes, is a large publicly-held corporation whose stock is listed on the New York Stock Exchange. The Form 10–K, Annual Report to the Securities and Exchange Commission filed by SmithKline for the calendar year ending December 31, 1980, indicates that the total assets of SmithKline as of December 31, 1980 were in excess of $1.5 billion, and the operating profit of SmithKline for the year ending December 31, 1980 was $447 million.

5. The Applicants, each of whom is the holder of a Note, desire to sell their Notes for cash to their respective fully vested individual Plan accounts at their fair market value as of the date of sale. The fair market value of the Notes will be determined by discounting the future payments under the Notes at the rate of interest which, under the market conditions prevailing on the date of the sale, will result in a fair market value purchase price for the Notes. Mr. Robert H. Foster, vice-president of the Trust Company Bank of Georgia, which is unrelated to the Applicants and has no interest in the transaction for which the exemption is requested, rendered an appraisal of the Notes on February 10, 1982. Mr. Foster determined that based upon his review of: (a) The terms of the Notes; (b) the terms of the Letter of Credit securing payment of the Notes; (c) the relevant financial statements of SmithKline; and (d) current interest rates on comparable securities, the fair market value of the Notes as of February 10, 1982 will equal the future payments of principal and interest discounted at 19%. Therefore, the Applicants' accounts would realize a net annual rate of return of 19% for the term of the Notes. Based upon Mr. Foster's appraisal, the purchase price of each of the Applicant's Notes would be as follows: Graves—$229,189.74; Matthews—$201,461.04; Raaen—$229,189.74; Stacy—$127,185.37; Tapia—$15,262.25; and Allan—$50,874.15. The actual discount rate which will be used to determine the sale price will be the rate determined by Mr. Foster based upon an evaluation of the above-described factors immediately prior to the sale of the Notes.

6. In summary, the Applicants represent that the proposed transaction satisfies the criteria of section 408(a) due to the following:

(a) Each sale of Notes will be directed by the Applicant owning the Note and will involve only the Applicant's own individual account;

(b) The sales will be one-time transactions for cash;

(c) The Notes will be sold at their fair market value as determined by an independent appraiser;

(d) The obligor on the Notes, SmithKline, has assets in excess of $1.5 billion; and

(e) The Notes are secured by a Letter of Credit issued by Girard Bank, Philadelphia.

Notice to Interested Persons

Because the sale of Notes involves solely the Applicants and the Applicants' individual accounts, the Department believes 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 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 406(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 the sale of the Notes by the Applicants to their respective individual accounts in the Plans, provided that the purchase price for the Notes is not less than the fair market value of the Notes on the date of sale.

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 14th day of July 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. 82–19811 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–3111]

Proposed Exemption for Certain Transactions involving the F. T. Carey, M.D., P.C. Employee; Benefit Plan and Trust; Located in Sunnyside, New York

AGENCY: Department of 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 Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the proposed sale by the F. T. Carey, M.D., P.C. Employee Benefit Plan and Trust (the Trust) of a parcel of improved real property located in Jupiter, Florida to Dr. and Mrs. F. T. Carey (Dr. and Mrs. Carey), disqualified persons with respect to the Trust. The Trust consists of two plans, the F. T. Carey, M.D., P.C. Money Purchase Pension Plan (the Pension Plan) and the F. T. Carey, M.D., P.C. Profit Sharing Plan (the Profit Sharing Plan) (collectively, the Plans). Because Dr. and Mrs. Carey are the sole shareholders of F. T. Carey, M.D., P.C. the sponsor of the Plans and the only participants in the Plans, 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.

DATE: Written comments and requests for a public hearing must be received by the Department on or before August 20, 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–3111. 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, 20216.

FOR FURTHER INFORMATION CONTACT: Katherine D. Lewis of the Department, telephone (202) 523–8972. (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 sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(A)(1) through (E) of the Code. The proposed exemption was requested in an application filed by Dr. and Mrs. Carey, pursuant to 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, 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 September 31, 1981 the Pension Plan had net assets of approximately $120,967.63 and the Profit Sharing Plan had net assets of approximately $80,645.09. The assets of the Plans are commingled for investment purposes.

Dr. and Mrs. Carey are the trustees (the Trustees) of the Plans and decision-makers with respect to Plan investments, and are also the only participants in the Plans. The sponsor of the Plans is the F. T. Carey, M.D., P.C., a professional corporation providing medical services.

2. On July 11, 1980 the Plans purchased, from unrelated parties, a two-bedroom condominium (the Property) located at 1469 Via Miguel, Jupiter, Florida. The cost of the Property to the plans was $112,634, which was paid in cash. The Property includes certrain furnishings which the Plans purchased for $10,632. In addition, the Plans paid $828 for insurance and $384 for maintenance, bringing the total investment of the Plans in the Property to $124,478 on April 1, 1982. No closing costs were paid by the Plans. The Plans purchased the Property for its income and appreciation potential. Representations were made to the Trustees that there was an active rental market in the area and that the earnings of the Plans would be enhanced by the investment. However, the Trustee state that they have been unable to find lessees for the Property and therefore have been unable to realize the income they expected. The Trustees state that the Plan assets currently invested in the Property (currently representing apporoximately 62% of Plan assets) could be put into more productive investments elsewhere. The Trustee have determined that the proposed sale is appropriate for and in the best interest of the Plans.

3. The applicants propose that the Plans sell the Property to Dr. and Mrs. Carey for its appraised fair market

value. The purchase price will be paid to the Plans entirely in cash and no sales commissions will be paid. The sale of the Property will be for a cash sum of $131,000. An independent appraisal by Donald R. Que of Callaway and Price, Inc., West Palm Beach, Florida, indicated a fair market value of $131,000 for the Property and furniture on February 19, 1982. This would represent a profit of $6,522 on the Plans' investment in the Property of $124,478.

4. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) the Trustees have determined that the proposed transaction is appropriate for and in the best interest of the Plans and their participants and beneficiaries; (b) the Property has been appraised by an independent appraiser; (c) this is a one-time transaction for cash; (d) the Trustees represent that the Plans will be able to invest the sale proceeds in more productive investments; (e) the Plans will be reimbursed for all expenditures they have made regarding the Property; and (f) the Property will be sold at a profit.

Notice to Interested Persons

Because Dr. and Mrs. Carey are the sole shareholders of F. T. Carey, M.D., P.C., the sponsor of the Plans, and the only participants in the Plans, 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 4975(c)(2) of the Code does not relieve a fiduciary or other disqualified person from 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 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 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 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted, 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 sale of the Property by the Plans to Dr. and Mrs. Carey for the cash sum of $131,000, provided that this amount is not less than the fair market value of the Property on the date of sale.

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 15th day of July 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. 82–19612 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–3390]

Proposed Exemption for Certain Transactions Involving the Bay View Federal Savings and Loan Association Profit Sharing Plan Located in San Mateo, Calif.

AGENCY: Department of 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 March 1, 1982, the cash sale by the Bay View Federal Savings and Loan Association Profit Sharing Plan (the Plan) of 39 mortgage loans (the Mortgage Loans) to Bay View Federal Savings and Loan Association (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the Plan and its participants and beneficiaries, the Employer and any other persons who participated in the transaction.

EFFECTIVE DATE: If granted, the exemption will be effective March 1, 1982.

DATES: Written comments and requests for a public hearing must be received by the Department on or before September 7, 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–3390. 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 482 participants. The Plan is administered by a committee (the Committee) of full-time employees of the Employer consisting of eight voting members. The three trustees of the Plan (the Trustees) are all officers of the Employer. As of December 31, 1981, the Plan had total assets of $3,711,294. The Employer is a mutual stock corporation engaged in the savings and loan industry.

2. The Mortgage Loans consisted of 39 loans originated by the Plan and secured by residential and commercial real estate in northern California. None of the Mortgage Loans were made to parties in interest with respect to the Plan. As of December 31, 1981, the Mortgage Loans had a total outstanding principal balance of $2,204,251. The Trustees estimated that because of the increase in mortgage interest rates in the year 1981 the Mortgage Loans' market values were considerably less than their par values. Consequently, in order to avoid carrying the Mortgage Loans at their market value on the Plan's year end financial statements, the Committee and the Trustees requested the Employer to purchase the Mortgage Loans from the Plan at their outstanding principal balances.

3. The Employer purchased the Mortgage Loans from the Plan for cash on March 1, 1982, for $2,216,815 which represented the Mortgage Loans' outstanding principal balances plus accrued unpaid interest as of that date. Ms. Mary Morehead, vice president of the National Secondary Market Inc., located in Beverly Hills, California, determined that, as of March 1, 1982, the Mortgage Loans had a fair market value of $1,710,016. Neither Ms. Morehead nor her firm maintain any relationship to the Employer or its principals.

4. The Plan did not incur any sales commissions or any other expenses with regard to the sale. The proceeds of the sale were reinvested by the Plan in other interest-bearing investments. The applicant represents that the difference between the purchase price of the Mortgage Loans and their appraised market value, if treated as an employer contribution, will not cause the annual additions to the Plan to exceed the limitations of section 415 of the Code.

5. In summary, the applicant represents that the sale of the Mortgage Loans satisfied the statutory criteria of section 408(a) of the Act because (a) the Trustees represented that the sale was in the best interests of the Plan; (b) the sale was a one-time transaction for cash; (c) the Plan did not incur any expenses with regard to the sale; and (d) the Plan sold the Mortgage Loans for an amount greater than the Mortgage Loans' fair market values.

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 Code, including sections 401(a)(4), 404 and 415.

Notice to Interested Persons

Within fifteen days after publication of this Notice of Proposed Exemption in the **Federal Register** notice to interested persons will be provided by conspicuous posting on bulletin boards at administrative offices and employee working areas at Employer branch offices. Notice will include a copy of this notice as published in the **Federal Register** and inform interested persons of their 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 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, effective March 1, 1982, to the cash sale of the Mortgage Loans by the Plan to the Employer for $2,216,815, provided that this amount was not less than the fair market value of the Mortgage Loans on the date of sale.

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 which is the subject of this exemption.

Signed at Washington, D.C., this 13th day of July 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. 82-19613 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-3061]

Proposed Exemption for Certain Transactions Involving the Fletcher Printing Co. Profit Sharing Plan and Trust Located in Lakeland, Fla.

AGENCY: Department of 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 leasing of office space (the Lease) by the the Fletcher Printing Co. Profit Sharing Plan and Trust (the Plan) to the Fletcher Printing Co. (the Employer), the sponsor of the Plan. The proposed exemption, if granted, would affect the participants and beneficiaries of the Plan, the Employer, 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 September 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, Rooms C-4526, U.S. Department of Labor. 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D-3061. 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: Katherine D. Lewis of the Department, telephone (202) 523-8972. (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 Mr. Ralph Fletcher, the trustee (the 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 approximately ten participants and net assets of $394,123 on December 31, 1981. On November 10, 1980, the Plan purchased, for cash, land located at 1425 North Broadway, Bartow, Florida, upon which it subsequently erected an office building (the Building). The Building was completed on January 20, 1981, and consists of 2,340 square feet divided into three rentable office spaces of 840, 780, and 720 square feet, respectively. The cost basis to the Plan of the Building, improvements, and the land upon which it is located was $72,474, representing approximately 18 percent of the Plan's assets as of December 31, 1981.

2. Since February 1, 1981 the Plan has leased 840 square feet of the Building to the Employer and 780 square feet to Dr. Kenneth A. Finger, an unrelated party. The Plan has been unable to find a lessee for the third office space of 720 square feet. The application requested retroactive relief for the lease to the Employer effective Feburary 1, 1981; however, the Department it unable to make a finding that the transaction satisfied the statutory requirements upon which administrative relief is granted. Accordingly, the applicants represent that the Employer will pay all excise taxes which are applicable under section 4975(a) of the Code within 60 days of the publication in the Federal Register of a final notice of the granting of the exemption proposed herein. The applicants request an exemption to enter into similar leasing arrangements prospectively, having added certain safeguards, discussed below, which were not present in the prior lease.

3. The proposed Lease will be for a five year term with an option to renew for an additional five years. The option to renew the Lease is exercisable solely by the Plan. An independent appraisal of the fair rental value of the Building was made on April 6, 1981 by William H. Loftin, S.I.R. (Loftin), of Loftin Real Estate in Lakeland, Florida, indicating a fair rental value of $5.25 per square foot, based on comparable rentals in the area. Loftin has had twenty years of experience in the financing, developing and appraising of real estate in and around Lakeland, Florida and is familiar with property values and commercial lease rates in the area. Loften is independent of all parties to the transaction. The rental to be paid to the Plan under the proposed Lease will be $7 per square foot per annum, which is identical to that charged by the Plan to the other tenant in the Building, who is unrelated to the Employer. The rental will at all times be at least the fair rental value, as determined once every three years during the term of the Lease by a qualified, independent appraiser.

4. Mr. Llewellyn N. Belcourt (Belcourt), who is independent of all parties to the proposed transaction, has agreed to act as an independent fiduciary for the Plan with respect to the proposed Lease. Belcourt is a certified public accountant with extensive experience in both pension and profit sharing plans and real estate investments. Belcourt states that it is his opinion that the proposed Lease is in the best interests of the Plan's participants and beneficiaries and that the terms of the Lease are as favorable to the Plan as those which the Plan could obtain from an unrelated party. Belcourt will monitor the Lease on the Plan's behalf to ensure compliance with all terms and conditions contained therein and will

take any steps necessary to enforce the rights of the Plan with regard to the Lease. Belcourt will also have sole discretion to determine whether a renewal of the Lease at the end of the initial five year term is in the Plan's best interest.

5. The Trustee states that it is his opinion that the Lease is appropriate for the Plan and in the best interest of the Plan's participants and beneficiaries, in that it will enable the Plan to relize at least a 13.9% annual return on its investment in the Building.

6. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) the proposed Lease provides for a higher rental value than that established by an independent appraisal and is identical to that charged by the Plan to an independent third party; (2) Belcourt, acting as the independent fiduciary for the Plan, has determined that the Lease is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries, and also that the terms of the Lease are as favorable to the Plan as those which the Plan could obtain with an unrelated third party; (3) Belcourt will monitor the terms of the Lease and take any actions necessary to enforce the rights of the Plan; and (4) the Trustee states that it is his opinion that the Lease to the Employer is appropriate for the Plan and favorable to the Plan.

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

Within twenty days after publication of this notice in the **Federal Register**, notice of the proposed exemption will be mailed to all interested persons including the Plan participants and beneficiaries, the Employer, the Trustees of the Plan, and the independent fiduciary. Such notice shall contain 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/or 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)(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 Lease of office space by the Plan to the Employer, as herein described, provided that the terms and conditions of the Lease remain as favorable to the Plan as would otherwise be available with an unrelated third 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 7th day of July, 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. 82-19814 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

[Application Nos. D-3191 and D-3192]

Proposed Exemption for Certain Transactions Involving the C. John Robbins Individual Retirement Account and the Ralph Anglin Individual Retirement Account Located in Philadelphia, Pa.

AGENCY: Department of 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 Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt cash purchases by the C. John Robbins Individual Retirement Account (the C. John Robbins IRA) and the Ralph Anglin Individual Retirement Account (the Ralph Anglin IRA) (collectively, the Accounts) of certain residential mortgages (the Mortgages) which are

owned by Beach Avenue, Ltd. (the Partnership). Messrs. Robbins and Anglin are each 50 percent owners of the capital and profits interest in the Partnership. The proposed exemption, if granted, would affect Messrs. Robbins and Anglin, the trustee, the Partnership and other persons participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before August 24, 1982.

ADDRESS: All written comments and request 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 Nos. D–3191 and D–3192. 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: Ms. Jan Broady of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the dpendency before the Department of an application for exemption 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 Messrs. Robbins and Anglin, pursuant to section 4975(c)(2) of the Code, and in acccordance with the 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. Messrs. Robbins and Anglin are the 50 percent owners of the capital and profits interest in the Partnership, an entity organized under the laws of the State of New Jersey and located in Philadelphia, Pennsylvania. Messrs. Robbins and Anglin are also participants in their respective Accounts which are maintained by the Securities Savings and Loan Association (Securities) of Vineland, New Jersey. As of February 23, 1982, the balance in the C. John Robbins IRA was $93,667 and the balance in the Ralph Anglin IRA was $93,962. The Accounts are currently invested in savings certificates. Securities represents that the Accounts conform to the requirements of section 408(a) of the Code.

2. The Partnership is presently the owner of two residential mortgages (Mortgage A and Mortgage B) made with unrelated third parties. The applicants propose that each Account purchase a Mortgage. Mortgage A will be purchased by the C. John Robbins IRA and Mortgage B by the Ralph Anglin IRA. Mortgage A and Mortgage B are both first mortgages.

3. Mortgage A was made by the Partnership and Mr. and Mrs. Kenneth Hopkins on June 19, 1981. The real property underlying Mortgage A is a condominium unit located at 1125 Beach Avenue, Cape May, New Jersey. Mortgage A has a face value of $108,500 with interest payable at the rate of 14.5 percent per annum for a term of five years. The total annual payment for each of the fine years is $15,943 or $1,328 per month. This amount constitutes both payments to principal and interest. A balloon payment of $106,960 is due at the end of the five year period.

4. Mortgage B was made between the Partnership and Mr. and Mrs. Louis Tomasetti on September 18, 1981. The real property underlying Mortgage B consists of a condominium unit also located at 1125 Beach Avenue, Cape May, New Jersey. Mortgage B has a face value of $118,000 with interest payable at the rate of 13.5 percent for five years. The total annual payment for each of the five years is $16,219 or $1,351 per month. This amount represents payments to both principal and interest. A balloon payment of $115,950 is due at the end of the fifth year.

5. The Accounts propose to purchase the respective Mortgages for cash at their fair market values on the date of closing. The Accounts will not incur any commissions or fees in connection with such sale.

6. Mr. Charles T. Rosica, Jr. (Mr. Rosica), Vice President of the Bay Street Bank of Ship Bottom, New Jersey, appraised the Mortgages. On January 5, 1982, Mr. Rosica indicated that based on current market conditions in effect at that time, Mortgage A was worth $86,712 and Mortgage B, $94,341.

7. Securities, which has expertise in the area of mortgage financing, will service Mortgage A and Mortgage B on behalf of the appropriate Account. Securities will collect and remit payments to the Accounts and ensure taxes and insurance premiums are paid. Securities will also make decisions regarding foreclosures should a default on the Mortgages occur.

8. In summary, it is represented that the proposed transactions will satisfy the requirements for an exemption under section 497(c)(2) of the Code because: (a) the purchases will be one-time transactions for cash; (b) the purchase prices for the Mortgages will be based on their fair market values as determined by an independent appraiser at the time of closing; (c) the Accounts will not incur any commissions or fees in connection with the purchases; (d) Securities, as custodian of the Accounts will be vested with oversight and collection responsibilities with respect to the Accounts; and (e) Messrs. Robbins and Anglin, the persons whose Accounts will be affected by the transactions, approve of the transactions and desire that they be consummated.

Notice to Interested Persons

Because Messrs. Robbins and Anglin are the sole participants in their respective Accounts, 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 4975(c)(2) of the Code does not relieve a fiduciary or disqualified person from certain other provisions of the Code, including any prohibited tansaction provisions to which the exemption does not apply;

(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 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 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 request 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. Commnents 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 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75–26, 1975–1 C.B. 722. If the exemption is granted, 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 purchases by the C. John Robbins IRA and the Ralph Anglin IRA of certain Mortgages owned by the Partnership, provided the amounts paid for the Mortgages are not more than their fair market values on the date said purchases are made.

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 7th day of July, 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. 82–19615 Filed 7–19–82; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–2934]

Proposed Exemption for Certain Transactions Involving the Knoxville Surgical Group Profit Sharing Plan and the Knoxville Surgical Group Pension Plan Located in Knoxville, Tennessee

AGENCY: Department of 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 (the Sale) of a building (the Property) to the Knoxville Surgical Group Profit Sharing Plan (the Profit Sharing Plan) and the Knoxville Surgical Group Pension Plan (the Pension Plan, collectively, the Plans) by a partnership (the Partnership), which is a party in interest with respect to the Plans, (2) the proposed lease (the Lease) of the Property by the Plans to Knoxville Surgical Group, P.C. (the Employer), the sponsor of the Plans; and (3) certain guarantees to the Plans with respect to the Property made by the Employer, and individually by the principal shareholders of the Employer (the Principals). The proposed exemption, if granted, would affect the Employer, the Partnership, the participants and beneficiaries of the Plans and other persons participating in the transactions.

