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Thursday
April 25, 1985

Selected Subjects

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 5325 of April 22, 1985

Asian/Pacific American Heritage Week, 1985

By the President of the United States of America

A Proclamation

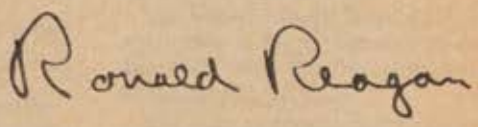
The Pacific Ocean today is ringed by a large number of successful developed and developing nations. So rapid has the progress of this area been that many scholars are beginning to speak of an emerging Pacific Civilization similar to the Mediterranean Civilization of the ancient world or the Atlantic Civilization of modern times. America is well-placed to play a major role in this emerging civilization not only because of its geographic position but also because many of its citizens are themselves of Asian and Pacific ancestry.

Americans of Asian and Pacific ancestry are a diverse group, representing as many different ethnic allegiances as Americans of European ancestry, but certain common values characterize them all. Whether as immigrants to our country or as native inhabitants in the islands of the Pacific Ocean, they have retained a strong sense of traditional values emphasizing vital family and communal bonds. These values remain strong today and play an important role in the success achieved by these proud Americans.

Asian and Pacific Americans have been successful in virtually every field of endeavor. Through their achievements in many areas, they have enriched the lives of all Americans. By sharing their cultures with other Americans, they have increased our Nation's rich cultural vitality. Asian and Pacific Americans have truly helped the United States to fulfill its most cherished ideals.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning May 5, 1985, as Asian/Pacific American Heritage Week and call upon all Americans to observe this week with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of April, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and ninth.



[FR Doc. 85-10114
Filed 4-23-85; 12:18 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 85-315]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: This document amends the list of suppressive areas under the witchweed quarantine and regulations by adding areas in 7 counties in North Carolina to the list of suppressive areas, and by deleting 1 county and areas in 12 counties in North Carolina, and areas in 2 counties in South Carolina from the list of suppressive areas. In addition, this document makes certain other nonsubstantive, editorial changes. This action is necessary as an emergency measure in order to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Effective date of this interim rule April 25, 1985. Written comments concerning this rule must be received on or before June 24, 1985.

ADDRESSES: Written comments should be submitted to Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728 Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected in Room 728 of the Federal Building between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Charles H. Bare, Staff Officer, Field Operations Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 663, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8295.

SUPPLEMENTARY INFORMATION:

Emergency Action

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

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

Background

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

Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of witchweed is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the artificial movement of witchweed to noninfested areas and to prevent the reinfestation of suppressive areas where the witchweed no longer occurs.

Designation of Areas as Suppressive Areas

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of areas previously designated as suppressive area. Therefore, as an emergency measure, the following areas in Craven, Duplin, Hoke, Lenoir, Pitt, Richmond, and Wayne Counties in North Carolina which were previously nonregulated areas are designated as witchweed suppressive areas. These additional areas are areas where eradication of witchweed is undertaken as an objective. This action is necessary in order to prevent the spread of witchweed and to facilitate its ultimate eradication. The areas in North Carolina and South Carolina that are being designated as suppressive areas by this action are described as follows:

North Carolina

Craven County. The Bellamy, Willie, farm located on the north side of State Secondary Road 1444 and 0.9 mile southwest of its junction with State Secondary Road 1440.

The Jolley, Albert, farm located on the south side of State Highway 55 and 0.3 mile west of its junction with State Secondary Road 1258.

The Faison, Moses, farm located 1.1 miles south of State Secondary Road 1307 and 1.5 miles east of the junction of said road with State Secondary Road 1352.

The Tripp, Dudley, farm located on the north side of State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

Duplin County. The Dobson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its

intersection with State Secondary Road 1737.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The Tyner, J.R., farm located on the south side of State Highway 24 and the east side of State Secondary Road 1737 at the intersection of said roads.