DATE: Written comments and requests for a public hearing must be received by the Department on or before August 30, 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–2934. 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: 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 Deparment 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 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 Employer is a professional corporation engaged in the practice of medicine. The Profit Sharing Plan and the Pension Plan had total assets, as of March 11, 1982, of $504,731 and $546.586, respectively. The Plans each have 10 participants. The Partnership is presently composed of Drs. Mack Fecher, Hugh Hyatt and Richard Brinner, all officers, directors and employees of the Employer. Drs. Mack Fecher, Hugh Hyatt, Richard Brinner and Bruce McCampbell are the Principals. The Property is a medical office building located in Knoxville, Tennessee and has been owned by the Partnership since 1968.

2. The applicant is requesting an exemption to permit the proposed Sale of the Property to the Plans by the Partnership and the subsequent Lease of the Property by the Plans to the Employer. The Property would be deeded to both the Pension Plan and the Profit Sharing Plan as joint owners, each Plan sharing equally in the purchase price of the Property and the benefits derived from the Property. The Sale will be for a sum of $240,000 in cash. This value was determined to be the fair market value of the Property, as of August 31, 1981, by Lewis Sam Pipkin, M.A.I., S.R.P.A. (Pipkin), an independent appraiser located in Knoxville, Tennessee. All expenses related to the Sale of the Property will be paid by the Partnership. The Lease will be a triple

net lease with all property taxes, insurance, repair and maintenance costs paid by the Employer. The Lease will be for an initial five year term. At the end of this five year term the Plans will have an option to renew the Lease with the Employer for an additional five year term. Rentals initially will be $3,000 a month. This value was determined to be the fair market rental value of the Property, as of August 31, 1981, by Pipkin. An appraisal of the Property will be performed annually by a qualified independent appraiser and rentals will be adjusted to reflect the fair market rental value of the Property. The applicant represents that the projected rate of return to the Plans on the Lease at current fair market rental rates should exceed 13% per annum. In addition, the Property is located in a regional medical center, surrounded by hospitals and other medical office buildings. As a result, the applicant represents property values have appreciated at a rapid rate in the vicinity of the Property with the Property appreciating at a rate of approximately 9.8% per annum. The purchase of the Property would involve less than 24% of the assets of each Plan.

3. Valley Fidelity Bank and Trust Company of Knoxville, Tennessee (Fidelity) has accepted appointment as special trustee on behalf of the Plans with respect to the transactions. Fidelity is independent of the parties involved in the transactions. Fidelity has reviewed the terms and conditions of the proposed transactions and represents that the Sale and Lease are in the best interests of the Plans and their beneficiaries and participants. Fidelity will also monitor the rental payments made to the Plans and all annual rental adjustments and will be responsible for enforcing the rights of the Plans under the terms and conditions of the lease. Fidelity will also determine at the end of the initial five year term of the Lease whether the Lease will be renewed for an additional term of five years.

4. The Employer guarantees that if the Property is sold during the initial five year term of the Lease and the five year renewal of the Lease for below the original purchase price of $240,000, it will indemnify the Plans for the difference between the original purchase price of the Property and the selling price. Fidelity will be responsible for determining when and if the Property is to be sold. The payments of rent under the Lease will be personally guaranteed by the Principals in the event of a default by the Employer. The applicants represent that the Principals had a combined net worth, as of April 1, 1982, of $2,000,000.

5. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 408(a) of the Act because: (1) Fidelity, an independent party, has determined that the Sale and Lease are in the best interests of the Plans; (2) the Sales price and rentals to be paid under the Lease have been determined by Pipkin, a qualified independent appraiser; (3) Fidelity will monitor the terms and conditions of the Lease; (4) rentals under the Lease will be adjusted every year to reflect the fair market rental value of the Property; (5) if the Property is sold at any time during the term of the Lease below the original purchase price paid by the Plans of $240,000, the Employer will indemnify the Plans for the difference; (6) at the termination of the initial five year term of the Lease the Plans have the option to renew the Lease for an additional five year term; and (7) the Principals personally guarantee that rentals will continue to be received by the Plans in the event of a default by the Employer under the Lease.

Notice to Interested Persons

Notice of this proposed exemption will be given to all participants and beneficiaries of the Plans by certified mail within 10 days following the publication of this notice of pendency in the **Federal Register.** The notice will contain a copy of the notice of pendency as it appears in the **Federal Register** as well as a statement informing interested persons of their right to comment 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 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 Sale of the Property by the Partnership to the Plans for the cash sum of $240,000, provided this price is not greater than the fair market value of the Property at the time of the Sale; (2) the Lease of the Property by the Plans to the Employer, provided the terms and conditions of the Lease are at least as favorable to the Plans as the Plans could obtain in a transaction with an

unrelated party; and (3) certain guarantees to the Plans by the Principals and the Employer with respect to the Property as described herein.

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 13th day of July, 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. 82-19616 Filed 7-19-82; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Advisory committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published June 16, 1982 (47 FR 26059). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. Those Subcommittee meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the August 1982 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Barbara Jo White) between 8:15 a.m. and 5 p.m., Eastern Time.

ACRS Subcommittee Meetings

**Fluid Dynamics*, July 29 and 30, 1982, San Jose, CA. The Subcommittee will discuss potential safety concerns raised by a former General Electric employee, Mr. John Humphrey, regarding the BWR pressure suppression containment design.

**Reliability and Probabilistic Assessment*, August 6, 1982, Washington, DC. The Subcommittee will discuss the draft NRC Staff Action Plan for implementing the Commission's proposed safety goals.

**Class-9 Accidents*, August 6, 1982, Washington, DC. The Subcommittee will discuss the Severe Accident Research Plan (NUREG-0900).

**Watts Bar Nuclear Plant*, August 10, 1982, Washington, DC. The Subcommittee will complete the review to the application of Tennessee Valley Authority for an operating license for the Watts Bar Nuclear Power Plant Units 1 and 2.

**Regulatory Activities*, August 10, 1982, Washington, DC.—CANCELLED.

**Safety Research Program*, August 11, 1982, Washington, DC. The Subcommittee will discuss the format and content of the NRC Long-Range Plan for fiscal year 1985 through fiscal year 1989.

**Grand Gulf Nuclear Station Units 1 and 2*, August 11, 1982, Washington, DC. The Subcommittee will continue the discussion of the Mississippi Power and Light Company's request for and operating license.

**Extreme External Phenomena*, August 11, 1982, Washington, DC. The Subcommittee will discuss seismic design margins for nuclear power plants.

**Clinch River Breeder Reactor Working Group on Structures and Materials*, August 18 and 19, 1982, Washington, DC. The Subcommittee will discuss elevated temperature design (N-47), "leak before break" criteria, overall leakages, leak detection, inservice inspection, and overall structural integrity of transition joints.

**Transportation of Radioactive Materials*, August 24, 1982, Washington, DC. The Subcommittee will continue its review of the adequacy of the NRC procedures for certifying packages for transporting radioactive materials. It may also discuss proposed revisions to 10 CFR Part 71, "Packaging of Radioactive Material for Transport and Transportation of Radioactive Material Under Certain Conditions".

**Reactor Operations*, August 25, 1982, Washington, DC. The Subcommittee will discuss NRC's enforcement policy, the Inspection and Enforcement (IE) performance appraisal team inspection program and the IE regionalization program.

**Washington Public Power Supply System Unit 2 (WPPSS)*, August 31 and September 1, 1982, Washington, DC. The Subcommittee will review the application of Washington Public Power supply System for an operating license for the WPPSS Nuclear Project Unit 2.

**Regulatory Activities*, September 8, 1982, Washington, DC. The Subcommittee will review proposed Regulatory Guides and Regulations.

**Metal Components Working Group*, September 8, 1982, Washington, DC. The Subcommittee will continue the discussion with NRC and industry regarding the matter of pressurized thermal shock.

**AC/DC Power Systems Reliability*, September 8, 1982, Washington, DC. The Subcommittee will discuss the ongoing NRC and industry work on the reliability of DC power systems in nuclear power plants and station blackout.

ACRS Full Committee Meeting

August 12-14, 1982: items are *tentatively* scheduled.

*A. *Grand Gulf Nuclear Station Unit 1*—Outstanding Operating License issues.

*B. *Watts Bar Nuclear Plant Units 1 and 2*—Operating License.

*C. *Robert E. Ginna Nuclear Power Plant*—Systematic Evaluation Program.

*D. *Emergency Core Cooling Systems*—Proposed revision of 10 CFR Part 50, Appendix K. ECCS Evaluation Models.

*E. *Quantitative Safety Goals*—Proposed NRC implementation plan.

*F. *Control Room Habitability*—Discuss control room design bases/criteria.

*G. *Instrumentation and Control Systems in BWBs*—Discuss design features of BWR control and instrumentation systems.

*H. *ACRS Subcommittee Activity*—Discuss status of ACRS subcommittee activity regarding safety-related matters including reactor radiological effects, emergency planning, and the NRC Long-Range Research Plan.

*I. *Naval Reactors Policies and Procedures*—Discuss naval reactors policies and procedures regarding design and operation of nuclear powered propulsion systems.

*J. *NRC Staff Activities*—Hear and discuss reports on NRC Staff activities including system interaction studies and plans for resolution of ATWS.

September 9–11, 1982: Agenda to be announced.

October 7–9, 1982: Agenda to be announced.

Dated: July 15,-1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-19574 Filed 7-19-82; 8:45am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Class-9 Accidents; Meeting

The ACRS Subcommittee on Class-9 Accidents will hold a meeting on August 6, 1982, Room 1046 at 1717 H Street, NW., Washington, D.C. The Subcommittee will disucuss the Severe Accident Research Plan (NUREG–0900).

In accordance with the procedures outlined in the **Federal Register** on September 30, 1981 (46 FR 47903), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Friday, August 6, 1982—12:30 p.m. Until the Conclusion of Business

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Gary Quittschreiber, or Mr. Stuart K. Beal (Telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: July 15, 1982.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 82-19575 Filed 7-19-82; 8:45 am]

BILLING CODE 7590-01-M

Policy Statement of Information Flow

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Statement of Policy.

SUMMARY: The Commission has approved this policy statement to emphasize to licensees their responsibility to provide the Commission with timely and accurate information during the course of an incident or significant event.

EFFECTIVE DATE: July 20, 1982.

FOR FURTHER INFORMATION CONTACT: George Eysymontt, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (202) 634–3302.

Policy Statement of Information Flow

All licensees have a responsibility to provide the Commission with timely accurate and sufficiently complete information to make sound regulatory decisions. The purpose of this policy statement is to emphasize to all licensees the special importance of this responsibility during the course of an incident or a significant event. The Commission recognizes that licensees, rather than the Commission, have the ultimate responsibility for safe operation of their facilities including response to significant events. However, if inaccurate, insufficient of deliberately misleading information is provided, it could impede the Commission's ability to fullfill its own responsibilities.

The capability of the Nuclear Regulatory Commission to make timely recommendations and to provide information regarding actual or potential threats to the public health and safety depends on the timeliness, accuracy and completeness with which incidents and significant events are communicated by licensees to the Commission. While the majority of occurrences resulting from licensed activities pose little or no serious or immediate threat to the public health and safety, there are certain occurrences which may pose such threats or generate public concern. In order to perform its regulatory responsibilities the Nuclear Regulatory Commission has an important need to collect facts quickly, accurately and completely about incidents or significant events, assess these facts, take necessary supportive action, and inform the public.

In view of the Commission's responsibilities, it is essential that licensees and personnel at licensed facilities or involved in licensed activities communicate candidly and completely with the Commission at all times and in particular in the following situations:

(a) any incident involving byproduct, source, or special nuclear material possessed by a licensee which may have caused or threatens to cause exposure to certain levels of radiation (see 10 CFR 20.403).

(b) any significant event as defined in 10 CFR 50.72 involving a nuclear power reactor (e.g., any event requiring initiation of the licensee's emergency plan or any section of that plan).

(c) any case of accidental criticality or any loss, other than normal operating loss, of special nuclear material (see 10 CFR 70.52).

(d) any incident in which an attempt has been made, or is believed to have been made, to commit a theft or unlawful diversion of special nuclear material which a licensee is licensed to possess, or to commit an act of industrial sabotage against a licensee's plant or transportation system (see 10 CFR 73.71).

Although their primary responsibility is to deal with any occurrence, licensees will be held accountable for informing the NRC. In those instances when doubt may exist concerning the severity of an occurrence, its consequences, and the potential for further degradation of the situation, licensees should report candidly such uncertainty. They should not fail to communicate with the Commission for reasons such as optimism or fear of public reaction. The Commission cannot and will not tolerate less than timely, candid, and sufficiently complete reporting and intends to deal forcefully with licensees and their responsible personnel when communications are unsatisfactory or when deliberately misleading information is supplied. Sanctions will be imposed on licensees who fail to meet their obligations with respect to Commission requirements. In assessing whether a licensee has met its obligation, the Commission will keep in mind that some judgment on the part of the licensee is called for. Licensees should keep in mind that they are responsible for assuring their judgments are sound—made by competent people who are themselves assured of timely, accurate and sufficiently complete information through adequate procedures.

Dissenting View of Commissioner Thomas M. Roberts

While fully supporting the laudatory goal of encouraging full and candid provision of information between licensees and the NRC, I disapprove this policy statement on the grounds that it is vague and overly broad. With regard to its vagueness, I note that it is unclear exactly what situations and what subjects are covered by this statement. While titled "Policy Statement on Information Flow" and thus seemingly covering the provision of information by all licensees at all times, the text of the statement implies that its coverage is limited to the provision of information during incidents or significant events. Moreover, the statement is vague as to the precise types of information with which the Commission wishes to be provided.

Due to this broad general language, licensees will be hard pressed to determine the kinds of actions which will demonstrate full compliance with this policy statement. The Atomic Energy Act contemplates that the Commission will require by regulation that information which it determines is necessary and/or desirable. 42 U.S.C. 2133, 2201. Here, the Commission, has chosen not to exercise this authority. Rather, it has delegated this identification process to licensees by requesting the provision of "timely, accurate, and sufficiently complete information [for the Commission] to make sound regulatory decisions." Thus, licensees must determine what it is that the Commission needs to make what the Commission considers to be sound regulatory decisions.

Finally, while I realize that a policy statement is not legally enforceable, I note that most licensees make good faith attempts to comply with such statements. This statement appears to request the provisions of information in addition to that already required by NRC regulations and/or license conditions and technical specifications.[1] Thus, to the extent that this statement imposes additional "requirements," the statement would appear to be rulemaking via policy statement. If the Commission has identified the need for additional reporting requirements, it would be preferable to promulgate these by rulemaking.

Dated at Washington, D.C. this 15th day of July 1982.

[1] The policy statement states that "[s]anctions will be imposed on licensees who fail to meet their obligations *with respect to Commission requirements.*" (emphasis added) Thus, the statement implies that its coverage extends to the provision of information in addition to that which is legally required and enforceable.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 82-19573 Filed 7-19-82; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 4.17, "Standard Format and Content of Site Characterization Reports for High-Level-Waste Geologic Repositories," suggests the types of information that should be included in a site characterization report for review by the NRC staff and establishes a format for presenting the information.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

(5 U.S.C. 552(a))

Dated at Silver Spring, Maryland this 14th day of July 1982.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 82-19572 Filed 7-19-82; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Announcement on the SEC Government Business Forum on Small Business Capital Formation

In a unique attempt to establish a meaningful and ongoing dialogue on the capital formation problems besetting the small business community, the Securities and Exchange Commission is planning the first SEC Government-Business Forum on Small Business Capital Formation. This program will provide a forum for small businesses, government regulatory agencies, and private sector organizations concerned with small business issues to discuss the existing impediments to small business capital formation particularly in the areas of taxation, securities and credit. The Forum is scheduled to be held September 23–25, 1982, in Washington, D.C.

The format of the Forum provides that participants will meet in working discussion groups of 15–20 persons to cover eight major issues with the intent of developing specific recommendations. In order to achieve these objectives, the size of the Forum must be limited. Each participant must be generally familiar with all the discussion papers being prepared for distribution prior to the Forum. Further, each participant will be requested to act as a discussion leader on one major issue.

Members of the publlic interested in being considered for active participation at the Forum should promptly complete and return the biographical sheet available from the Office of Small Business Policy, Division of Corporation Finance, U.S. Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549 by August 2, 1982. The biographical sheet will facilitate the selection of small businesspersons, lawyers, accountants and others who are knowledgeable in small business issues and who could make the most meaningful contribution ot the Forum.

For further information contact Daniel Abdun-Nabi at (202) 272-2644.

George A. Fitzsimmons,

Secretary.

July 13, 1982.

[FR Doc. 82-19633 Filed 7-19-82; 8:45 am]

BILLING CODE 8010-01-M

[812-5164; Rel. No. 12550]

Carnegie Tax Free Income Trust; Filing of Application

July 14, 1982.

Notice if hereby given that Carnegie Tax Free Income Trust ("Applicant") 1331 Euclid Avenue, Cleveland, Ohio 44115, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on April 13, 1982, and an amendment thereto on June 4, 1982, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting Applicant to the extent necessary (1) from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder to permit Applicant (a) to compute its net asset value per share using the amortized cost method of valuation, (b) to consider the maturity of variable rate demand notes in its portfolio as the longer of the notice period required before Applicant would be entitled to prepayment on the note or the period remaining until the note's next interest rate adjustment; and (c) to value in the manner described below rights acquired from brokers, dealers, or banks to sell portfolio securities to such persons; and (2) from the provisions of Section 12(d)(3) of the Act to permit Applicant to acquire rights to sell its portfolio securities to brokers or dealers. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is an unincorporated business trust, organized under the laws of Massachusetts to provide, through investment in a professionally-managed portfolio of high quality municipal obligations, as high a level of current income exempt from federal income taxation obtainable from short-term rates as is consistent with prudent investment management, the preservation of capital and the maintenance of liquidity. Applicant further states that municipal obligations in which it may invest ("Municipal Obligations") consist of debt obligations issued by or on behalf of any state, territory, or possession of the United States or the District of Columbia or their political subdivisions, agencies, or instrumentalities, the interest on which is in the opinion of counsel for the issuer, wholly exempt from federal income taxation. It is further stated that specific types of Municipal Obligations which Applicant may acquire include (1) bond anticipation notes, construction loan notes, project notes, revenue anticipation notes and tax anticipation notes which (a) are backed by the full faith and credit of the United States, (b) are rated MIG–1, MIG–2 or their substantial equivalent by Moody's Investors Service, Inc. ("Moody's"), or (c) if not rated, have, in the opinion of the Board of Trustees of Applicant, essentially the same characteristics and quality as bonds having the above ratings; (2) municipal bonds, including pollution control revenue bonds which are (a) rated Aaa or Aa by Moody's, (b) rated AAA or AA by Standard & Poor's Corporation ("S&P"), or (c) if not rated, have, in the opinion of Applicant's Board of Trustees, essentially the same characteristics and quality as bonds having the above ratings; (3) other types of tax-exempt Municipal Obligations such as short-term discount notes rated (a) Prime–1 or Prime–2 by Moody's, or (b) if not rated, possess equivalent characteristics and quality in the opinion of the Board of Trustees. Applicant also states that it may invest in commitments to purchase Municipal Obligations on a "when-issued" basis; Applicant states that at the time it makes a commitment to purchase a Municipal Obligation, it will record the transaction and reflect the value of the obligation in determining its net asset value. It is further stated that Applicant's custodian will maintain on a daily basis a separate trust account consisting of cash or liquid debt securities with a value at least equal to the amount of Applicant's commitment to purchase when-issued securities. Applicant also states that is may at times invest in taxable short-term investments of comparable quality to its Municipal Obligations consisting of obligations of the United States government, its agencies or instrumentalities, deposit obligations of banks and savings and loan associations which are members of the Federal Deposit Insurance Corporation, bankers acceptances and documented discount notes, high-grade commerical paper guaranteed or issued by domestic corporations, and instruments (including repurchase agreements) secured by such obligations.

Applicant represents that its Board of Trustees intends to establish procedures designed to stabilize, to the extent reasonably possible, the net asset value of its shares, computed for the purpose of distribution, redemption and repurchase, at $1.00. 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 and 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 further states 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 the board of directors of the investment company. Prior to the filing of the application, the Commission expressed its view that, among other things, (1) Rule 2a-4 under the Act requires that portfolio instruments of "money market" funds be valued with reference to market factors, and (2) it would be inconsistent generally, with the provisions of Rule 2a-4 for a "money market" fund to value its portfolio instruments on an amortized cost basis (Investment Company Act Release No. 9786, May 31, 1977). In view of the foregoing, Applicant request exemptions from Section 2(a)(41) of the Act and Rule 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to value its portfolio by means of the amortized cost method of valuation.

In support of the relief requested, Applicant states that experience indictates that two features are necessary in any "money market" fund: (1) certainty of stability of principal and (2) steady flow of predictable and competitive investment income. Applicant asserts that it can provide these features to investors by maintaining a portfolio of high quality, municipal obligations valued at amortized cost. Applicant represents that, given the nature of its policies and operations, there should be a negligible discrepancy between prices obtained by the amortized cost method and those obtained by a market valuation method.

Consequently, Applicant states that its use of the amortized cost method of valuation would not be inconsistent with the policy of the Act, as implemented by Rule 2a-4, nor would it undermine the protection of investors provided by such Rule.

Applicant further represents that (1) its Board of Trustees has determined in good faith that, in light of the characteristics of Applicant, absent unusual or extraordinary circumstances, the amortized cost method of valuation of portfolio instruments is appropriate and preferable to the use of a market-based valuation method; and (2) its Board of Trustees has further determined to monitor continuously valuation indicated by methods other than amortized cost so that any necessary changes in the valutaion method may be made to assure that the valuation method being used is a fair approximation of fair value in view of all pertinent factors.

Applicant has agreed that the following conditions may be imposed in any order of the Commission granting the exemptive relief requested:

1. In supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, Applicant's Board of Trustees undertakes—as a particular responsibility within its overall duty of care owed to Applicant's 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 share, as computed for the purpose of the distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the 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 Applicant's net asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and maintenance of records of such review.[1]

(b) In the event such deviation from Applicant's $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Board of Trustees will promptly consider what action, if any, should be initiated.

(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 action may include: redeeming shares in kind; selling portfolio instruments prior to maturity to realize capital gains or losses, or to shorten Applicant's average portfolio maturity; 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 net asset value per share; provided, however, that Applicant will not (a) purchase any instrument with a remaining maturity of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120.[2]

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 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 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 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 as though 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 Applicant's Board of Trustees.

6. Applicant will include in each quarterly report, as an attachment to Form N–1Q, a statement as to whether any action pursuant to condition 2(c) above was taken during the preceding fiscal quarter, and, if any action was taken, will describe the nature and circumstances of such action.

In connection with compliance with the undertaking set forth in paragraph (3) above, Applicant states that the proliferation of tax-exempt mutual funds has significantly increased the demand for short-term tax-exempt instruments and, as a result, available yields on such instruments have tended to decline. At the same time, Applicant states, certain issuers of tax-exempt instruments have sought to lengthen their terms in order, among other things, to decrease the transaction costs associated with repeated short-term issues. Applicant states that, in order to induce longer term borrowing relationships, issuers have begun offering higher yields on variable rate notes containing a demand feature allowing either party to terminate the obligation within relatively short notice periods. Applicant represents that it believes that the acquisition of such variable rate demand notes would provide shareholders with a higher tax-exempt return without subjecting them to increased investment risk.

Applicant states that it proposes to acquire, normally in negotiated transactions with the issuers, tax-exempt variable rate demand notes having the following features: (1) each note would have an interest rate determined by a prescribed forumla and adjusted at periodic intervals not to exceed one year; (2) Applicant could at any time demand prepayment of the unpaid principal balance plus accrued interest thereon and would be entitled to prepayment within a prescribed notice period not to exceed seven calendar days; (3) issuers could, at their discretion, prepay the outstanding principal plus accrued interest thereon upon notice to Applicant within a period comparable to the notice periods required for Applicant to demand prepayment; (4) absent an earlier exercise by Applicant or an issuer of their respective prepayment privileges, the principal and interest under each note would be payable on a date exceeding one year from the date of purchase by Applicant; (5) each note purchased by Applicant would be

[1] To fulfill this condition, Applicant states that it 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.

[2] In fulfilling this condition, if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, Applicant states that it 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.

determined under procedures prescribed by Applicant's Board of Trustees to present minimal credit risks and would be rated by a major rating service within its two highest rating categories or, if not rated, would be determined by the Board of Trustees to be comparable to tax-exempt securities which are of "high quality" (i.e., within the two highest ratings assigned by any major rating service). Applicant states that the issuer's obligation to pay principal on its notes would be supported by an irrevocable, unconditional bank letter of credit where necessary to ensure that the notes were of "high quality" (i.e., in all cases where the Board of Trustees could not determine that a note is of "high quality" without a letter of credit). Applicant states that, if a letter of credit is a feature of a note when it is purchased by Applicant, the note will always be supported by such letter of credit unless the rating of the note rises to within the two highest grades without the letter of credit.

Applicant represents that its adviser, Carnegie Capital Management Company, intends to evaluate not less frequently than monthly the credit of the issuers of notes and the backing banks in accordance with other procedures used to evaluate the quality of portfolio securities. Applicant undertakes to dispose of any note (by exercising the demand privilege where beneficial) when, due to an adverse change in the issuer's credit, Applicant's Board of Trustees or any rating service concludes that the note is no longer of "high quality".

Applicant states that it will normally have an unconditional right to sell the notes at any time. However, Applicant represents that any note that is not freely assignable will be required to be backed by an irrevocable, unconditional bank letter of credit. According to Applicant, banks issuing such letters of credit will, in its adviser's opinion, present minimal risk of default and will be major United States commercial banks having outstanding certificates of deposit suitable for portfolios of "high quality" short-term "money market" instruments.

Applicant states that it proposes to acquire variable rate demand notes as described above and to consider the maturity of such notes, for purposes computing its dollar-weighted average portfolio maturity and the prohibition against purchase of securities maturing in more than one year, as the longer of the notice period required before Applicant is entitled to prepayment under the note, or the period remaining until the note's next interest rate adjustment.

Applicant submits that there are two general reasons for restricting the maturities of Applicant's portfolio securities. First, lengthening the period to maturity of a fixed rate debt security valued according to the amortized cost method generally increases the risk that unrealized gains or losses will cause the security's amortized cost value to deviate materially from its current market value. Applicant states that this risk (because it primarily results from fluctuations in prevailing interest rates) is the "market risk" and that one of the purposes of limiting the allowable average period to maturity of the portfolio is to reduce its market risk. The second reason for limiting maturity, Applicant states, is that the "credit risk" represented by an instrument is generally perceived to increase as the instrument's maturity is lengthened. Applicant states that the credit risk is controlled by the requirement that Applicant's portfolio be limited to securities of "high quality" which mature in one year or less.

Applicant asserts that neither its proposed purchase of variable rate demand notes nor its proposed method of computing its dollar-weighted average portfolio maturity will violate the intent of the conditions set forth in paragraph (3) above. Applicant states that because a note's interest rate adjustment provision reflects the prevailing rate from time to time on comparable tax-exempt securities, unrealized gains and losses with respect to any note would be eliminated as of each interest rate adjustment date. Absent unusual circumstances, Applicant asserts that the rate adjustment provision will permit the notes to be sold at par on each interest rate adjustment date. Applicant further states that if the interest rate, as adjusted, does not sufficiently eliminate material unrealized appreciation or depreciation on the adjustment date (due to unforeseen circumstances other than a decline in the rating of the notes to below "high quality"), Applicant undertakes to demand prepayment of the note in full. Applicant also undertakes to sell the notes or exercise its demand privilege (whichever is more beneficial) if, due to an adverse change in the issuer's credit, the notes are no longer of "high quality". Applicant asserts that the maturity of a note for purposes of determining its market risk is approximately measured by the notice period required before Applicant is entitled to prepayment in full and that for purposes of measuring either of these risks, the maturity of a note will never exceed one year.

Applicant states in addition that where the period remaining until the next interest rate adjustment is different from the notice period required for payment, Applicant undertakes to utilize the longer of the two periods for purposes of computing weighted average maturity. Applicant states that this approach is the most conservative under the circumstances.

In connection with its proposed use of the amortized cost valuation method, Applicant requests an exemption to permit Applicant to (1) acquire variable rate demand notes and value them by use of the amortized cost valuation method and (2) compute its dollar-weighted average portfolio maturity as proposed hereinabove. Applicant represents that these exemptions comport with the standards of Section 6(c) of the Act in view of its management policies and the conditions set forth above.

Applicant asserts that in addition to maintaining a constant net asset value per share, it must provide its shareholders with the ability to obtain same-day redemption proceeds in federal funds. It is stated that the federal funds wire closes for transmission purposes at 3:00 p.m., and that therefore Applicant has little time to obtain (either from maturing portfolio securities or settlements arranged that day on sales of securities) the cash needed to meet net redemptions. Applicant states further that, because the maturity dates of the Municipal Obligations to be held in its portfolio will be relatively infrequent and non-negotiable, Applicant will be unable to rely on scheduled maturities to meet net redemptions. In addition, Applicant states that regular settlement on sales of portfolio securities may take five business days; thus, it is stated, unless prior arrangements assuring immediate liquidity have been made, the negotiation of same-day settlements on sales of Municipal Obligations within the brief time available is frequently impossible or may require Applicant to receive a less favorable execution price on a sale even though the securities sold have a short remaining maturity. Applicant states that other investment techniques used by taxable money market funds to obtain liquidity are not viable options because they are prohibitively expensive or would produce undesirable taxable income.

Applicant states that it proposes to improve its portfolio liquidity by assuring same-day settlements on portfolio sales (and thus facilitate the

same-day payments of redemption proceeds in federal funds) through the acquisition of "Standby Commitments". A Standby Commitment, Applicant states, is a right of a fund, when it purchases a Municipal Obligation for its portfolio from a broker, dealer, or other financial institution, to sell the same principal amount of such securities back to the seller, at the fund's option, at a specified price. Applicant states further that Standby Commitments are also known as "puts", and that its investment policies permit the acquisition of Standby Commitments solely to facilitate portfolio liquidity. Applicant represents that the acquisition or exercisability of a Standby Commitment will not affect the valuation or maturity of its underlying portfolio, which will be valued in accordance with the amortized cost order hereby requested.

Applicant undertakes to acquire only Standby Commitments having the following features: (1) They will be in writing and will be physically held by Applicant's custodian; (2) they may be exercisable by Applicant at any time prior to the underlying security's maturity; (3) Applicant's rights to exercise them will be unconditional and unqualified; (4) they will be entered into only with dealers, banks and brokers who in the investment adviser's opinion present a minimal risk of default; (5) although they will not be transferable, Municipal Obligations purchased subject to such commitments could be sold to a third party at any time, even though the commitment was outstanding; and (6) their exercise price will be (i) Applicant's acquisition cost of the municipal securities which are subject to the commitment (excluding any accrued interest which Applicant paid on their acquisition), less any amortized market premium or plus any amortized market or original issue discount during the period Applicant owned the securities, plus (ii) all interest accrued on the securities since the last interest payment date during the period the securities were owned by Applicant. Applicant further states that since it values its Municipal Obligations on an amortized cost bases, the amount payable under a Standby Commitment will be substantially the same as the value assigned by Applicant to the underlying securities. Moreover, Applicant submits that there is little risk of an event occurring which would make the amortized cost valuation of its portfolio securities inappropriate; however, Applicant represents that in the unlikely event that the market or fair value of securities in its portfolio were not substantially equivalent to their amortized cost value, the securities would be valued on the basis of available market information and held to maturity. Applicant represents that it expects to refrain from exercising the Standby Commitments in such a situation to avoid imposing a loss on a dealer and jeopardizing Applicant's business relationship with that dealer.

Applicant states that it expects that Standby Commitments generally will be available without the payment of any direct or indirect consideration. However, if necessary or advisable, Applicant states that it will pay for Standby Commitments, either separately in cash or by paying a higher price for portfolio securities which are acquired subject to the commitment. Applicant represents that, as a matter of policy, the total amount paid in either manner for outstanding Standby Commitments held in its portfolio will not exceed ½ of 1% of the value of its total assets calculated immediately after any Standby Commitment is acquired.

Applicant asserts that it is difficult to evaluate the likelihood of use or the potential benefit of a Standby Commitment. Therefore, Applicant states that its Board of Trustees will determine that Standby Commitments have a "fair value" of zero, regardless of whether any direct or indirect consideration is paid. Where Applicant has paid for a Standby Commitment, Applicant states that its cost will be reflected as unrealized depreciation for the period during which the commitment is held. In addition, for purposes of complying with the condition of its amortized cost order that the dollar-weighted average maturity of its portfolio shall not exceed 120 days, Applicant states that the maturity of a portfolio security shall not be considered shortened or otherwise affected by any Standby Commitment to which such security is subject.

Applicant states that it has been advised by its counsel that the Internal Revenue Service ("IRS") has issued a favorable private ruling to the effect that a registered investment company will be the owner of municipal securitis acquired subject to a put option and that interest on the securities will be tax-exempt to the company and that its counsel is prepared to render an opion to Applicant to this effect. Applicant states that it does not intend to seek a favorable ruling from the IRS with respect to its Standby Commitments and that there is no assurance that Standby Commitments will be available to it nor does Applicant assume that such commitments would continue to be available under all market conditions.

Section 12(d) of the Act, in relevant part, prohibits any registered investment company from purchasing or otherwise acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is an investment adviser. Therefore, Applicant requests an order pursuant to Section 6(c) of the Act exempting it from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit its acquisition of Standby Commitments from brokers or dealers. Applicant also requests, pursuant to Section 6(c) of the Act, an exemption from the provisions of Section 2(a)(41) of the Act and Rules 2a–4 and 22c–1 thereunder, permitting it to value Standby Commitments in the manner described hereinabove.

Applicant asserts that this relief is appropriate in the public interest, and consistent with the protection of investors. Applicant asserts that the proposed acquisition of Standby Commitments will not affect its net asset value per share for purposes of sales and redemptions and will not pose new investment risks, but rather will improve its liquidity and ability to pay redemption proceeds the same day in federal funds. Applicant states that its reliance upon the credit of dealers, banks and brokers from which it purchases commitments will be secured to the extent of the value of the underlying municipal securities which are subject to the commitment. Therefore, Applicant asserts that a Standby Commitment presents less risk than a bank certificate of deposit and will be qualitatively no greater a risk than the risk of loss faced by any investment company which is holding securities pending settlement after having agreed to sell the securities to a broker or dealer in the ordinary course of business. Moreover, Applicant states that its investment adviser intends to evaluate periodically the credit of institutions issuing Standby Commitments. According to Applicant, for that reason and in light of the fact that Standby Commitments will not be ascribed value for purposes of determining Applicant's net asset value, the acquisition of such commitments will not meaningfully expose its assets to the entrepreneurial risks of the investment banking business, nor require it to evaluate the credit of dealers in determining its net asset value.

Notice is further given that any interested person may, not later than August 9, 1982, at 5:30 p.m., submit to the

Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted, or he/she may request that he/she be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or in the case of an attorney-at-law, by certificate) shall be filed contemporanously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the application herein will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–19634 Filed 7–19–82; 8:45 am]

BILLING CODE 8010–01–M

[812–5131; Rel. No. 12549]

Keystone Provident Life Insurance Co. et al.; Filing of Application

July 14, 1982.

In the matter of Keystone Provident Life Insurance Company, KMA Variable Account, and Keystone Massachusetts, Inc., 99 High Street, Boston, MA 02105.

Notice is hereby given that Keystone Life Insurance Company (the "Company"), KMA Variable Account (the "Variable Account"), a separate account of the Company registered under the Investment Company Act of 1940 ("Act") as a unit investment trust, and Keystone Massachusetts, Inc. ("KMI"), the principal underwriter of the Variable Account, referred collectively herein as "Applicants," filed an application on March 5, 1982 and amendments thereto on June 18, 1982 and July 2, 1982, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicants from provisions of Sections 22(e), 26(a), 27(c)(1), 27(c)(2), and 27(d) of the Act to the extent necessary to permit the transactions described in the application and, pursuant to Section 11 of the Act, for Commission approval of certain offers of exchange. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Background

The Company and the Variable Account filed an application July 15, 1980, and amendments thereto on November 21, 1980, January 21, 1981 and March 10, 1981 ("original application"), for an order of the Commission, pursuant to Section 11 of the Act, approving certain offers of exchange and, pursuant to Section 6(c) of the Act, granting exemptions from certain provisions of Sections 2(a)(32), 2(a)(35), 22(c), 26(a), 27(c)(1), 27(c)(2) and 27(d) of the Act and Rule 22c–1 thereunder to the extent necessary to permit the transactions described in the application. On April 9, 1981, the Commission approved the proposed exchange offers and granted the requested exemptions (Investment Company Act Release No. 11727).

The original application contemplated that the administrator and custodian of the assets of the Variable Account would be Bradford Trust Company of Boston ("Bradford Trust") and, therefore, Bradford Trust would hold the shares of the listed portfolio investment companies of the Variable Account (the "Eligible Mutual Funds"). However, the Company and Bradford Trust have now mutually agreed that Bradford Trust should no longer act as custodian and administrator of the contracts. The Applicants therefore propose to have the Company perform all administrative functions for the contracts and the Variable Account and to have State Street Bank and Trust Company ("State Street") serve as the custodian and hold all of the assets of the Variable Account in trust. In addition, two more portfolio investment companies, Keystone Bond Trust and Keystone Stock Trust, have been added to the list of Eligible Mutual Funds.

Custodianship

Sections 26(a) and 27(c)(2) of the Act, as here pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments other than the sales load are deposited with a qualified bank as trustee or custodian and held in trust under an indenture containing specific provisions. Applicants request exemptions from Sections 26(a) and 27(c)(2) of the Act to the extent necessary to permit State Street to hold the shares of the Eligible Mutual Funds on an uncertified basis.

Texas Optional Retirement Plan

Sections 22(e) and 27(c)(1) of the Act provide, respectively, in pertinent part, (1) that a registered investment company may not suspend the right of redemption or postpone the date of payment upon the redemption of any redeemable security in accordance with its terms for more than seven days after the tender of such security for redemption, and (2) that a registered investment company issuing periodic payment plan certificates may not sell such certificates unless such certificates are redeemable securities. Section 27(d) of the Act makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor of or underwriter for such company, to sell any such certificate unless the certificate provides that the holder thereof may surrender the certificate at any time within the first eighteen months after the issuance of the certificate and receive in payment thereof, in cash, the sum of (1) the value of his account, and (2) an amount, from such underwriter or depositor, equal to that part of the excess paid for sales loading which is over 15% of the gross payments made by the certificate holder.

Pursuant to Texas law, all Texas institutions of higher education make available to certain employees an Optional Retirement Program ("ORP") funded through fixed or variable annuity contracts. As interpreted in an opinion by the Attorney General of Texas, certain 1973 amendments to the legislation establishing the Program now prohibit provisions in a fixed or variable contract issued in connection with ORP which provide for making available the redemption value of such contract prior to death, retirement or termination of employment in all institutions of higher education. Since 1973, the Program statute has been amended again. However, the new statute contains similar provisions. Applicants request exemptions from the provisions of Sections 22(e), 27(c)(1) and 27(d) of the Act to the extent necessary to permit compliance with the new ORP statute as it pertains to redemption values under contracts issued to participants in the Program subsequent to the date of such exemptive order.

Applicants will ensure that appropriate disclosure is made to

persons who consider participation in the Program, informing them of the restriction on the availability of redemption values under contracts to be issued to them. This disclosure will take the form of an appropriate reference in each prospectus (or a sticker thereto) to the restriction on redemption of those contracts, as well as requiring each participant, as a part of the determination that the sale of these contracts is suitable for that participant, to sign a statement indicating that he is aware that these restrictions will be placed on his contract when it is issued. In addition, all sales literature that is to be used in conjunction with the sale of these contracts will contain appropriate disclosure regarding the restriction on redeemability and the sales people involved in soliciting in this market will be instructed to bring this restriction specifically to the attention of the potential participants.

Offers of Exchange

Section 11(a) of the Act provides that it shall be unlawful for any registered open-end company or any principal underwriter for such a company to make or cause to be made an offer to the holder of a security of such company or of any other open-end investment company to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities to be exchanged, unless the terms of the offer have first been submitted to and approved by the Commission. Section 11(c) provides that, irrespective of the basis of exchange, the provisions of subsection (a) shall be applicable to any type of offer to exchange the securities of registered unit investment trusts for the securities of any other investment company.

The Variable Account is segmented into sub-accounts. The contract value is the sum of the value of all sub-account accumulation units attributable to a contract. Applicants propose to permit contract owners to transfer accumulated contract values from one sub-account to another sub-account without fee, penalty or other charge. There will be no limitation on such transfers. Applicants request an order under the provisions of Sections 11(a) and 11(c) to permit the transactions described in the application.