Hoke County. The McGregor, Gilbert, farm located on the south side of State Secondary Road 1219 and 0.4 mile east of the junction of said road with State Secondary Road 1218.

Lenoir County. The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its junction with State Secondary Road 1318.

Pitt County. The Cannon, James, farm located on the west side of State Secondary Road 1918 and 0.1 mile north of its junction with State Secondary Road 1917.

The Couch, Ruth, farm located on the east side of State Secondary Road 1918 and 0.3 mile north of its junction with State Secondary Road 1917.

The Stancill, Wiley, farm located on the west side of State Secondary Road 1918 and 0.1 mile south of its junction with State Secondary Road 1919.

Richmond County. The Autry, John, farm located on the north side of State Secondary Road 1803 and 0.4 mile east of Osborne.

The Covington, Tally, farm located on private road 0.1 mile north off of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

The Jackson, James, farm located on private road 0.2 mile north off of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

The Terry, Elijah, farm located on the northwest side of State Secondary Road 1442 and 0.2 mile northwest of its junction with State Secondary Road 1477.

Wayne County. That area bounded by a line beginning at a point where State Highway 111 and State Secondary Road 1913 junction; then southwesterly along State Secondary Road 1913 to its junction with State Secondary Road 1744; then easterly along said road to its junction with State Secondary Road 1948; then southerly along said road to its intersection with State Secondary Road 1745; then westerly along said road to its junction with State Secondary Road 1915; then northerly along said road to its intersection with State Secondary Road 1744; then westerly along said road to its junction with State Secondary Road 1933; then northwesterly along said road to its junction with State Secondary Road 1120; then easterly along said road to its junction with State Secondary Road 1915; then easterly from said junction along an imaginary line to the junction of Sleepy Creek and the Neuse River; then easterly along said river to its intersection with State Highway 111; then southerly along said highway to the point of beginning.

The Barwick, Jack, farm located on the west side of State Secondary Road 1932 and 0.6 mile south of the junction of said road and State Secondary Road 1934.

The Brooks, Leonard, farm located 0.2 miles west of State Secondary Road 1934 and 1 mile south of the junction of said road and State Secondary Road 1932.

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of the junction of said road and State Highway 55.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of said road and State Secondary Road 1938.

The Grady, Zeb, farm located on the east side of State Secondary Road 1932 and 1 mile north of the junction of said road and State Secondary Road 1744.

The Hines, Lucy, farm located on the west side of State Secondary Road 1933 and 1.5 miles south of the junction of said road and State Secondary Road 1120.

The Hines, Viola, farm located on the southwest side of State Secondary Road 1932 and 0.8 miles northwest of the intersection of said road and State Secondary Road 1744.

The Lewis, Ben H., farm located on the northeast corner of the intersection of State Secondary Roads 1744 and 1932.

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of the junction of said road and State Secondary Road 1934.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

Deletion of Areas From List of Regulated Areas

In addition to designating certain areas that were previously nonregulated as suppressive areas, this action deletes certain areas in North Carolina and South Carolina from the list of suppressive areas. This action has been taken because it has been determined that the witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, as an emergency measure, this document deletes Brunswick County in North Carolina, and the following parts of the counties of Craven, Cumberland, Duplin, Greene, Hoke, Johnston, Lenoir, Onslow, Pitt, Richmond, Scotland, and Wayne in North Carolina, and the following parts of the counties of Florence and Marlboro in South Carolina from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles:

North Carolina

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

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

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

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

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

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

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

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

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

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

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

The Williams, Robert F., farm located on the west side of State Secondary

Road 1728 and 0.6 mile north of its junction with State Secondary Road 1714.

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

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

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

The Jernigan, Cornelia, farm located on the west side of State Secondary Road 1360 and 0.4 mile south of its junction with State Secondary Road 1004.

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

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

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

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

The Murphrey, Edward, farm located on the east side of State Secondary Road 1004 and 0.3 mile south of its junction with State Highway 903.