Section 6(c)

Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction or any class or classes of persons, securities or transactions, from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested party may, not later than August 2, 1982 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication 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 August 2, 1982 unless the Commission thereafter orders a hearing upon request or upon the Commission's motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive notice of further developments in this matter, including the date of the hearing, if ordered, and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 82–19635 Filed 7–19–82; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[License No. 03/04–0056]

Small Business Investment Corporation of Norfolk; Surrender of License To Operate as a Small Business Investment Company

Notice is hereby given that, pursuant to Section 107.105 of the regulations governing Small Business Investment Companies (13 CFR 107.105 (1982)), Small Business Investment Corporation of Norfolk (SBICN), 1216 Granby Street, Norfolk, Virginia 23510, has surrendered its license to operate as a Small Business Investment Company (SBIC) under the Small Business Investment Act of 1958, as amended (the Act). SBICN was licensed by the Small Business Administration on February 5, 1962.

SBICN has complied with all conditions set forth by the Small Business Administration for surrender of its license. Therefore, under the authority vested by the Act, and pursuant to the above-cited regulation, the license of SBICN was accepted effective July 9, 1982, and it is no longer licensed to operate as a SBIC.

(Catalog of Federal Domestic Assistance Program No. 59–011, Small Business Investment Companies)

Dated: July 13, 1982.

Robert G. Lineberry,

Acting Deputy Associate for Investment.

[FR Doc. 82–19562 Filed 7–19–82; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area No. 2054]

Florida; Declaration of Disaster Loan Area

DeSoto and Hendry Counties in the State of Florida constitute a disaster area as a result of damage caused by severe storms and flooding which occurred on June 17, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on September 6, 1982, and for economic injury until the close of business on April 7, 1983, at the address below: U.S. Small Business Administration, National Guard Armory, Arcadia, Florida 33821.

or other locally announced locations.

Homeowners with credit available elsewhere, 15⅜%

Homeowners without credit available elsewhere, 7⅞%

Businesses with credit available elsewhere, 16½%

Businesses without credit available elsewhere, 8%

Businesses (EIDL) without credit available elsewhere, 8%

Other (non-profit organizations including charitable and religious organizations), 11½%

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Public Law 96–302.

Information on recent statutory changes (P.L. 97–35, approved August 13, 1981) is available at the above-mentioned office.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: July 12, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-19564 Filed 7-19-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area No. 2042; Amendment No. 1]

Texas; Declaration of Disaster Loan Area

The above numbered declaration (See 47 FR 29429) is amended by adding the adjacent county of Archer as a result of damage caused by severe storms and flooding which occurred on or about May 12, 1982. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on July 26, 1982, and for economic injury until the close of business on February 25, 1983.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 23, 1982.

Donald R. Templeman,

Deputy Administrator.

[FR Doc. 82-19563 Filed 7-19-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular; Public Debt Series—No. 18-82]

Treasury Notes of July 31, 1984, Series U-1984

July 15, 1982.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $6,000,000,000 of United States securities, designated Treasury Notes of July 31, 1984, Series U-1984 (CUSIP No. 912827 NL 2). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated August 2, 1982, and will bear interest from that date, payable on a semiannual basis on January 31, 1983, and each subsequent 6 months on July 31 and January 31 until the principal becomes payable. They will mature July 31, 1984, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered, and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, July 21, 1982. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, July 20, 1982, and received no later than Monday, August 2, 1982.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purposed are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each

competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, August 2, 1982. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, July 29, 1982. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment wil be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 82-19652 Filed 7-16-82; 1:19 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 139
Tuesday, July 20, 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

1

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From July 15th Open Meeting

The following item has deleted at the request of the Broadcast Bureau from the list of agenda items scheduled for consideration at the July 15, 1982, Open Meeting and previously listed in the Commission's Notice of July 8, 1982.

Agenda, Item No., and Subject

Aural—2—*Title:* Mutually exclusive applications for new AM stations on 670 kHz in Tamarac and Miami, Florida, and a petition to deny the Miami application. *Summary:* The Commission considers all the above matters and designates the applications for hearing.

Issued: July 15, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-1060-82 Filed 7-16-82; 3:36 pm]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

FCC To Hold Open Commission Meeting, Thursday, July 22, 1982

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, July 22, 1982, which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title:* Notice of Proposed Rulemaking to amend Part 5 of the Commission's Rules to diminish restrictions on the licensing and use of stations in the Experimental Radio Service (Other Than Broadcast). *Summary:* The Commission considers staff proposals to reduce certain requirements pertaining to the experimental use of radio under Part 5 of the Commission's Rules, and to expand the scope of Part 5 to authorize limited market trials.

General—2—*Title:* Amendment of Subpart G, Part 15 of the Commission's Rules regarding Auditory Assistance Devices. *Summary:* The FCC will consider whether to adopt a Report and Order amending the Rules to eliminate the restriction on place of use of auditory assistance devices.

General—3—*Title:* Second Report and Order to permit expanded usage of frequencies in the 420-450 MHz band for non-Government radiolocation. *Summary:* The FCC will consider the amendment of Parts 2 and 90 of its regulations to permit assignment of frequencies in the 420-435 MHz portion of the 420-450 MHz band to non-Government radiolocation stations that utilize spread spectrum technology in the contiguous 48 states and Alaska.

General—4—*Title:* Notice of Proposed Rule Making to provide for Emergency Position-Indicating Radiobeacon (EPIRB) for survival craft of vessels operating in the Great Lakes. *Summary:* The FCC will consider whether to adopt a Notice of Proposed Rule Making to amend Part 83 to provide for Class D and Class E EPIRB's for use on survival craft of vessels operating in the Great Lakes. These EPIRB's would operate on the frequencies 156.8 MHz and 156.75 MHz and their intended purpose is to increase the chances for rescue in a distress distress situation. The rule sections pertaining to Class A, Class B and Class C EPIRB's have been rewritten to separate the technical requirements for type acceptance from the operational requirements.

General—5—*Title:* Improvements to UHF Television Reception. *Subject:* The Commission will consider whether to adopt a *Report and Order* in Docket 78-391, instituting rule changes for improving the UHF television service.

General—6—*Title:* Television Receiver Equipment Grading. *Subject:* The Commission will consider what further action should be taken in Docket 78-307, an inquiry considering a program for grading or labeling television receivers and receiving antenna equipment.

General—7—*Title:* Technical Improvements to Television Receivers and Certain Transmitter Standards. *Summary:* The FCC will consider a staff information memorandum concerning the status of tests made on a high performance television receiver developed for the FCC by RF Monolithics, Incorporated, under contract.

General—8—*Title:* UHF Television Receiver Noise Figures. *Subject:* In 1978, the Commission lowered the maximum allowable UHF receiver noise figure from 18 dB to 14 dB beginning in 1979, and further to 12 dB beginning in 1982 (Docket 21010). (Noise figure is a measure of one factor that determines how well a television receiver displays a weak signal.) In 1980, the 12 dB standard was overturned by the U.S. Court of Appeals. The Commission will consider what further action to take in this proceeding.

General—9—*Title:* Measurement Techniques of Television Receiver Noise Figures. *Summary:* The FCC will consider relaxing the annual reporting requirements for television receivers under Part 15 and consider terminating this proceeding which questioned the accuracy, repeatability, and tolerance of noise figure measurements in television receivers.

General—10—*Title:* Television Receiver Performance Standards. *Summary:* The FCC will consider terminating this proceeding which questioned whether noise figure and peak picture sensitivity were adequate evaluators of weak signal television performance.

Private Radio—1—*Title:* Amendment of Part 90 of the Commission's Rules and Regulations to release spectrum in the 806-821/851-866 MHz bands and to adopt rules and regulations which govern their use. An inquiry concerning the multiple licensing of 800 MHz radio systems ("community repeaters"). Amendment of Section 90.385(c) to allow transmission of nonvoice signals at 800 MHz. *Summary:* The Commission will consider whether to adopt Private Radio Bureau recommendations for the release of reserved 800 MHz spectrum. The Commission will consider such issues as: whether to encourage technical flexibility; whether to use frequency coordination in the bands; whether to permit operational flexibility and to what extent; what loading standards should be adopted, and how to accommodate "slow growth" systems.

Private Radio—2—*Title:* Amendment of Parts 2, 22, and 90 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band and to Establish Other Rules, Policies, and Procedures for One-Way Paging Stations in the Domestic Public Land Mobile Radio Service and the Private Land Mobile Radio Services. *Summary:* The Commission will consider whether to adopt Private Radio Bureau recommendations for the use of the 929-930 MHz band for Private Land Mobile paging operations. The Commission will consider such issues as: whether SMRS should be permitted in the band and to what extent; whether exclusive channel assignments should be made; whether to adopt loading standards; whether to use frequency coordination, and whether specific technologies should be identified for use in the band.

Private Radio—3—*Title:* Amendment of Part 90 of the Commission's Rules and Regulations to Eliminate Certain Restrictions on Non-voice Operations in the Private Land Mobile Radio Services. *Summary:* The Commission will consider whether to adopt a Notice of Proposed Rule Making which seeks to eliminate two limitations on Private Land mobile operations: (1) A two second limitation on non-voice base/mobile communications; and (2) the secondary status of non-voice to voice communications.

Common Carrier—1—*Title:* Application for Review and Motion for Stay filed by Radio Telephone Communications, Inc., of the Common Carrier Bureau's adoption of the plurality technical coordination plan for the Miami, Florida market, in Docket 21039. *Summary:* RTC requests review of the September 28, 1981, Order by the Chief, Mobile Services Division, approving the technical method of operation advanced by the south Florida Carriers for sharing the frequencies 470–512 MHz in the Miami, Florida area. The plurality plan proposes that eight of the ten applicants in the Miami, Florida market be permitted to form a corporation, Goldcoast Mobile Telephone Company, which will own and operate the facilities and lease air time to all the applicants. RTC alleges that the plurality plan is contrary to Commission policy, the federal antitrust laws, and Department of Justice and Federal Trade Commission policies. Therefore, RTC urges the Commission to condition its acceptance of the plurality plan on RTC's full equity participation in the proposal.

Common Carrier—2—*Title:* Revision and update of Rules Part 22 ("Public Mobile Service") CC Docket 80–57. *Summary:* Before the Commission is a *Notice of Proposed Rulemaking* which proposes to simplify these rules, place them in plain language and bring the rules up to date with current technology, reducing costs to applicants and staff, and expediting the administrative processes related to the public mobile service.

Common Carrier—3—*Title: Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board,* CC Docket No. 80–286. *Summary:* The Commission will consider a petition for reconsideration of the recently adopted plan for the phase out of customer premises equipment from the Separations process over a five-year period.

Common Carrier—4—*Title:* Amendment of Section 22.501(a) of the Rules to allow the 35 and 43 MHz frequency bands to be used for one-way paging on an exclusive basis in the Domestic Public Land Mobile Radio Service (Docket No. 80–189). *Summary:* The Commission will consider whether or not to modify its earlier decision in this proceeding as a result of Petitions for Reconsideration that were filed.

Common Carrier—5—*Title:* Amendment of Parts 2, 22, 89 and 91 of the Commission's Rules with Regard to Allocation of Frequencies in the Bands 35.19–35.69 MHz and 43.19–43.69 MHz (Docket No. 19327). *Summary:* The Commission will consider whether to amend its rules to allow certain 35 and 43 MHz frequencies to be used for one-way paging.

Cable Television—1—*Title:* Applications for construction permits in the Cable Television Relay Service (CARS) filed January 5, 1982 by Karnack Corporation dba Winter Garden Cable TV (Winter Garden) (CAR–19238–01, CAR–19269–05 and CAR–19276–05); and by its subsidiary, Cable Television of Eagle Pass, Inc. dba Rio Grande TV Cable (Rio Grande) (CAR–19240–01 to CAR–19242–01). *Summary:* Winter Garden, licensee of CARS Stations KYX–61 and KYX–62, Pearsall and Loma Vista, Texas, respectively, filed CAR–19269–05 and CAR–19276–05 to make changes to its CARS facilities. Additionally, it filed CAR–19238–01 in order to construct a new CARS station at Moore, Texas. Similarly, Rio Grande filed CAR–19240–01 to CAR–19242–01 for the purpose of constructing new CARS stations at Eagle Pass, Farias Ranch and Winter Haven, Texas.

Assignment and Transfer—1—*Title:* Petition for Reconsideration of the Commission's Action Denying a Petition to Deny the Application to Assign the License of Station WCVB–TV, Boston, Massachusetts, from Boston Broadcasters, Inc., to Metromedia, Inc., by Christopher Bennett and Arklay King. *Summary:* The Commission will consider whether the petitioners have presented any new matters or other allegations which would warrant reconsideration of the Commission's denial of their petition to deny and grant of the WCVB–TV assignment application.

Renewal—1—*Title:* Competing applications of Pillar of Fire for renewal of license of Station WAWZ(FM), Zarephath, New Jersey, and Radio New Jersey for a construction permit for Somerville, New Jersey. *Summary:* The Commission considers designating the mutually exclusive applications for a consolidated proceeding.

Renewal—2—*Title:* Renewal application for Station WABC–TV, New York, New York. *Subject:* The Commission will consider the proposal of WABC–TV to enhance its physical presence in New Jersey by establishing a news bureau in New Jersey, with interconnection to the main studio and with a variety of promotional efforts to publicize the facilities, and petitions to deny the renewal application, filed by the New Jersey Coalition for Fair Broadcasting, the Governor of New Jersey, the State Legislature of New Jersey, and the Department of the Public Advocate for the State of New Jersey.

Compliants and Compliance—1—*Title:* Petitions for notice of Inquiry or declaratory ruling filed by Henry Geller, National Association of Broadcasters and Radio-Television News Directors Association, Public Broadcasting Service, and National Broadcasting Company, Inc., regarding Commission interpretation of Sections 315(a) (3) and (4) the Communications Act. *Subject:* The Commission must decide whether to issue a Notice of Inquiry or declaratory ruling regarding (1) exemption from equal opportunities considerations of broadcaster-sponsored debates between candidates, and broadcast or rebroadcast of such debates later than the next day subsequent to an event; and/or (2) clarification of the Commission's position on candidates' appearances on exempt news documentaries.

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 P. Peratino, FCC Public Affairs Office, telephone number (202) 254–7674.

Issued: July 15, 1982.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S–1061–82 Filed 7–16–82; 3:37 pm]

BILLING CODE 6712–01–M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 3:30 p.m. on Wednesday, July 14, 1982, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider a recommendation regarding the liquidation of assets acquired by the Corporation from Surety Bank and Trust Company, Wakefield, Massachusetts (Legal Division memorandum dated July 12, 1982).

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(6), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(9)(B) and (c)(10)).

Dated: July 15, 1982.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S–1057–82 Filed 7–16–82; 11:11 am]

BILLING CODE 6714–01–M

4

FEDERAL RESERVE SYSTEM (Board of Governors)

PLACE: 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a meeting on July 7, 1982.)
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: July 16, 1982.

James McAfee,

Associate Secretary of the Board.

[S–1059–82 Filed 7–16–82; 3:36 pm]

BILLING CODE 6210–01–M

5

NUCLEAR REGULATORY COMMISSION

DATE: Week of July 19, 1982.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and closed.

MATTER TO BE DISCUSSED: *Tuesday, July 20:*

10:00 a.m.
Discussion of Proposed Rulemaking—Accreditation of Qualification Testing Organizations (public meeting)

Wendnesday, July 21:

2:00 p.m.:
Briefing on Minimum Number of Shifts Required at Operating Reactors (public meeting)

Thursday, July 22:

10:00 a.m.:
Discussion of Waste Confidence Proceeding (closed—Exemption 10)
3:00 p.m.:
Discussion with Licensing Board on Indian Point (Open/Closed status to be determined)
4:30 p.m.:
Affirmation/Discussion Session (public meeting)
Affirmation and/or Discussion and Vote:
a. Export and Import of Nuclear Equipment and Material: Proposed Amendments to NRC's Regulations;
b. Final Rule Implementing the Equal Access to Justice Act;
c. Resumption of Hearing Before Commission in NFS Erwin, (Material Control and Accounting Amendment);
d. Alternative Commission Decision in Indian Point Special Proceeding.

Friday, July 23:

10:00 a.m.:
Budget Briefing (public meeting)
2:00 p.m.:
Continuation of Budget Briefing (public meeting) (if needed)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634–1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFROMATION: Walter Magee (202) 634–1410.

July 13, 1982.

Walter Magee,

Office of the Secretary.

[S–1055–82 Filed 7–15–82; 5:10 pm]

BILLING CODE 7590–01–M

6

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 28525, June 30, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m. on July 22, 1982.

CHANGES IN THE MEETING: This meeting has been canceled.

Dated: July 15, 1982.

[S–1054–82 Filed 7–15–82; 4:14 p.m.]

BILLING CODE 7600–01–M

7

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1295]

TIME AND DATE: 10:15 a.m. (EDT), Friday, July 23, 1982.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

DISCUSSION ITEM:

1. Preliminary rate review.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245–0101.

Dated: July 16, 1982.

[S–1056–82 Filed 7–16–82; 9:23 am]

BILLING CODE 8120–01–M

8

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–82–16]

TIME AND DATE: 9 a.m., Tuesday, July 27, 1982.

PLACE: Conference Rooms 8 A, B, C, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. *Railroad Accident Report:* Derailment of Washington Metropolitan Transit Authority Train No. 410 at Smithsonian Interlocking on January 13, 1982, and Recommendations to the Washington Metropolitan Transit Authority and the District of Columbia.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382–6525.

July 20, 1982.

[S–1058–82 Filed 7–16–82; 11:54 am]

BILLING CODE 4910–58–M

federal register

Tuesday
July 20, 1982

Part II

Department of Health and Human Services

Health Care Financing Administration

Medicare and Medicaid Programs; Rural Hospitals: Provision of Long-Term Care Services (Swing-Bed Provision); Flexibility in Application of Standards

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 435, 440, 442 and 447

Medicare and Medicaid Programs; Rural Hospitals: Provision of Long-Term Care Services (Swing-Bed Provision); Flexibility in Application of Standards

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: These regulations implement sections 904 and 949 of Pub. L. 96–499, the Omnibus Reconciliation Act of 1980. Under section 904 (the swing-bed provision), certain small, rural hospitals may use their inpatient facilities to furnish skilled nursing facility (SNF) services to Medicare and Medicaid beneficiaries, and intermediate care facility (ICF) services to Medicaid beneficiaries. These hospitals will be reimbursed at rates appropriate for those services, which are generally lower than hospital rates. This statutory provision is intended to encourage the most efficient and effective use of inpatient hospital beds for delivery of either hospital or SNF and ICF services.

Under section 949, rural hospitals of 50 or fewer beds may be exempted from certain personnel standards in the conditions of participation for hospitals. This exemption applies only to the extent that it does not jeopardize or adversely affect the health and safety of patients.

DATES: These regulations are effective July 20, 1982. We are publishing final regulations, rather than a notice of proposed rulemaking followed by a final rule, and waiving the customary 30-day delay between publication of regulations and the effective date, for reasons given under Waiver of Proposed Rulemaking and Delayed Effective Date below. However, we will consider any comments mailed by September 20, 1982. If, as a result of comment, we believe that changes are needed in these regulations, we will publish the changes in a later Federal Register document, and will respond to the comments in the preamble of that document.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17073, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309–G Hubert H. Humphrey Building, 200 Independence Ave, S.W., Washington, DC., or to Room 789, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to BPP–149–FC. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309–G of the Department's office at 200 Independence Ave., SW., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202–245–7890).

FOR FURTHER INFORMATION CONTACT:

For the Swing-Bed Reimbursement Provision: William J. Goeller, Health Care Financing Administration, Bureau of Program Policy, 1–D–1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207, (301–597–1802).

For the Standards for Swing-Bed Hospitals and for the Rural Hospitals Provision: Margaret VanAmringe, Health Care Financing Administration, Health Standards and Quality Bureau, 2–E–3, Dogwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, (301–594–9712).

SUPPLEMENTARY INFORMATION:

I. Swing-Bed Provisions

A. Background

1. *Shortage of nursing home beds in rural communities*—Both the Medicare and Medicaid programs provide reimbursement for various levels of health care in inpatient facilities. Both programs cover an inpatient hospital level of care and a skilled nursing facility (SNF) level of care. At State option, the Medicaid program also covers care in an intermediate care facility (ICF) under certain conditions for patients whose medical conditions require institutional care that is above the level of room and board, but less intensive than care provided in a hospital or SNF.

Many hospitals participating in Medicare and Medicaid, in addition to providing an inpatient hospital level of care, may also provide SNF or ICF levels of care through establishment of a "distinct part" unit. A distinct part SNF or ICF must be an entire physically indentifiable unit consisting of all the beds within that unit (such as a separate building, floor, wing, or corridor), and must meet the health, safety, and additional requirements at 42 CFR Part 405, Subpart K or Part 442, Subpart F. A distinct part SNF or ICF unit is reimbursed as a separate entity from the rest of the institution. That is, costs are allocated separately to each part of the institution that provides these clearly different levels of inpatient care.

While most hospitals wishing to provide a SNF or ICF level of care to their inpatients have been able to meet the distinct part requirements, small rural hospitals have had difficulty in establishing these physically identifiable units because of the limitations of their physical plant and accounting capabilities. At the same time, these hospitals frequently have an excess of hospital beds, and the communities in which they are located often have a scarcity of SNF or ICF beds in Medicare and Medicaid participating facilities.

2. *Swing-bed concept*—In response to these problems, the "swing-bed concept" was proposed and studied. This concept allows small hospitals to use their beds interchangeably as either hospital, SNF, or ICF beds, with reimbursement based on the specific type of care provided. Allowing the use of beds in this manner would provide small hospitals with greater flexibility in meeting fluctuating demands for inpatient hospital and nursing home care. Between 1973 and 1977, several swing-bed experiments were conducted in rural communities in Utah, Texas, South Dakota, and Iowa to study this concept. An evaluation report ("An Evaluation of Swing-Bed Experiments to Provide Long-Term Care in Rural Hospital", November 1980) concluded that: (a) an unmet demand for nursing home care exists in many communities, (b) the swing-bed concept would particularly benefit rural communities in meeting both nursing home care and hospital care needs, and (c) assuming reimbursement is flexible, the swing-bed concept is a cost-effective means of providing nursing home care.

B. Section 904 of the Omnibus Reconciliation Act

1. *Application of section 904 under Medicare and Medicaid*—In response to the shortage of nursing home beds in rural areas for Medicare and Medicaid beneficiaries, Congress enacted section 904 (the "swing-bed" provision) of Pub. L. 96–499 (the Omnibus Reconciliation Act of 1980). That section added a new section 1883 to title XVIII (Medicare) and a new section 1913 to title XIX (Medicaid) of the Social Security Act (the "Act"). Under these provisions, a small, rural hospital (defined in the law as one with fewer than 50 beds) may be reimbursed under the appropriate program for furnishing SNF services to Medicare or Medicaid beneficiaries, and

ICF services to Medicaid beneficiaries. In order to qualify, the hospital must be granted a certificate of need for the provision of SNF and ICF services from the State health planning and development agency for the State in which the hospital is located, and must have an agreement with the Department.

Specifically, the law provides that—

- The hospital must meet the discharge planning and social services standards applicable to participating SNFs;
- A hospital receiving a waiver for 24-hour nursing coverage is not eligible to participate as a swing-bed hospital;
- Medicare SNF-type services are subject to the same eligibility and coverage requirements as services furnished by participating SNFs, except for those requirements the Secretary determines are inappropriate for such services furnished by a hospital;
- Payment for these services will be made at the average rate per patient day paid for SNF or ICF routine services, respectively, during the previous calendar year under the State's Medicaid plan;
- Reimbursement for general routine hospital services (those for room, nursing, dietary and other services usually included in the daily charge) will be determined after the amounts attributable to the routine SNF and ICF services provided under the swing-bed arrangement are subtracted from total general routine service costs; and
- There will be no change, for purposes of the swing-bed provisions, in the way reimbursement for the reasonable cost of ancillary services, such as laboratory or X-ray services, is determined.

The Department may enter into a swing-bed agreement, on a demonstration basis, with hospitals that meet all eligibility requirements other than the bed size and geographic location criteria.

Section 904 also requires the Department to submit a report to Congress by December 5, 1983, concerning our experience in administering these provisions. The report will include an analysis of (1) the extent and effect of these swing-bed agreements on the availability, effectiveness, and economical provision of nursing home care services, (2) the results of any demonstration projects conducted under these programs, (3) whether eligibility to participate as a swing-bed hospital should be extended to other hospitals, regardless of bed size or geographic location, where there is a shortage of long-term care beds, and (4) whether the swing-bed provision should be continued.

In addition to section 904, Congress enacted section 902 of Pub. L. 96–499, as amended by section 2102 of Pub. L. 97–35 (the Omnibus Budget Reconciliation Act of 1981). Section 902, the "inappropriate inpatient hospital services" provision, provides for temporary care in a hospital for Medicare beneficiaries who need post-hospital, extended care services that are not available in an appropriate SNF facility. The basic difference between the section 902 and 904 provisions is that the "inappropriate inpatient hospital services" provision provides for temporary care in a hospital for a beneficiary who needs covered SNF care that is not available at the time, while the "swing-bed" provision allows small, rural hospitals to function as substitute SNFs. Section 902 requires the hospital to transfer the patient to a certified SNF as soon as a bed becomes available. Section 904 allows small, rural hospitals to provide care throughout the period a patient requires covered SNF or ICF care. The regulations implementing section 902 are being developed for separate publication.

Since the Medicare program is Federally administered, any hospital that meets the criteria set forth in these rules for being a swing-bed facility is eligible for Medicare reimbursement for SNF services. Medicaid is a joint Federal-State program under which the State, within broad Federal rules, makes determinations on the scope and administration of the program. New section 1913 of the Medicaid statute, added by Pub. L. 96–499, states that payment may be made under the State plan for those SNF and ICF services furnished by a participating Medicare swing-bed hospital. Accordingly, each State has the option of deciding whether to reimburse those hospitals for these services under its Medicaid plan. If a State decides not to do so, then a swing-bed hospital under Medicare can be recognized, for purposes of the Medicaid program, as a provider only of hospital care.

2. Eligible Hosptals.

(a) *Calculation of bed size*—To participate as a swing-bed hospital a hospital must have fewer than 50 inpatient hospital beds. The legislation does not specify the method for counting hospital beds. The count of beds will include all inpatient hospital beds maintained by the hospital, exclusive of beds for newborns and beds in intensive care type inpatient units. For general certification purposes, beds for newborns and beds in intensive care type inpatient units are not classified with general routine inpatient hospital beds. Excluding these categories of beds from the bed count for swing-bed hospitals will, therefore, be consistent with established practice and will assure that only those general routine beds capable of providing SNF-type and ICF-type services will be considered. In addition, while the statute and congressional reports are not specific on this count, we believe the congressional intent of this provision was to have as many hospitals as possible become eligible for swing-bed approval. As a result, by excluding beds for newborns and beds in intensive care units, the bed count will assure that the maximum number of hospitals will be able to participate. Beds in separately certified "distinct part" SNFs and ICFs are not included in this count. (For hospitals with distinct part units electing swing-bed reimbursement, see discussion in Section 4.(c) below.)

(b) *Definition of "rural"*—Any geographic area not designated as "urban" in the most recent census is considered "rural" for the purpose of this regulation. This definition was chosen both for its consistency with the definition used for Rural Health Clinics (42 CFR 481.5) and because it allows more hospitals the opportunity to participate as swing-bed facilities.

(c) *Certificate of need*—Section 1883(b)(2) of the Act requires a hospital to obtain a certificate of need from the State health planning and development agency in the area in which it is located, in order to participate as a swing-bed hospital. States with severe shortages of long-term care beds may not require a certificate of need to provide long-term care services. By requiring hospitals in these States to obtain a certificate of need, HCFA would be placed in a position of imposing additional administrative burdens on both providers and the States. We believe this requirement would be expensive, unnecessary, and counterproductive, and could penalize those States that would benefit most from the swing-bed program. Therefore, if a State allows expansion of long-term care units without requiring a certificate of need for these services in hospitals, this criterion will not apply.

(d) *Provider agreement*—Section 1883(c) of the Act requires the hospital to enter into an agreement with the Department in order for the hospital to use its beds on a "swing" basis. HCFA will not require that hospital enter into two separate agreements. Rather, eligible hospitals will be granted an "approval" to participate in the swing-bed program. We believe various administrative difficulties, such as the

issuing of new provider numbers to hospitals and the reissuing of provider numbers upon swing-bed terminations, would be associated with separate provider agreements. These problems would be costly and could inappropriately penalize providers. In addition, since swing-bed services are to be integrated with routine inpatient hospital care services, no new entity is being created that would warrant a new provider agreement.

In order to receive approval to "swing" their beds, a hospital must (i) have a valid provider agreement under Medicare (hospitals wishing to be approved under Medicaid must have valid agreements under both Medicare and Medicaid), and (ii) meet the "Special Requirements for Hospital Providers of Long-Term Care Services" (42 CFR 405.1041).

We are not including in these regulations the specific requirements dealing with swing-bed approvals and withdrawals. These requirment are being including in hospital enter into two separate agreements. Rather, eligible hospitals will be granted an "approval" to participate in the swing-bed program. We believe various administrative difficulties, such as the issuing of new provider numbers to hospitals and the reissuing of provider numbers upon swing-bed terminations, would be associated with separate provider agreements. These problems would be costly and could inappropriately penalize providers. In addition, since swing-bed services are to be integrated with routine inpatient hospital care servies, no new entity is being created that would warrant a new provider agreement.

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We are not including in these regulations the specific requirements dealing with swing-bed approvals and withdrawals. These requirements are being included in an overall recodification of 42 CFR Part 405, Subparts S and O into a new Part 489, Subchapter E, and we do not believe it is practical or necessary at this point to modify sections of the regulations that will be renumbered and substantially changed. HCFA soon will be issuing administrative instructions to Regional Offices, fiscal intermediaries, and State Medicaid agencies, detailing the method for processing provider swing-bed approvals as part of existing provider agreements.

(e) *24-hour nursing waiver*—In accordance with section 1883, a hospital receiving a waiver of the 24-hour nursing coverage requirement under section 1861(e)(5) of the Act will not be eligible to participate as a swing-bed hospital. (See section II.B.3. of this preamble for discussion of the 24-hour nursing waiver.)

(f) *Conditions and requirements for participation*—While a facility in compliance with the Conditions of Participation for Hospitals (42 CFR Part 405, Subpart J) would be able to meet the general health and safety needs of long-term care patients, the psychosocial and rehabilitative needs of long-term care patients and hospital inpatients usually differ significantly. While inpatient hospital medical problems generally require short-term, high intensity treatment, long-term care often denotes chronic illness, disability, advanced age, and social adjustment problems that requires special services and requirements.

The Congress and the Department have consistently maintained that Medicare and Medicaid should not pay for substandard institutional care. To ensure that SNF-type and ICF-type patients in swing-bed hospitals receive necessary supportive services, the Congress specifically required in section 1883(f) of the Act that the SNF provisions governing discharge planning and social services apply to hospital providers of long-term care. In addition, section 1883(f) of the Act specifically require that Medicare SNF-type services in swing-bed hospitals "be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except those requirements the Secretary determines are inappropriate".

We believe that there is clear statutory intent to treat "swing-bed" hospitals similarly to SNFs in order to assure adequate quality of care for long-term care patients in swing-bed hospitals; and clear congressional intent to utilize exess capacity an increase the supply of long-term beds in rural areas. We are attempting to strike this balance by requiring that Medicare SNF-type services in a swing-bed hospital be subject to the same eligibility and coverage requirements as services furnished in a participating SNF, except for those conditions that (1) duplicate existing hospital requirements (2) require a facility to make extensive structural modifications or changes, or (3) are unnecessary in what is primarily a general routine inpatient hospital setting.

In determining which additional standards to apply, we believe that equity among providers of nursing home care requires as much consistency in treatment as possible. For example, if certain professional services are not readily available in a particular geographic area, it seems inequitable to require that these services be provided in local free-standing and distinct part nursing homes, but not in a nearby swing-bed hospital. We have, however, kept the swing-bed requirements to a minimum, and the standards which we are including will be applied as flexibly as possible. We believe that swing-bed hospitals may have a lower daily census of long-term care patients than do nursing homes, and that patients in swing-bed hospitals are less likely to become long-term residents. We will consider these factors when surveying for compliance with the requirements.

We believe that the following standards are necessary and appropriate to SNF patient care requirements and, consistent with the intent of section 949 of Pub. L. 96–499, do not impose a significant burden on rural hospitals. (See section II. of this preamble for discussion of section 949, Standards for Rural Hospitals.) While hospitals that operate "distinct parts" already meet these conditions, we believe other hospitals can easily comply with most requirements by modifying their current services.

(i) *Patients' rights.* The inclusion of patients' rights provisions, which are not addressed in the existing hospital regulations, reflects the Department's increased interest in, and awareness of, the basic rights of institutionalized individuals. The House Committee Report on the swing-bed services provision indicates congressional approval of hospitals' establishing and implementing policies regarding the specific rights of long-term care patients (H.R. Report No. 96–1167, p. 61). These provisions are important in the delivery of care to the institutionalized elderly who, due to lengths of stay that generally exceed those of other general routine hospital inpatients, often become "residents" of the facility. These provisions can be developed by the hospital's governing body or other responsible person(s). Many hospitals currently have patients' rights policies that comply with this requirement. Development and implementation of a patients' rights policy by hospitals that are currently without such policies should not be burdensome or difficult.

(ii) *Specialized rehabilitative services.* Long-term care patients usually have chronic illnesses that impair their ability to function. Rehabilitation services attempt to bring patients to their highest level of activity, retard deterioration, and teach patients to function effectively within these limitations. Since provision of rehabilitation services is not required of hospitals, use of this standard for swing-bed hospitals assures that an integrated rehabilitation program is available to long-term care patients with this need. Swing-bed hospitals may elect to provide some of these services, such as physical or occupational therapy, through the use of outside resources. In addition, swing-bed hospitals need not provide all types of rehabilitative services, as long as they do not accept patients requiring those specific services that the facility cannot provide.

(iii) *Dental services.* The dental needs of long-term care patients may be greater than that of general routine hospital inpatients because of possible longer lengths-of-stay required for these individuals. In addition, prolonged drug use for SNF-type and ICF-type patients may have a deleterious effect on their dental health. Since this condition requires only an agreement with a dentist, and not that a dentist be a full-time employee, there should be no cost impact on swing-bed hospitals.

(iv) *Social services.* As required by statute, the social services requirement is being included and will ensure that long-term care patients' medically related social and emotional needs are met. This requirement complements the provision of rehabilitative services and responds to the patients' need for assistance in adjusting to the emotional aspects of long-term illness, treatment, and extended stay in an inpatient facility.

(v) *Patient activities.* The primary purpose of an activities program is to create opportunities for long-term care patients to continue life tasks and to exercise abilities in order to minimize pathology or retard or prevent disability.

Community, interpersonal, and self-care activities are employed to meet the specific needs of each participant of a program. Such activities are carried out for the purpose of: "(1) Enhancement of healthy integration with the resident's environment, (2) prevention of deterioration by engagement in physical and psychological exercise, (3) symptom reduction (4) correction or amelioration of specific pathology, (5) limitation of disability, and (6) provision of opportunity for meaningful participation and problem solving." (*Working with Older People—A Guide to Practice,* DHEW, 1974).

One of the primary goals of health care in this country should be prevention. In the context of long-term care, this goal is interpreted in terms of the extent to which the facility's staff works with residents to stimulate them to use past self care skills, to regain lost or impaired self care skills, to retain or regain reality orientation, to use judgement and problem solving skills, and other critical individual functions that directly determine whether a person can regain independent or minimally supervised living. Failure to do so reinforces dependency and promotes further deterioration, thereby increasing the types and extent of both special and medical services the individual will require.

The patient activities requirement also refers to activities of "interest" to the individual, suggesting social activities. We believe that social stimulation and interaction is as vital a part of efforts to minimize depression and loneliness (which contributes to debilitation), as is assistance in the maintenance or restoration of self care skills and other activities of daily living.

The required rehabilitative services involve the application of discrete, time-limited treatments intended to aid in the restoration of physical function. Behavioral psychology and rehabilitation research indicates that, unless the skills being developed or restored through these treatments are reinforced through practice (called "generalization") and used spontaneously, the value of the rehabilitative service may be lost.

The activities employed under these requirements represent those "generalization" efforts necessary to make discrete treatments useful. To do this requires an active and continuing process of aiding patients to keep their skills intact, or to build their skills back to a level that will result in reduced instances of institutionalization, longer periods of independence, and ultimately lowered cost and more optimal utilization of facility services.

We believe that, whether intentional or not, there is often a strong momentum toward custodial care in long-term care situations, partly based on the dependency level of the client population. Thus, we think it is critical to incorporate the activities requirements in these regulations. Since it is expected that the number of long-term care patients in swing-bed hospitals will be minimal, the activities program need not be as comprehensive as one in an SNF or an ICF. However, unless a qualified individual is designated to be responsible for these activities, they may not occur, or their importance may go unrecognized.

(vi) *Discharge planning program.* The application to swing-bed hospitals of the SNF provision governing discharge planning (42 CFR 405.1137(h)) will ensure that the long-term patient has a planned program of continuing care that meets his or her post-discharge needs. The discharge planning activities can be incorporated into the hospital's existing utilization review plan.

The following SNF requirements duplicate hospital requirements and will not be applied to swing-bed hospitals: (i) State and local laws; (ii) governing body and management (except patients' rights); (iii) medical direction; (iv) dietetic services; (vii) specialized rehabilitative services—outpatient physical therapy services; (viii) pharmaceutical services; (ix) laboratory and radiological services; (x) medical records; (xi) physical environment (except activity rooms); (xii) infection control; and (xiii) utilization review (except discharge planning). The SNF requirement of dining and patient activity rooms will also not be applied since, in some instances, this may require extensive structural modifications for many hospitals.

In addition, we are exempting the transfer agreement and disaster preparedness requirements since these conditions are inappropriate and unnecessary for hospitals. The transfer agreement requirement is oriented toward skilled nursing facilities where physicians are not normally available. If a long-term care patient in a swing-bed hospital requires general routine inpatient hospital services, these services could be provided in the facility; a transfer agreement would not be necessary. The disaster preparedness requirement is also not needed since hospitals are accustomed to dealing with emergency situations, have 24-hour staff availability, and are familiar with triage procedures. Although disaster preparedness is needed in an SNF, the acute care nature of a hospital makes this condition redundant for swing-bed hospitals.

3. Coverage requirements.

(a) *Medicare*—Section 1883 of the Act specifically permits swing-bed hospitals under Medicare to be paid for those post-hospital extended care services which would be reimbursable if furnished by SNFs. ("Extended care services" is the term used in the Medicare statute for services normally furnished by SNFs.) Under the law, SNF services in a swing-bed hospital are

subject to the same coverage requirements and coinsurance provisions that are applicable for SNFs. SNF days in a swing-bed hospital are to be counted against total SNF benefit days available to Medicare beneficiaries. For coverage purposes, the following existing program requirements specified in 42 CFR 405.120 are applicable to SNF services in a swing-bed hospital:

- Medicare beneficiaries receiving an SNF level of care in a swing-bed facility must first meet the three-day prior hospital stay requirement, that is, they must have had three consecutive calendar days of medically necessary inpatient hospital care before being transferred to SNF care.
- Beneficiaries must meet the requirement for "timely transfer" to a SNF. That is, they must need and receive a covered level of SNF care within 30 days after "discharge" from hospital care (unless a SNF level of care is not medically appropriate until a later predetermined time).

Days of care received at or below the SNF level in a swing-bed hospital will not count toward the three-day prior hospitalization requirement. If a beneficiary is admitted to a swing-bed hospital for inpatient hospital care but requires a SNF level of care after three days, the timely transfer requirement will be considered to be met even though the patient does not physically leave the facility. Under the Medicare program, this situation will be treated as a "discharge" from hospital care and an "admission" to SNF care.

(b) *Medicaid*—Under the Medicaid program, SNF and ICF services can be covered in a swing-bed hospital only to the extent that such services are covered under the State plan. As with the Medicare provisions, the legislation made no changes in the statutory provisions governing SNF and ICF services, other than to permit payment by the State when these services are furnished in a swing-bed setting. Therefore, we see no basis for treating these days differently from SNF days furnished in a SNF or from ICF days furnished in an ICF. Any Federal or State requirements or limits applicable to SNF or ICF care are equally applicable to swing-bed days.

4. Reimbursement.

(a) *Medicare*—Section 1883 of the Act establishes a new method for reimbursing for routine services furnished in the hospital setting to patients who require SNF care, and for determining the reasonable cost of routine services furnished to inpatients who require hospital care. Under the legislation, reimbursement for ancillary services used by swing-bed patients is to be computed in the same manner as is done for ancillary services received by regular hospital inpatients (42 CFR 405.452).