The Whitaker, J.H., farm located on the east side of State Secondary Road 1004 and 0.6 mile south of its junction with State Highway 903.

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

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

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

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

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

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

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

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

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

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

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

Richmond County. The David, Ethel, farm located on both sides of State Secondary 1803, on the west side of the intersection of said road with State Secondary Road 1825.

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

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

The Cagle, Richard, farm located on the east side of State Secondary Road 1407 and 0.2 mile north of its junction with State Secondary Road 1427.

The Cauldwell, V.S., farm located on the northeast side of State Secondary Road 1416 and 0.3 mile southeast of the intersection of said road and U.S. Highway 401.

The Hasty, W.H., farm located on the southwest side of State Secondary Road 1407 and 0.5 mile northwest of its junction with North Carolina Highway 71.

The Jackson, Lula, farm located on the west side of State Secondary Road 1407 and 0.2 mile northwest of its junction with State Secondary Road 1427.

The Lowry, Lula, farm located on the west side of State Secondary Road 1433 and 1.5 southwest of its junction with State Secondary Road 1407.

The McGirt, Tommy P., farm located on the northwest side of State Secondary Road 1403 at its junction with State Secondary Road 1407.

The McLaughlin, A.M., farm located on the north side of State Secondary Road 1403 and 0.1 mile east of Wagram, North Carolina.

The McLean Brothers, farm located on both sides of State Secondary Road 1425 and 0.5 mile north of its junction with State Secondary Road 1424.

The McMillan, Polly, farm located on both sides of State Secondary Road 1331 and 0.5 mile northwest of its junction with State Secondary Road 1324.

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

The Robinson, Estate, farm located on the southeast side of State Secondary Road 1324 and 0.8 mile southwest of its junction with State Secondary Road 1329.

The Snead, Jessie, farm located on the north side of State Secondary Road 1319 and 0.2 mile west of its junction with State Secondary Road 1323.

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

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

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

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

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

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

The Price, James, farm located in the southeastern intersection of State

Highway 111 and State Secondary Road 1745.

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

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

South Carolina

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

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

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

As a result of this action, the only areas presently regulated as suppressive areas in North Carolina and South Carolina are those areas listed in this document in § 301.80–2a as suppressive areas.

Executive Order 12291 and Regulatory Flexibility Act

This interim rule is issued in conformance with Executive Order 12291 and Secretary's Memorandum No. 1512–1, and has been determined to be not a "major rule." Based on information compiled by the Department, it has been determined that this interim rule will have an annual effect on the economy of approximately $300; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

The Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities. This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, it has been determined that there are approximately 290,000 small entities that move regulated articles interstate from North Carolina and South Carolina, and many hundreds of thousands of small entities that move such articles interstate from other States. However, it has been determined that only 20 entities in North Carolina and South Carolina move regulated articles interstate from the areas that will be affected by this action. Further, the overall economic impact from this action is estimated to be only about $300.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Quarantine, Transportation, Witchweed.

PART 301—DOMESTIC QUARANTINE NOTICES

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

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

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

North Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

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

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

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Secondary Road 1730 and State Secondary Road 1708 meet at the Columbus-Bladen County line; then south and southwest along State Secondary Road 1730 to its junction with State Secondary Road 1001; then south along said road to a point where it is intersected by State Secondary Road 1714; then west along said road to its junction with U.S. Highway 74; then west along said highway to U.S. Highway 701 Bypass; then south and west along said highway to its intersection with State Secondary Road 1314; then west along said road to its junction with State Secondary Road 1346; then southwest along said road to its junction with the North Carolina-South Carolina State border where the line ends.

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

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

Craven County. The Bellamy, Willie, farm located on the north side of State Secondary Road 1444 and 0.9 mile southwest of its junction with State Secondary Road 1440.

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

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

The Jolley, Albert, farm located on the south side of State Highway 55 and 0.3 mile west of its junction with State Secondary Road 1258.