Under current regulations at 42 CFR 405.452, the cost of furnishing general routine services to all hospital patients is determined by an averaging method. Under this method, reimbursement is calculated by adding together all general routine service costs, deriving an average cost per diem, and multiplying that per diem by the number of days of hospital care provided to Medicare beneficiaries in that institution. In addition, regulations at 42 CFR 405.430 provide for an inpatient routine nursing salary cost differential adjustment factor when appropriate (see explanation in section 4.(f) below). Section 1883 of the Act changes this reimbursement methodology for swing-bed hospitals by establishing different reimbursement levels for general routine service areas:

(i) *Cost of SNF care.* Regardless of the actual costs incurred in furnishing routine SNF-type services in a participating swing-bed hospital, the statute specifies that the reasonable cost of the services is the product of the number of SNF patient days furnished times the reasonable cost per patient day. The reasonable cost per patient day is defined as the average rate per patient day paid for routine SNF services during the previous calendar year under Medicaid in the State in which the hospital is located. If a State does not have a Medicaid program, the reasonable cost per patient day is based on the average reasonable cost per patient day paid for routine SNF services during the previous calendar year under Medicare in the State in which the hospital is located.

(ii) *Calculation of general routine service hospital costs.* Since hospital and long-term care services are furnished interchangeably in a swing-bed hospital, the cost of providing such levels of service cannot be readily determined. Instead of imposing a burdensome cost finding process or using an average per diem method to allocate general routine service costs between hospital and long-term care services, the statute provides that the reimbursement due for the long-term care services from all classes of patients will be subtracted from the total general routine service costs to determine the cost of providing the hospital-level services (referred to as the "carve out" method). Once amounts attributable to SNF-type and ICF-type services have been carved out, the average per diem cost of general routine hospital services is then determined by dividing the remaining general routine service costs by the remaining general routine hospital days (i.e., total general routine days minus all SNF and ICF patient days).

In providing for the "carve out" method, section 1883 of the Act states that the "total reimbursement due" for all SNF and ICF routine services for all classes of patients (including Medicare, Medicaid, and private pay patients) is to be subtracted from total inpatient general routine costs. For SNF patient days under Medicare and SNF and ICF patient days under Medicaid, the "reimbursement due" represents the costs attributable to the SNF and ICF routine services and is equivalent to the rates specified in sections 1883 and 1913 for those services; that is, the average Statewide per diem rate paid in the State during the previous calendar year.

A literal definition of "reimbursement due" from private pay patients could represent the charges made by a swing-bed hospital to these patients for SNF and ICF services, rather than the costs of the services. However, since private pay individuals are receiving the same services as those furnished to Medicare and Medicaid patients, the cost attributable to these services should be the same for private pay patients as for program beneficiaries. If charges, rather than costs for SNF and ICF services, are subtracted from the hospital's general routine service costs, the remaining amount will not represent the costs attributable to the general routine hospital services. Therefore, to assure that the Medicare program pays the reasonable cost of the general routine hospital services (as required by section 1861(v)(1) of the Social Security Act), we believe "reimbursement due" with respect to private pay patients is intended to represent costs attributable to the SNF and ICF services. These costs will be based on the same rates as those used for Medicare and Medicaid beneficiaries. Accordingly, the regulations are providing for a "carve out" of total costs attributable to SNF and ICF patients, as determined by summing the product of the total SNF-type days for all classes of patients times the appropirate average SNF rate and the product of the total ICF-type days for all classes of patients times the appropriate average ICF rate.

The following example illustrates the calculation of general routine inpatient service costs for a particular swing-bed hospital:

Facts:	
Total general routine inpatient service costs	$250,000
Total hospital care inpatient days	2,000
Total SNF-type inpatient days	400
Total ICF-type inpatient days	100
Total general routine inpatient days	2,500
Appropriate average State medicaid rate for SNF-type inpatient days	$35
Appropriate average State medicaid rate for ICF-type inpatient days	$20
Calculation:	
Total SNF-type inpatient days (400) times appropriate State medicaid rate ($35)	$14,000
Total ICF-type inpatient days (100) times appropriate State medicaid rate ($20)	$2,000
Total routine service cost applicable to SNF-type and ICF-type care	$16,000
Total general routine inpatient service costs	$250,000
Less total routine service cost applicable to SNF-type and ICF-type care	−16,000
General routine inpatient service costs applicable to hospital care	$234,000
Average per diem general routine inpatient service cost applicable to hospital care ($234,000/2,000 days)	[1]$117.00

[1]To the extent appropriate, this amount is subject to the inpatient routine nursing salary cost differential adjustment factor and hospital cost limits. (See explanation in sections 4.(e) and 4.(f) of this preamble.)

(b) *Medicaid*—Section 1913 of the Act establishes the Medicaid reimbursement provision for swing-bed services comparable to those for Medicare. Specifically, section 1913 provides that—

- Swing-bed hospitals will be paid for SNF and ICF routine services at the Statewide average rates paid under the State plan during the previous calendar year to SNFs and ICFs, as appropriate;
- The reasonable costs of ancillary services will be determined in the same way as for hospital services; and,
- In order to allocate costs between hospital and long-term care services, the total reimbursement due for all classes of long-term care patients will be subtracted from the hospital's total routine costs before determining reimbursement for routine hospital services under the State plan.

When the swing-bed provision was enacted, the Medicaid statute provided for the reimbursement of inpatient hospital services on a reasonable cost basis. Section 2173 of Pub. L. 97–35, however, amended section 1902(a)(13)(A) of the Medicaid statute to provide for payment for hospital services on the basis of rates that the State finds, and satisfactorily assures the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to furnish services in compliance with State and Federal requirements. (The methods and standards used by the State to determine hospital payment rates must also take into account the situation of hospitals serving a disproportionate number of low income patients with special needs, and must provide for lower reimbursement rates for hospital patients receiving services at an inappropriate level of care. The State must assure that Medicaid beneficiaries have reasonable access to inpatient hospital services of adequate quality.) Interim final regulations implementing section 1902(a)(13)(A) of the Act, as amended, were published in the **Federal Register** on September 30, 1981 (46 FR 47964).

While most States elected in the past to determine the cost of inpatient hospital services by applying the Medicare principles of reasonable cost reimbursement, we anticipate that the elimination of the Medicaid reasonable cost provision will eventually result in a wide array of diverse payment systems. These payment systems might not differentiate between routine and ancillary services, and the payment rates for inpatient hospital services might not be determined on a cost-related basis. In these situations, the cost allocation provided for in section 1913 of the Act may have no impact on the payment rate developed for the inpatient hospital services under section 2173 of Pub. L. 97–35. We do not believe the Congress intended to limit the flexibility of States to determine the payment rates for the inpatient hospital services and the long-term care ancillary services furnished by a swing-bed hospital by requiring reimbursement on a cost-related basis. We believe the new regulations applicable to payment rates for hospital and long-term care services (42 CFR 447.252) establish appropriate criteria to meet congressional intent. Therefore, we are not issuing separate regulations concerning reimbursement for inpatient hospital services and long-term care ancillary services in swing-bed hospitals. States will have maximum flexibility in determining the payment rates for these services.

A different situation exists with respect to the long-term care routine services. Section 1913 of the Act establishes specific rates of payment for the SNF and ICF routine services. Although the State does not have as much flexibility in determining the reimbursement rate for these services as it does for other long-term care or inpatient hospital services, the swing-bed provision is compatible with other Medicaid reimbursement provisions in that it contemplates reimbursement based on rates rather than on a cost-related basis. For this reason, we are providing that the State plan must pay for routine SNF and ICF services furnished by a swing-bed hospital at the average rate per patient day paid for routine SNF and ICF services, respectively, during the previous calendar year under Medicaid. (Routine services will be defined by the State.)

We invite public comments on the Medicaid reimbursement issues.

(c) *Use of swing-bed reimbursement method by hospitals maintaining distinct parts.*

(i) *Legislative intent*—The bed count used to establish eligibility for a swing-bed approval takes into consideration only hospital beds. Any separately certified long-term care beds are excluded from this count. This means that as long as the hospital component of a hospital-SNF complex has fewer than 50 beds (excluding beds for newborns and beds in intensive care type inpatient units) and meets the other requirements for a swing-bed approval, the institution may obtain approval to use its hospital beds interchangeably for hospital and SNF care. The swing-bed approval would not affect the distinct part SNF; the SNF component of the complex would continue to be treated as a separate provider for certification and reimbursement purposes.

In addition to the swing-bed provisions, we are providing a simplified reimbursement option for small, rural institutions that is based on the swing-bed reimbursement provisions. The legislative history of Pub. L. 96–499 contains various proposals, either as proposed legislation or as part of committee reports and staff papers, that would have allowed hospital-SNF complexes to be reimbursed under the swing-bed reimbursement method while maintaining separate certification of the hospital and SNF components. The inpatient general routine service costs of both components would be combined for reimbursement purposes into a single cost center even though each part of the institution would furnish services only in accordance with its level of care certification.

Neither Pub. L. 96–499 nor the Conference Committee Report (H.R. Report No. 96–1479) included this option; however, statements by Congressman Charles Rangel and Senator Robert Dole, published in the *Congressional Record* on December 5, and December 9, 1980, respectively, indicate that the omission was inadvertent. According to Senator Dole, the reimbursement option was designed to accommodate institutions of fewer than 50 beds that maintain their long-term beds in a separate part of the institution. The intent was to permit these institutions to continue to maintain a separation of the

hospital and long-term care beds while, at the same time, permitting the institution to use the swing-bed reimbursement procedure.

In view of this legislative history, we are providing that rural hospital-SNF complexes with fewer than 50 beds (including beds in their Medicare-certified distinct part SNFs, but excluding beds in non-certified distinct parts) may elect to be reimbursed for services furnished in the hospital and the certified distinct part SNF using the swing-bed reimbursement methodology. Election of this reimbursement option does not authorize a facility to "swing" its hospital beds. In order to use hospital beds for furnishing long-term care services, the hospital component must meet the requirements of regulations at 42 CFR 405.1041 and obtain swing-bed approval from the Department.

The bed count for purposes of the simplified reimbursement option takes into account the total beds only in the Medicare-certified portions of the complex. It differs from the bed count used to establish eligibility for participation as a swing-bed hospital that takes into consideration only the beds in the hospital component of the complex. We believe use of these different bed counts is consistent with congressional intent since this approach avoids a potential reimbursement disdvantage for small institutions that have already established a distinct part SNF. By counting the total beds that are in Medicare participating components of the complex (exclusive of intensive care beds and beds for newborns), we are making this reimbursement option available to small institutions that would still qualify as swing-bed providers if all their Medicare certified beds were hospital beds. If we were to count only the beds in the hospital component, there would be no limit on the combined bed size of the components that would be reimbursed under this option. We believe the option was intended for small institutions, and that a limit on the number of beds included under the reimbursement option comparable to the maximum number that could be reimbursed under a swing-bed approval is appropriate. Otherwise, a hospital-SNF complex with 50 or more beds would have a reimbursement advantage that is not available to hospitals of comparable size.

Rural hospital-SNF complexes with fewer than 50 beds have considerable flexibility under these regulations. These institutions will have the options of:

- Continuing to maintain separate hospital and SNF components for certification and reimbursement purposes;
- Maintaining separate hospital and SNF components for certification purposes and combining the two components for reimbursement purposes (simplified reimbursement option);
- Obtaining a swing-bed approval for the hospital component while continuing to maintain the distinct part SNF as a separate component for certification and reimbursement purposes (swing-bed approval only);
- Obtaining a swing-bed approval for the hospital component, maintaining the separate distinct part SNF certification, and combining the two components for reimbursement purposes (swing-bed approval and simplified reimbursement option); and,
- Converting the distinct part SNF beds to hospital beds and obtaining a swing-bed approval to use all the beds interchangeably for hospital and long-term care.

If the hospital-SNF complex has more than 50 beds, it will not have the option of combining the hospital and SNF components into a single cost center. However, the hospital component in this situation would be treated the same as any other rural hospital for purposes of establishing eligibility for a swing-bed approval.

(ii) *Alternating use of optional reimbursement method.* The legislative history provides that the Department would approve the use of the optional reimbursement method when a hospital can demonstrate that use of this method would contribute significantly to more efficient and effective administration, and would be in the interest of program beneficiaries (H.R. Report 97–1167, p. 62). To facilitate implementation, we will assume automatically that a qualifying hospital complex satisfies these conditions when it initially elects the swing-bed reimbursement option and we will not require further documentation. However, it is not the intent that a hospital complex alternate between the swing-bed reimbursement method and separate cost finding for its distinct part(s), based on which method would provide the higher reimbursement at a given time. Therefore, we are providing that a hospital complex being reimbursed under the swing-bed reimbursement option can revert to separate cost finding for the distinct part one time only. Once having reverted, the provider cannot subsequently elect to use the optional reimbursement method. We believe this is essential to protect program funds and guard against either planned or inadvertent use of this reimbursement method to increase reimbursement without justification.

(iii) *Establishment of a combined cost center.* When the optional swing-bed reimbursement method is used in a qualifying hospital complex, the institution will accumulate the costs of its general routine service area and Medicare participating distinct part SNF into a single cost center. Only those components that are participating in the Medicare program are included in a single cost center since these are the only beds in which Medicare program beneficiaries may receive covered services.

(iv) *Extending the reimbursement option to Medicaid.* We believe that it is within a State's discretion to determine whether the swing-bed reimbursement method can be used by Medicaid-certified distinct parts in small, rural institutions. States have the option of following the Medicare principles of reimbursement for hospital inpatient services, including recognition of the swing-bed provision and the optional reimbursement method.

(d) *Computation of rates to be applied to swing-bed services*—Section 904 provides two basic types of rates to be applied to SNF-type or ICF-type routine services in swing-bed hospitals: (1) for hospitals in States with Medicaid plans, the rates will be the average Medicaid per diem rate paid for routine SNF and ICF services in the previous calendar year, and (2) in the case of a hospital located in a State which does not have a Medicaid plan, the rate for SNF-type services furnished under Medicare will be the average Medicare per diem rate paid for routine SNF services in that State in the previous calendar year. In computing the average per diem payment rates, payments to swing-bed hospitals will not be included.

Following is an explanation of how we plan to develop the necessary rates:

(i) *Medicaid rates used in previous calendar year.* On an annual basis, we will request that each State supply the appropriate HCFA Regional Office with the rates to be applied to the SNF and ICF services. These rates are to represent an average per diem payment for routine services in SNFs weighted by SNF patient days, and for routine services in ICFs other than ICFs furnishing services principally for the mentally retarded (ICF/MRs), similarly weighted (see discussion in section (ii) below on use of ICF/MR rates). The rates should be based on payments made for services furnished during the calendar year preceding the calendar year during which the rates are to be effective. The rates will be effective for

a full calendar year. (Note that more than one rate will apply to cost reporting periods that are not on a calendar year basis.) We will issue specific guidelines concerning the development of the needed data.

While we would like to develop these payment rates in a uniform manner since they will be used for Medicare as well as Medicaid purposes, we recognize that State plan provisions on long-term care reimbursement differ widely, and that some variations in methodology and estimates are inevitable. However, since the law is specific with respect to what rates are to apply to swing-bed services, the rates must approximate as closely as possible the average rate per patient day paid by States for routine services during the previous calendar year to SNFs and to ICFs other than ICF/MRs. If a State does not act on a timely basis to compute the necessary rates or is otherwise unable to furnish rates approximating the average rates of payment during the previous calendar year, we will develop the rates from the best available data.

We are asking the States to furnish the data because no reporting mechanism is currently in place by which we can otherwise obtain the appropriate rates. There are, however, two sources that may become available in the future. One potential source is the reporting form HCFA–120 (Monthly Statistical Report on Medical Care), which contains aggregate data on days of care and program outlays by type of facility.

Because of the difficulties many States are encountering in fully and accurately completing the report and the number of adjustments that would be required, the HCFA–120 cannot be used as the primary source for rate data at the present time.

The other potential source of data is the information regarding average rates of payment that our regulations at 42 CFR 447.255 state must be submitted with the State's assurances regarding the reasonableness and adequacy of its payment rates. Those regulations, which implement sections 962 of Pub. L. 96–499 and section 2173 of Pub. L. 97–35, were published as an interim final rule with comment period on September 30, 1981 (46 FR 47964). We have received a number of comments regarding submittal of assurances and related information, and we are now analyzing those comments to determine whether any changes in the requirements are needed. Because we have not completed this analysis, we cannot predict whether the regulations at 42 CFR 447.255 would provide a useful source of rate data.

Once the HCFA–120 reporting difficulties are resolved, or our analysis of the regulations at 42 CFR 447.255 and the actual rate data submitted by States under this authority show that this data source is feasible, it may no longer be necessary to request that the States furnish the appropriate rates for swing-bed reimbursement. In order to accommodate this situation, as well as to address instances where a State does not furnish the requested rates, we are indicating in the regulations that the Statewide average rate be computed either (1) by the State and furnished to HCFA, or (2) by HCFA directly based on the best available data.

(ii) *Use of ICF/MR rates.* One issue that has arisen in regard to rate computation is the cost of ICF/MR services furnished to Medicaid beneficiaries. Under section 1905(d) of the Act, States providing ICF services may also include ICF services in institutions for the mentally retarded or persons with related conditions. The language contained in section 1913 of the Act on reimbursement for swing-bed services does not make any distinction between these types of ICF services.

Under section 1905(d) of the Act, ICF/MR services are included within the definition of ICF services. The basic difference between ICF/MR services and other types of ICF services (referred to as general ICF services) is with the type of facility providing the services. As defined in the statute, a facility is considered to be furnishing ICF/MR services only if its primary purpose is to provide services to mentally retarded individuals. If a mentally retarded Medicaid beneficiary is placed in a general ICF, he or she is considered as receiving only general ICF services. This is significant because some States maintain separate rates for ICF/MR services.

Only facilities whose primary purpose is to provide services to the mentally retarded are separately identified as ICFs/MR. Hospitals and general ICFs are not considered to furnish ICF/MR services as a separate category. Therefore, we do not believe it is appropriate either to include ICF/MR services with general ICF services when computing an average ICF rate, or to compute a separate rate for ICF/MR services.

(iii) *Average Medicare per diem rates in States without a Medicaid program.* When a swing-bed hospital is located in a State that does not have a Medicaid program, the reasonable cost of Medicare SNF services is the average reasonable cost per patient day paid for routine services during the previous calendar year under Medicare to SNFs in that State. For those States, we will develop a rate for Medicare services based on SNF cost report data regularly maintained by HCFA.

The rate will be based on services furnished during the calendar year preceding the calendar year for which the rates are to be effective. The rate will consist of the Statewide average per diem cost for routine SNF services (as described in 42 CFR 405.452(d)), weighted by SNF patient days in that State.

(iv) *ICF rate for private patients.* We are also establishing a rate for ICF-type services furnished to private patients in States without a Medicaid program and in States that do not cover ICF services under their Medicaid plan. The rate is needed for purposes of carving out the costs applicable to these services in determining the cost of general routine hospital care. We are developing the rate by first determining the ratio of the average ICF rate to the average SNF rate in each of the States with Medicaid programs covering SNF and ICF services. We will then compute a national average ratio and apply it to the SNF rate developed for each of the States without a Medicaid program covering ICF services to establish a rate for ICF-type services furnished to private patients.

(e) *Effect of section 904 on the limitations on reimbursable costs—* Section 1861(v)(1) of the Social Security Act, as amended in 1972 by section 223 (Limitation on Coverage of Costs) of Pub. L. 92–603, grants the Department the authority to set limits on reimbursable costs of providers for services furnished to Medicare beneficiaries. These limits may be based on estimates of costs necessary in the efficient delivery of needed health services. Currently, the hospital cost limits are based on actual hospital costs for prior periods, and are applied to general routine inpatient hospital operating costs. Under current regulations (42 CFR 405.460), the Medicare program allows individual providers to file a request for reclassification, exception, or exemption from these cost limits when specified conditions are met.

As discussed above, section 904 establishes a new method of reimbursing for routine services furnished to nursing care patients in the hospital setting. Once the reasonable cost of SNF and ICF patient days is determined, it is subtracted from total routine costs, with the remainder representing the cost of general routine

inpatient hospital services for hospital patients.

Under the swing-bed demonstration projects that were conducted in a number of rural areas, there was an expectation that placing nursing care patients in vacant hospital beds would result in lower per diem hospital costs. However, we recognize it is possible that after SNF and ICF costs are subtracted from total general routine service costs, general routine inpatient per diem operating costs may increase in certain facilities, resulting in a per diem cost that exceeds the applicable hospital cost limit. This situation may occur when the lower prices paid for the long-term care patient days result in a greater share of total costs being attributed to general routine inpatient hospital days, and a corresponding higher per diem for those days.

We do not have sufficient information or data at this time to assess the impact of the swing-bed provisions with respect to the routine cost limits. We do not believe, however, that it would be equitable for a hospital to be disadvantaged under the cost limits solely because of the mechanics of the reimbursement process. Therefore, we will be closely monitoring the impact of the swing-bed provisions, and we will take appropriate action to address any inequities that come to our attention.

(f) *Effect of section 904 on the inpatient routine nursing salary cost differential*—The Medicare rules for calculating reasonable cost reimbursement include an inpatient nursing salary cost differential applicable to routine nursing services furnished to aged, pediatric and maternity patients in an institutional setting (42 CFR 405.430). (Under the Medicaid program, this differential is excluded in calculating reimbursement (42 CFR 447.272).) For hospital services furnished on or after October 1, 1981 (under the provision of section 2141 of Pub. L. 97–35), the differential is reimbursable at a rate not to exceed 5.0 percent. (Revised regulations on the nursing salary cost differential were published in the **Federal Register** on October 1, 1981 (46 FR 48544)).

Section 904 establishes specific reimbursement rates as the reasonable cost of SNF services furnished in a hospital with a swing-bed approval. Since the law is clear with respect to the calculation of reasonable cost of these services, we do not believe the inpatient routine nursing salary cost differential is applicable to the long-term care services furnished in a swing-bed hospital. To reflect this policy, we are amending 42 CFR 405.430 to state that, for purposes of the nursing differential, (1) aged, pediatric, and maternity inpatient days, as well as total inpatient days, do not include any swing-bed days of care at the SNF or ICF level, and (2) total routine nursing salary costs do not include costs applicable to those days.

5. *Timetable for implementing the swing-bed provisions*—We are providing that the regulations are effective on the date of publication, subject to the provisions specified below.

(a) *Medicare*—Under Medicare, the earliest date reimbursement for swing-bed services may begin is the effective date of the hospital's approval as a swing-bed hospital. The effective date of the approval will be determined using Medicare rules for provider agreements (42 CFR Part 489).

With respect to rural institutions of fewer than 50 total beds that maintain a Medicare distinct part SNF, the earliest date such institutions may elect the simplified swing-bed reimbursement method is the first cost reporting period beginning on or after the effective date of the regulations. We are providing for this election only on a cost reporting period basis because the use of two different cost finding methods during a single reporting period would seriously complicate the reimbursement process.

(b) *Medicaid*—The State plan must be amended in order for a hospital to receive swing-bed reimbursement under Medicaid. The implementation date for the hospital will be based on the later of either the effective date of the plan amendment or that of the hospital's swing-bed approval. The effective date of the State plan amendment will be determined in accordance with usual Medicaid rules (45 CFR 201.3(g)). That is, it will be effective no earlier than the first day of the calendar quarter in which an appropriate amendment is submitted to the HCFA Regional Office, or, with respect to expenditures under the amendment, the date on which the amendment is in operation on a Statewide basis.

II. Standards for Rural Hospitals Provision

A. Background

Under present law (section 1861(e) of the Social Security Act), a hospital must satisfy certain statutory and regulatory requirements related to health and safety standards, physical plant, organizational arrangements, and qualified medical, nursing and other technical staff in order to participate in either the Medicare or Medicaid program. One statutory requirement is that a hospital provide 24-hour nursing services furnished or supervised by a registered professional nurse. Between January, 1971 and December, 1978, the Secretary had statutory authority to waive this requirement for rural hospitals when a determination was made that a shortage of qualified nursing personnel existed in an area.

Small, rural hospitals have frequently criticized the Conditions of Participation for hospitals as being tailored to large, urban facilities and inappropriate to the rural hospital situation and resource limitations. These hospitals, particularly those providing a narrow range of services and without a sufficient supply of nurses or other technical personnel, have found that the rigid application of these Federal requirements creates unnecessary financial and managerial burdens and, at times, has culminated in hospital closure.

B. Section 949 of the Omnibus Reconciliation Act

1. *Application of section 949 to rural hospitals*—In response to a scarcity of technical and nursing personnel in rural areas and the difficulties encountered by small hospitals in meeting Federal requirements, Congress enacted section 949 of Pub. L. 96–499, Standards for Rural Hospitals. That section amended section 1861(e) of the Social Security Act to provide for more flexible application of certain Medicare standards to small, rural hospitals. Specifically, this provision allows the Department, under certain circumstances, to waive temporarily nursing, technical personnel, and fire and safety requirements in rural hospitals of 50 or fewer beds. HCFA will take into consideration the availability of qualified nursing and other technical personnel in the area, the scope of services furnished, and the economic impact of structural standards that, if rigidly applied, would result in unreasonable financial hardship for a rural hospital.

With respect to the fire and safety requirements, these provisions are already contained in regulations at 42 CFR 405.1022(b) and allow the Department to waive provisions of the Life Safety Code when appropriate.

2. *Eligible hospitals*—In order to receive a temporary waiver of existing hospital standards and requirements in accordance with section 949, a hospital must have fifty or fewer inpatient hospital beds and must be located in a rural area (see section I.B.2.(b) of this preamble for the definition of "rural" used for swing-bed hospitals). Separately certified distinct part SNF and ICF beds are not included in the hospital's bed count. In accordance with

the statutory requirements in section 1883(a)(1) of the Act, participating swing-bed hospitals will not be eligible for the 24-hour nursing waiver.

3. *Temporary waiver of nursing and technical personnel requirements*—Section 949 provides for a temporary waiver of the statutory 24-hour nursing service requirement for hospitals experiencing a temporary shortage of qualified nurses in the area. However, in all instances, a registered professional nurse must be on the premises, at least during the regular daytime shift, to furnish or supervise the nursing provided. On all tours of duty not covered by a registered nurse, a licensed practical nurse must serve as the charge nurse. A temporary waiver of technical personnel requirements may also be granted based on the availability of and the educational opportunities for those personnel in the area.

Exceptions to existing personnel requirements may be exercised only to the extent that the hospital has made a good faith effort to comply with these requirements and that these waivers do not jeopardize or adversely affect the health and safety of patients. When HCFA determines that the waiver for technical personnel may adversely affect the health and safety of patients, the hospital may be required to limit its scope of services.

Waivers of nursing and technical personnel requirements may be granted for any one year period, or less, and may be withdrawn earlier if the Department finds that action is necessary in order to protect the health and safety of patients. This reflects Congress' intent that the purpose of requiring compliance with basic standards is to assure safety and quality of care for all patients (Conference Committee Report, H.R. Report No. 96–1167, p. 378).

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We believe the provisions of section 949 of Pub. L. 96–499 do not represent a major departure from past program practices. The temporary waiver for nursing services is basically a continuance of the authority granted the Department in section 102 of Pub. L. 94–182, which expired on December 31, 1978, and the waiver of other technical personnel was previously provided to certain hospitals located in remote areas (42 CFR 405.1910). In addition, under the provisions of section 904, Congress set forth a clear approach for permitting small, rural hospitals to use their inpatient facilities to provide SNF and ICF services to eligible beneficiaries, and indicated its great concern about the problems of providing long-term care facility services in rural areas.

In light of Congress' strong interest in these provisions, the advantages to beneficiaries, and the clarity of the law in most of its major requirements, we believe it is unnecessary and contrary to the public interest to publish a notice of proposed rulemaking and a request for public comments before issuing final regulations. As a result, we find that there is good cause both to waive the notice of proposed rulemaking procedures and to forego a delayed effective date, for both of these provisions.

Although these regulations are published in interim final form, we are providing for a comment period so that interested parties may raise any comments or suggestions. Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, if we publish changes in the regulations as a result of the comments received, we will respond to them in the preamble of that document.

IV. Impact Analysis

A. Executive Order 12291

We have determined that these regulations will not result in an annual impact of $100 million or otherwise meet the criteria of section 1(b) of the Order.

As stated earlier, these regulations will give the 1,350 rural hospitals with fewer than 50 beds an opportunity to provide SNF services to Medicare patients and, at State option, to provide SNF or ICF services to Medicaid patients.

Generally, occupancy rates in small, rural hospitals range from 40 to 60 percent, so it is clear that they have some capacity to provide SNF and ICF services. Since hospitals will be required to obtain a certificate of need for long-term care services, and since we believe consumers will prefer to receive SNF or ICF services from a certified SNF or ICF rather than a hospital, demand for hospital-provided SNF or ICF services will generally exist only in areas with a shortage of SNF or ICF beds.

We anticipate that one necessary condition for rural hospitals of fewer than 50 beds for opting to become swing-bed hospitals is that the SNF or ICF rate exceed the marginal cost of providing SNF or ICF services. (Under the "carve-out" reimbursement method, this difference will result in a lower hospital per diem rate.)

Medicare and in many States, Medicaid, reimburse hospitals for the cost of caring for hospital patients who subsequently need a covered lower level of care which is not available. We expect that hospitals in areas with a shortage of SNF or ICF beds are now receiving reimbursment for patients requiring SNF or ICF services. Hospitals electing the swing-bed approach would receive reimbursement for these patients at the lower SNF or ICF rate, reducing total Medicare and Medicaid reimbursement for hospital services. (Although the remaining patients would be reimbursed at a higher per diem rate, the reduced proportion of Medicare and Medicaid hospital patients would reduce total Medicare and Medicaid reimbursement.)

Therefore, we expect that small, rural hospitals will choose to become swing-bed hospitals only if the difference between marginal cost and payment rates, times the expected number of SNF or ICF patients (including patients awaiting placement and new patients), exceeds the reduction in reimbursement for hospital services.

Given the small size of these hospitals, they have limited capacity to provide SNF or ICF services. Since, for purposes of Medicare and Medicaid, the cost of reimbursing these services will be partially offset by reductions in reimbursement for hospital services, we believe the cost of these regulations is negligible.

We are also proposing to give the 100 hospital-SNF complexes of fewer than 50 beds the option of receiving Medicare reimbursement as if they were swing-bed hospitals. While under some circumstances accounting differences could result in slightly higher reimbursement to these facilities, we believe that the cost of this provision is negligible.

B. Regulatory Flexibility Analysis

The Secretary certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these regulations will not have a significant economic impact on a substantial number of small entities.

All rural hospitals of fewer than 50 beds are small entities for purposes of the Regulatory Flexibility Act. As explained in the previous section, these regulations will not affect hospitals in areas with no unmet demand for SNF or ICF services. These regulations also will not affect hospitals which determine that there is no financial advantage in becoming a swing-bed hospital. For those hospitals that do see a financial advantage, we do not believe that the impact of this rule will be significant, since the additional Medicare and Medicaid reimbursement for SNF or ICF

services will be partially offset by reductions in reimbursement for hospital services. Therefore, a regulatory flexibility analysis is not required.

V. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) requires Federal agencies to seek the approval of the Executive Office of Management and Budget (OMB) for any regulations that contain reporting and recordkeeping requirements that are subject to the statute.

Sections 405.434 and 405.452 of these regulations contain reporting and recordkeeping requirements that are subject to the Paperwork Reduction Act. The requirements contained in §§ 405.434(c) and 405.452(b)(3)(iii) for States to submit data for purposes of determining an estimated adjusted statewide rate for extended care services by a swing-bed hospital have already been approved by OMB for use through June 30, 1983. The OMB approval number is 0938–0253.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Certification of compliance, Clinics, Contracts (Agreements), End-Stage Renal Disease (ESRD), Health care, Health facilities, Health maintenance organizations (HMO), Health professions, Health suppliers, Home health agencies, Hospitals, Inpatients, Kidney diseases, Laboratories, Medicare, Nursing homes, Onsite surveys, Outpatient providers, Reporting requirements, Rural areas, X-rays.

42 CFR Part 435

Aid to Families with Dependent Children, Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 440

Clinics, Dental health, Drugs, Grant-in-Aid program—health, Health care, Health facilities, Health professions, Hearing disorders, Home health services, Inpatients, Laboratories, Language disorders, Lung diseases, Medicaid, Mental health centers, Occupational therapy, Personal care services, Physical therapy, Prosthetic devices, Outpatients, Opthalmic goals and services, Rural areas, Speech disorders, X-rays.

42 CFR Part 442

Certification of intermediate care facilities (ICFs), Certification of skilled nursing facilities (SNFs), Contracts (Agreements), Disabled, Grant-in-Aid program—health, Health facilities, Health professions, Health records, Information (Disclosure), Medicaid, Mental health centers, Nursing homes, Nutrition, Privacy, Safety.

42 CFR Part 447

Accounting, Clinics, Contracts (Agreements), Copayments, Drugs, Grant-in-Aid program—health, Health facilities, Health professions, Hospitals, Medicaid, Nursing homes, Payments for services: general, Payments: timely claims, reimbursement, Rural areas.

42 CFR Chapter IV, Parts 405, 435, 440, 442, and 447 are amended as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. In Part 405, Subpart A is amended as follows. The authority citation for Subpart A reads as follows:

Authority: Secs. 1102, 1801–1817, 1866, 1871, 1883, 49 Stat. 647, as amended, 79 Stat. 291–301, 314; 79 Stat. 331; 42 U.S.C. 1302, 1395–1395i, 1395cc, 1395hh, and 1395tt, unless otherwise noted.

1. Section 405.116 is amended by revising paragraph (a) to read as follows:

§ 405.116 Inpatient hospital sevices; defined.

(a) *General provisions.* (1) Subject to the conditions, limitations, and exceptions in the succeeding paragraphs of this section, the term "inpatient hospital services" means the following items and services furnished by a qualified hospital, (including a psychiatric hospital or a tuberculosis hospital) to an inpatient of such hospital:

(i) Bed and board;

(ii) Nursing services and other related services;

(iii) Use of hospital facilities;

(iv) Medical social services;

(v) Drugs, biologicals, supplies, appliances and equipment;

(vi) Certain other diagnostic or therapeutic items or services; and

(vii) Medical or surgical services provided by certain interns or residents-in-training.

(2) "Inpatient hospital services" does not include extended care services furnished by a hospital with a swing-bed approval.

* * * * *

2. Section 405.120 is amended by adding a new paragraph (a)(3) as follows:

§ 405.120 Posthospital extended care services; scope of benefits.

(a) *Benefits and conditions for entitlement.*

* * * * *

(3) For purposes of this subpart, the term "skilled nursing facility" means a facility or distinct part of a facility that has been certified to meet the conditions of participation set out in Subpart K of this part and has entered into an agreement with HCFA. Except as used in § 405.125 (a)(8), (g), and (h), the term "skilled nursing facility" also includes a participating hospital with a swing-bed approval.

* * * * *

B. In Part 405, Subpart D is amended as set forth below.

1. The table of contents for Subpart D is amended by adding a new § 405.434 as set forth below:

405.434 Reasonable cost of extended care services furnished by a swing-bed hospital.

Authority: Secs. 1102, 1814(b), 1833(a), 1861(v), 1871, and 1883, 49 Stat. 647, as amended, 79 Stat. 296, 79 Stat. 302, 79 Stat. 322, 79 Stat. 331; 42 U.S.C. 1302, 1395f(b), 1395l(a), 1395x(v), 1395hh, and 1395tt, unless otherwise noted.

2. Section 405.430 is amended by revising paragraphs (b)(1) to (b)(6), as follows:

§ 405.430 Inpatient routine nursing salary cost differential.

* * * * *

(b) *Definitions*—(1) *Aged day.* Aged day means a day of care furnished to an inpatient 65 years of age or older. Aged days do not include any days of care furnished to an inpatient 65 years of age or older (i) in an intensive care unit, coronary care unit, or other intensive care type inpatient hospital unit, or (ii) receiving skilled nursing facility (SNF) type or intermediate care facility (ICF) type services as defined in § 405.452(d) (3) and (4).

(2) *Pediatric day.* Pediatric day means a day of care furnished to an inpatient less than age 14 who is not occupying a bassinet for the newborn in the nursery. Pediatric days do not include any days of care furnished to an inpatient less than 14 years of age (i) in an intensive care unit, coronary care unit, or other intensive care type inpatient hospital unit, or (ii) receiving SNF-type or ICF-type services as defined in § 405.452(d) (3) and (4).

(3) *Maternity day.* Maternity day means a day of care furnished to a

female inpatient admitted for delivery of a child. Maternity days do not include any days of care furnished to a female inpatient admitted for child delivery who is (i) in an intensive care unit, coronary care unit, or other intensive care type inpatient hospital unit, or (ii) receiving SNF-type or ICF-type services as defined in § 405.452(d) (3) and (4).

(4) *Nursery day.* Nursery day means a day of care furnished to an inpatient occupying a bassinet for the newborn in the nursery.

(5) *Inpatient day.* Inpatient day means a day of care furnished to any inpatient (except an individual occupying a bassinet for the newborn in the nursery). Inpatient days do not include any days of care furnished to (i) inpatients in an intensive care unit, coronary care unit, or other intensive care type inpatient hospital unit, or (ii) patients receiving SNF-type or ICF-type services as defined in § 405.452(d) (3) and (4).

(6) *Inpatient routine nursing salary cost.* Inpatient routine nursing salary cost includes only the gross salaries and wages of nurses and other personnel for nursing activities performed in nursing units not associated with the nursery and not associated with services for which a separate charge is customarily made. This cost includes gross salaries and wages of head nurses, registered nurses, licensed practical and vocational nurses, aides, orderlies, and ward clerks. Inpatient routine nursing salary cost does not include: (i) salaries and wages of administrative nursing personnel assigned to the departmental office or nursing personnel who perform their work in surgery, central supply, recovery units, emergency units, delivery rooms, nurseries, employee health service, or any other areas not providing general inpatient care; (ii) salaries and wages of personnel performing maintenance or other activities that do not directly relate to the care of patients; (iii) salaries or wages of nursing personnel assigned to an intensive care unit, coronary care unit, or other intensive care type inpatient hospital unit; or (iv) that portion of nursing salaries applicable to SNF-type or ICF-type days as determined by multiplying the general routine nursing salary costs by the ratio of the total costs attributable to SNF-type and ICF-type routine services to the total general routine service costs.

* * * * *

3. A new § 405.434 is added to read as follows:

§ 405.434 Reasonable cost of extended care services furnished by a swing-bed hospital.

(a) *Purpose and basis.* This section implements section 1883 of the Social Security Act, which provides for reimbursement for extended care services furnished by small, rural hospitals having a swing-bed approval. Payments to such hospitals for extended care services furnished in general routine inpatient beds are based on the reasonable cost of extended care services, in accordance with paragraph (c) of this section.

(b) *Definition.* A swing-bed hospital is a hospital participating in Medicare that has an approval from HCFA to provide extended care services as defined in § 405.125 and meets the requirements specified in § 405.1041.

(c) *Principle.* The reasonable cost of extended care services furnished by a swing-bed hospital is determined as follows:

(1) If a hospital is located in a State participating in Medicaid, the reasonable cost of the routine services is based on the average Statewide rate per patient day paid under the State Medicaid plan for routine services furnished by skilled nursing facilities (SNFs) in that State during the previous calendar year. The Statewide average rate will be computed either (i) by the State and furnished to HCFA, or (ii) by HCFA directly based on the best available data.

(2) If a hospital is located in a State that is not participating in Medicaid, the reasonable cost of the routine services is based on the average reasonable cost per patient day under Medicare for routine services furnished by SNFs in that State during the previous calendar year. HCFA will determine the average reasonable cost using Medicare cost reports, with adjustments to account for cost reporting periods not covering the calendar year preceding the year for which the rate is to be effective.

(3) The reasonable cost of ancillary services furnished as extended care services will be determined in the same manner as the reasonable cost of other ancillary services furnished by the hospital, as specified in § 405.452(b)(1).

4. Section 405.452 is amended by reprinting the introductory language in paragraph (b) and adding new paragraph (b)(3); redesignating and reprinting paragraphs (d)(3) through (d)(10) as paragraphs (d)(5) through (d)(12), adding new paragraphs (d)(3), and (d)(4), and revising redesignated paragraphs (d)(9) and (d)(10); and adding new paragraph (e)(6), as follows:

§ 405.452 Determination of cost of services to beneficiaries.

* * * * *

(b) *Principle for cost reporting periods starting after December 31, 1971.* Total allowable costs of a provider shall be apportioned between program beneficiaries and other patients so that the share borne by the program is based upon actual services received by program beneficiaries. For cost reporting periods starting after December 31, 1971, the methods of apportionment are defined as follows:

* * * * *

(3) *Carve out method.* (i) The carve out method is used to allocate hospital inpatient general routine service costs in a participating swing-bed hospital, as defined in § 405.434(b). Under this method, the total costs attributable to the SNF-type and ICF-type services furnished to all classes of patients are subtracted from total general routine inpatient service costs before computing the average cost per diem for general routine hospital care.

(ii) The cost per diem attributable to the routine SNF-type services furnished by a swing-bed hospital is based on the reasonable cost per diem for services determined in accordance with § 405.434.

(iii) The cost per diem attributable to the routine ICF services furnished by the swing-bed hospital is determined as follows:

(A) If the hospital is located in a State that provides for ICF services under Medicaid, the cost per diem for ICF services furnished by a swing-bed hospital in that State is based on the Statewide average rate paid for routine services in ICFs (other than ICFs for the mentally retarded) during the preceding calendar year under the State Medicaid plan. The Statewide average rate will be computed either by the State and furnished to HCFA, or by HCFA directly based on the best available data.

(B) If the hospital is located in a State that does not provide for ICF services under Medicaid or that does not have a Medicaid program, the cost per diem for ICF services will be based on the average ratio of the ICF rate to the SNF rate in those States that provide for both SNF and ICF services under Medicaid. The ratio will be applied to the SNF cost per diem determined under paragraph (b)(3)(ii) of this section.

(iv) The sum of (A) total SNF-type days furnished to all classes of patients multiplied by the SNF cost per diem and (B) total ICF-type days furnished to all classes of patients multiplied by the appropriate ICF cost per diem will be subtracted from inpatient general

routine service costs. The cost per diem for inpatient general routine hospital care will be based on the remaining general routine service costs, taking into account, to the extent pertinent, an inpatient routine nursing salary cost differential (see § 405.430 for definition and application of this differential).

(v) Costs other than general inpatient routine service costs will be determined in the same manner as specified in the Departmental Method in paragraph (b)(1) of this section.

* * * * *

(d) *Definitions.*

* * * * *

(3) *SNF-type services.* SNF-type services are routine services furnished by a swing-bed hospital that would constitute extended care services if furnished by a skilled nursing facility. SNF-type services include routine services furnished in the distinct part SNF of a hospital complex that is combined with the hospital general routine service area cost center under § 405.453(d)(5).

(4) *ICF-type services.* ICF-type services are routine services furnished by a swing-bed hospital that would constitute intermediate care facility (ICF) services, as defined in § 440.150 of this chapter, if furnished by an ICF. ICF-type services are not covered under the Medicare program.

(5) *Ancillary services.* Ancillary services or special services are the services for which charges are customarily made in addition to routine services.

(6) *Charges.* Charges refer to the regular rates for various services which are charged to both beneficiaries and other paying patients who receive the services. Implicit in the use of charges as the basis for apportionment is the objective that charges for services be related to the cost of the services.

(7) *Cost.* Cost refers to reasonable cost as described in § 405.451.

(8) *Ratio of beneficiary charges to total charges on a departmental basis.* Ratio of beneficiary charges to total charges on a departmental basis, as applied to inpatients, means the ratio of inpatient charges to beneficiaries of the health insurance program for services of a revenue-producing department or center to the inpatient charges to all inpatients for that center during an accounting period. After each revenue-producing center's ratio is determined, the cost of services rendered to beneficiaries of the health insurance program is computed by applying the individual ratio for the center to the cost of the related center for the period.

(9) *Average cost per diem for routine services.*

(i) *Average cost per diem for routine services; general principle.* The average cost per diem for general routine services means the amount computed by dividing the total allowable inpatient cost for routine services (excluding the cost of services provided in intensive care units, coronary care units, and other intensive care type inpatient hospital units as well as nursery costs) by the total number of inpatient days of care (excluding days of care in intensive care units, coronary care units, and other intensive care type inpatient hospital units and newborn days) rendered by the provider in the accounting period.

(ii) *Average cost per diem for inpatient general routine hospital services in swing-bed hospitals.* The average cost per diem for inpatient general routine hospital services in swing-bed hospitals means the amount computed by (A) subtracting the costs attributable to SNF-type and ICF-type services from the total allowable inpatient cost for routine services (excluding the cost of services provided in intensive care units, coronary care units, and other intensive care type inpatient hospital units, and nursery costs), and (B) dividing the remainder by the total number of inpatient hospital days of care (excluding SNF-type and ICF-type days of care, days of care in intensive care units, coronary care units, and other intensive care type inpatient hospital units, and newborn days) furnished by the provider in the accounting period.

(10) *Average cost per diem for hospital intensive care type units.* Average cost per diem for intensive care units, coronary care units; and other intensive care type inpatient hospital units as defined in paragraph (d)(12) of this section means the amount computed by dividing the total allowable costs for routine services in each (see paragraph (b)(1) of this section), or the aggregate (see paragraph (b)(2) of this section), of these units by the total number of inpatient days of care rendered in each or the aggregate of these units.

(11) *Ratio of beneficiary charges for ancillary services to total charges for ancillary services.* With respect to cost reporting years starting before January 1, 1972, the ratio of beneficiary charges for ancillary services to total charges for ancillary services, as applied to inpatients, means the ratio of the total inpatient charges for covered ancillary services rendered to beneficiaries of the health insurance program to the total inpatient charges for ancillary services to all patients during an accounting period. This ratio is applied to the allowable inpatient ancillary costs for the period to determine the amount of reimbursement to a provider for the covered ancillary services rendered to beneficiaries. With respect to cost reporting periods starting after December 31, 1971, the ratio of beneficiary charges for ancillary services to total charges for ancillary services, as applied to inpatients, means the ratio of the total inpatient charges for covered ancillary services rendered to beneficiaries of the health insurance program to the total inpatient charges, excluding delivery room charges, for ancillary services to all patients during an accounting period. This ratio is applied to the allowable inpatient ancillary costs for the period, excluding delivery room costs, to determine the amount of reimbursement to a provider for the covered ancillary services rendered to beneficiaries.

(12) *Intensive care type inpatient hospital unit.*

* * * * *

(e) *Application.*

* * * * *

(6) *Carve out method.* The following illustrates how apportionment is determined in a hospital reimbursed under the carve out method:

HOSPITAL K

[Determination of cost of routine SNF-type and ICF-type services and general routine hospital services[1]]

Facts	Days of care		
	General routine hospital	SNF-type	ICF-type
Total days of care	2000	400	100
Medicare days of care	600	300	
Average medicaid rate	N/A	$35	$20

Total inpatient general routine service costs: $250,000.

Calculation of cost of routine SNF-type services applicable to medicare:
$35×300=$10,500

Calculation of cost of general routine hospital services:
Cost of SNF-type services: $35×400 ..... $14,000
Cost of ICF-type services: $20×100 2,000
Total $16,000

Average cost per diem of general routine hospital services:
$250,000−$16,000÷2,000 days=$117

Medicare general routine hospital cost:
$117×600=$70,200

Total medicare reasonable cost for general routine inpatient days:
$10,500+$70,200=$80,700

[1] An inpatient general routine nursing salary cost differential adjustment factor, as defined and illustrated in § 405.430, is applicable to the cost of inpatient general routine hospital days. The factor is not applicable to the cost of SNF days.

* * * * *

5. Section 405.453 is amended by adding a new paragraph (d)(5) to read as follows:

§ 405.453 Adequate cost data and cost finding.

* * * * *

(d) *Cost finding methods.* * * *

(5) *Simplified optional reimbursement method for small, rural hospitals with distinct parts for cost reporting periods beginning on or after [the effective date of the regulations].* (i) A rural hospital with a Medicare-certified distinct part SNF may elect to be reimbursed for services furnished in its hospital general routine service area and distinct part skilled nursing facility (SNF) using the reimbursement method specified in § 405.452(b)(3) for swing-bed hospitals, if it meets the following conditions: (A) The institution is located in a rural area as defined in § 405.1041, and (B) On the first day of the cost reporting period, the hospital and distinct part SNF have fewer than 50 beds in total (with the exception of beds for newborns and beds in intensive care type inpatient units).

(ii) In applying the optional reimbursement method, only those beds located in the hospital general routine service area and in the distinct part SNF certified by Medicare are combined into a single cost center for purposes of cost finding.

(iii) The reasonable costs of the routine extended care services will be determined in accordance with § 405.434(c). The reasonable cost of the hospital general routine services will be determined in accordance with § 405.452(b)(3).

(iv) The hospital must make its election to use the optional swing-bed reimbursement method in writing to the intermediary before the beginning of the hospital's cost reporting year. The hospital must make any request to revoke the election in writing before the beginning of the affected cost reporting period.

(v) The intermediary must approve requests to terminate use of the optional swing-bed reimbursement method. If a hospital terminates use of this optional method, no further elections may be made by the facility to use the optional method.

C. In Part 405, Subpart J is amended as set forth below.

1. The table of contents for Subpart J is amended by adding a new § 405.1041 as set forth below:

405.1041 Conditions of participation—Special requirements for hospital providers of long-term care services ("swing-beds").

Authority: Secs. 1102, 1861(c), (f), and (g); 1864, 1871 and 1883; 49 Stat. 647, as amended; 79 Stat. 314–316, 79 Stat. 326; 79 Stat. 331; 42 U.S.C. 1302, 1395x(c), (f), and (g); 1395aa, 1395hh, and 1395tt, unless otherwise noted.

2. A new § 405.1041 is added to read as follows:

§ 405.1041 Conditions of participation—Special requirements for hospital providers of long-term care services ("swing-beds")

A hospital that has a Medicare provider agreement must meet the following requirements in order to be granted an approval from HCFA to provide post-hospital extended care services, as specified in § 405.120, and be reimbursed as a swing-bed hospital, as specified in § 405.434:

(a) *Standard: Eligibility.* A hospital must meet the following eligibility requirements: (1) The facility has fewer than 50 hospital beds, excluding beds for newborns and beds in intensive care type inpatient units (for eligibility of hospitals with distinct parts electing the optional reimbursement method, see § 405.453(d)(5));

(2) The hospital is located in a rural area. This includes all areas not delineated as "urban" by the Census Bureau, based on the most recent census;

(3) When applicable, the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act) for the State in which the hospital is located;

(4) The hospital does not have in effect a 24-hour nursing waiver granted under § 405.1910(c); and

(5) The hospital has not had a swing-bed approval terminated within the two years previous to application.

(b) *Standard: Skilled nursing facility services.* The facility is substantially in compliance with the following skilled nursing facility requirements contained in Subpart K of this part:

(1) Patients' rights (§ 405.1121(k)(2), (3), (4), (7), (8), (10), (11), (13), and (14);

(2) Specialized rehabilitative services (§ 405.1126(a), (b), and (c));

(3) Dental services (§ 405.1129);

(4) Social services (§ 405.1130);

(5) Patient activities (§ 405.1131); and

(6) Discharge planning (§ 405.1137(h)).

D. In Part 405, Subpart P is amended as set forth below. The authority citation for Subpart P reads as follows:

Authority: Secs. 1102, 1814, 1835, 1871, and 1883, 49 Stat. 647 as amended; 79 Stat. 294; 79 Stat. 303; 79 Stat. 331; 42 U.S.C. 1302, 1395f, 1395n, 1395hh, 1395tt, unless otherwise noted.

1. Section 405.1632 is amended by adding a new paragraph (d) as follows:

§ 405.1632 Post-hospital extended care services; certification and recertification.

* * * * *

(d) For purposes of this section, the term "skilled nursing facility" also includes a participating hospital with a swing-bed approval.

E. In Part 405, Subpart S is amended as set forth below. The authority citation for Subpart S reads as follows:

Authority: Secs. 1102, 1814, 1861, 1871; 42 U.S.C. 1302, 1395f, 1395x, 1395hh.

1. Section 405.1910 is amended by revising the section title and paragraphs (a) and (c) and adding a new paragraph (d) to read as follows:

§ 405.1910 Temporary waivers applicable to hospitals.

(a) *General provisions.* If a hospital is found to be out of compliance with one or more conditions of participation for hospitals, as specified in Subpart J of this part, a temporary waiver may be granted by HCFA. HCFA may extend a temporary waiver only if such a waiver would not jeopardize or adversely affect the health and safety of patients. The waiver may be issued for any one year period or less under certain circumstances. The waiver may be withdrawn earlier if HCFA determines this action is necessary to protect the health and safety of patients. A waiver may be granted only if:

(1) The hospital is located in a rural area. This includes all areas not delineated as "urban" by the Bureau of the Census, based on the most recent census;

(2) The hospital has 50 or fewer inpatient hospital beds;

(3) The character and seriousness of the deficiencies do not adversely affect the health and safety of patients; and

(4) The hospital has made and continues to make a good faith effort to comply with personnel requirements consistent with any waiver.

* * * * *

(c) *Temporary waiver of 24-hour nursing requirement of 24-hour registered nurse requirement.* HCFA may waive the requirement contained in section 1861(e)(5) that a hospital must provide 24-hour nursing service furnished or supervised by a registered nurse. Such a waiver may be granted when the following criteria are met:

(1) The hospital's failure to comply fully with the 24-hour nursing requirement is attributable to a temporary shortage of qualified nursing personnel in the area in which the hospital is located.

(2) A registered nurse is present on the premises to furnish or supervise the nursing services during at least the daytime shift, 7 days a week.

(3) The hospital has in charge, on all tours of duty not covered by a registered nurse, a licensed practical (vocational) nurse.

(4) The hospital complies with all requirements specified in paragraph (a) of this section.

(d) *Temporary waiver for technical personnel.* HCFA may waive technical personnel requirements, issued under section 1861(e)(9) of the Act, contained in the Conditions of Participation: Hospitals (Subpart J of this part). Such a waiver must take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which the hospital is located. HCFA may also limit the scope of services furnished by a hospital in conjunction with the waiver in order not to adversely affect the health and safety of the patients. In addition, the hospital must also comply with all requirements specified in paragraph (a) of this section.

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, AND THE NORTHERN MARIANA ISLANDS

A. In Part 435, Subpart K, § 435.1009 is amended by revising the definition of "Resident of an intermediate care facility" as set forth below. The authority for Subpart K reads as follows:

Authority: Sec. 1102 of the Social Security Act; 42 U.S.C. 1302.

§ 435.1009 Definitions relating to institutional status.

* * * * *

"Resident of an intermediate care facility" is an individual who is—

(1) In need of and receiving professional services to maintain, improve, or protect health or lessen disability or pain under the direction of a practitioner of the healing arts;

(2) Admitted to an intermediate care facility in accordance with §§ 450.370 through 450.381 of this subchapter, or receiving ICF services in a hospital with a swing-bed approval in accordance with § 447.280 of this chapter;

(3) Under care and supervision 24 hours a day; and

(4) If he or she is in an institution for the mentally retarded, receiving active treatment as defined in this section.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

A. In Part 440, Subpart A is amended as set forth below. The authority for Subpart A reads as follows:

Authority: Sec. 1102 of the Social Security Act; 42 U.S.C. 1302.

1. Section 440.1 is revised to read as follows:

§ 440.1 Basis and purpose.

This subpart interprets section 1905(a) of the Act, which lists the services included in the term "medical assistance," sections 1905 (c), (d), (f)–(i), (l), and (m), which define some of those services, and section 1915(c), which lists as "medical assistance" certain home and community-based services provided under waivers under that section to individuals who would otherwise require institutionalization. It also implements sec. 1902(a)(43) with respect to laboratory services (see also §§ 447.10 and 447.342 for related provisions on laboratory services), and implements section 1913 of the Act with respect to "swing-bed" services (see related provisions in §§ 405.1041 and 447.280 of this chapter).

2. Section 440.10 is amended by adding a new paragraph (b) as set forth below:

§ 440.10 Inpatient hospital services, other than services in an institution for tuberculosis or mental diseases.

* * * * *

(b) Inpatient hospital services do not include SNF and ICF services furnished by a hospital with a swing-bed approval.

3. Section 440.40 is amended by revising paragraph (a)(1) as set forth below:

§ 440.40 Skilled nursing facility services for individuals age 21 or older (other than services in an institution for tuberculosis or mental diseases). EPSDT, and family planning services and supplies.

(a) *Skilled nursing facility services.* (1) "Skilled nursing facility services for individuals age 21 or older, other than services in an institution for tuberculosis or mental diseases," means services that are—

(i) Needed on a daily basis and required to be provided on an inpatient basis under §§ 405.127, 405.128, and 405.128a of this chapter;

(ii) Provided by (A) a facility or distinct part of a facility that is certified to meet the requirements for participation under Subpart C of Part 442 of this subchapter, as evidenced by a valid agreement between the Medicaid agency and the facility for providing skilled nursing facility services and making payments for services under the plan; or (B) if specified in the State plan, a swing-bed hospital that has an approval from HCFA to furnish skilled nursing facility services in the Medicare program; and

(iii) Ordered by and provided under the direction of a physician.

* * * * *

4. Section 440.150 is amended by adding new paragraph (f) as set forth below:

§ 440.150 Intermediate care facility services, other than in institutions for tuberculosis or mental diseases.

* * * * *

(f) Intermediate care facility services may include services provided in a swing-bed hospital that has an approval to furnish intermediate care services.

* * * * *

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

A. In Part 442, Subpart A is amended as set forth below. The authority citation for Subpart A reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

§ 442.1(a) is amended by revising paragraphs (6) and (7) and adding a new paragraph (8). As revised, paragraph (a) reads as set forth below:

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements, facility certification, and facility standards relating to the provision of skilled nursing facility and intermediate care facility services to Medicaid recipients. The requirements apply to State Medicaid agencies and survey agencies and to the facilities. This part is based on the following sections of the Act:

(1) Section 1902(a)(4), administrative methods for proper and efficient operation of the State plan;

(2) Section 1902(a)(27), provider agreements;

(3) Section 1902(a)(28), skilled nursing facility standards;

(4) Section 1902(a)(33)(B), State survey agency functions;

(5) Section 1905 (c) and (d), definition of intermediate care facility services;

(6) Section 1905 (f) and (i), definition of skilled nursing facility services;

(7) Section 1910, participation of Medicare-certified skilled nursing facilities in Medicaid; and

(8) Section 1913, hospital providers of skilled nursing and intermediate care services.

* * * * *

B. In Part 442, Subpart B is amended as set forth below.

1. Section 442.15 is amended by adding a new paragraph (d) as follows:

§ 442.15 Duration of agreement.

* * * * *

(d) The limitation specified in paragraph (a) of this section does not apply to hospitals with a swing-bed approval.

PART 447—PAYMENTS FOR SERVICES

A. In Part 447, Subpart C is amended as set forth below.

1. The table of contents for Subpart C is amended by adding a new § 447.280, and a center heading immediately preceding the new section, as set forth below:

Swing-Bed Hospitals

447.280 Hospital providers of SNF and ICF services (swing-bed hospitals).

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 447.250 is revised as set forth below:

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

§ 447.250 Basis and purpose.

Sections 447.251 through 447.265 of this subpart implement section 1902(a)(13)(A) of the Act, which requires that the State plan provide for payment for hospital and long-term care facility services through the use of rates that the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated facilities to provide services in conformity with State and Federal laws, regulations, and quality and safety standards. Sections 447.271 and 447.272 implement section 1902(a)(30) of the Act, which requires that payments be consistent with efficiency, economy, and quality of care; and section 1903(i)(3), which requires that payments for inpatient hospital services not exceed the hospital's customary charges. Section 447.280 implements section 1913(b) of the Act, which concerns reimbursement for long-term care services furnished by swing-bed hospitals.

3. Section 447.252 is amended by adding a new subparagraph (a)(4) as set forth below:

§ 447.252 General requirements.

(a) Payment rates.* * *

(4) With respect to long-term care services furnished by a swing-bed hospital, the methods and standards used to determine payment rates must satisfy the requirements specified in § 447.280.

* * * * *

4. A new § 447.280 and a center heading immediately preceding it are added to read as follows:

Swing-Bed Hospitals

§ 447.280 Hospital providers of SNF and ICF services (swing-bed hospitals).

(a) If the State plan provides for SNF services furnished by a swing-bed hospital, as specified in § 440.40(a) of this chapter, the methods and standards used to determine payments rates must provide for payment for the routine SNF services at the average rate per patient day paid to SNFs for routine services furnished during the previous calendar year.

(b) If the State plan provides for ICF services furnished by a swing-bed hospital, as specified in § 440.150(f) of this chapter, the methods and standards used to determine payment rates must provide for payment for the routine ICF services at the average rate per patient day paid to ICFs, other than ICFs for the mentally retarded, for routine services furnished during the previous calendar year.

(Catalog of Federal Assistance Program, No. 13.714, Medicaid—Medical Assistance Program, No. 13.773; Medicare—Hospital Insurance Program)

Dated: May 12, 1982.

Paul Willging,

Acting Administrator, Health Care Financing Administration.

Approved: June 25, 1982.

Richard S. Schweiker,

Secretary.

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

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