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

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

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

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

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

The Tripp, Dudley, farm located on the north side of State Secondary Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

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

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

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along said highway to

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

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

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

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

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

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

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

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

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

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

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J.T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

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

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

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

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

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

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

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

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1716.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Boykins, Charles B., farm located 1 mile northwest of State Secondary Road 1304 and 0.3 mile southeast of the junction of said road with State Secondary Road 1354.

The Bradshaw, Milton J., farm located at the northwest end of State Secondary Road 1960.

The Branch, Hall, farm located 0.3 mile northwest of State Highway 11 and 1 mile northeast of junction of highway and State Secondary Road 1378.

The Carlton, Rivers, farm located 1 mile south of State Secondary Road 1307 and 1.5 miles east of its junction of said road with State Secondary Road 1352.

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

The Dodson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its intersection with State Secondary Road 1737.

The Dobson, Twillie, farm located on the south side of State Secondary Road 1912 and 0.7 mile west of its junction of said road and State Highway 11.

The Faison, Moses, farm located 1.1 miles south of State Secondary Road 1307 and 1.5 miles east of the junction of said road with State Secondary Road 1352.

The Frederick, William, farm located on the north side of State Secondary Road 1114 and 0.1 mile west of the intersection of said road with State Secondary Road 1107.

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

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Hoover, Annie, farm located on the west side of U.S. Highway 117 and 0.2 mile north of the intersection of said highway with State Secondary Road 1909.

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

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

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

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

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

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

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

The Monk, E.D., farm located 0.2 mile east of State Secondary Road 1923 and 0.5 mile north of the junction of said road with State Secondary Road 1922.

The Monk, Johnny, farm located on the north side of State Secondary Road 1104 and 0.1 mile west of the junction of said road with State Secondary Road 1003.

The Moore, Macy J., farm located on the south side of State Secondary Road 1301 at the junction of said road with State Secondary Road 1353.

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

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

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

The Pigford, P.H., farm located on the south side of State Secondary Road 1960 and 0.2 mile east of the dead end of said road.

The Quinn, Joseph, farm located on both sides of State Secondary Road 1126 and 1.8 miles west of the intersection of said road with State Secondary Road 1100.

The Raiford, P.B., farm located on the west side of State Secondary Road 1900 and 0.1 mile south of the junction of said road with State Secondary Road 1903.

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

The Stokes, J.D., Jr., farm located on both sides of State Secondary Road 1980 and 0.3 mile east of the dead end of said road.

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

The Thomas, Douglas M., farm located on the southwest side of State Secondary Road 1700 and 0.4 mile northwest of the intersection of said road with State Secondary Road 1728.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of intersection of said road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of State Highway 24 and the east side of State Secondary Road 1737 at the intersection of said roads.

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

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

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1 mile south of the intersection of said highway and State Secondary Road 1700.

Greene County. That area bounded by a line beginning at a point where State Highway 903 intersects State Highway 123 and extending southerly along State Highway 123 to its intersection with Contentnea Creek, then northwest along said creek to its junction with Panther Swamp, then northerly along said swamp to its intersection with U.S. Highway 258–13, then northeasterly to its intersection with State Highway 903; then easterly along said highway to the point of beginning.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

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

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

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of said road with State Secondary Road 1139.

The Frizzelle, Roscoe, farm located on the south side of State Secondary Road 1141 and 0.3 mile east of the junction of said road with State Secondary Road 1139.

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

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of the junction of said road with State Secondary Road 1202.

The Pulley, Clarence E., farm located on the north side of State Secondary Road 1141 and 0.4 mile east of the junction of said road with State Secondary Road 1139.

The Serina, David, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of said road with State Secondary Road 1139.

The Spaulding, James, farm located on north side of State Secondary Road 1141 and 1.3 miles east of the junction of said road with State Secondary Road 1139.

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

The Womack, E. H., farm located on the east side of State Highway 27, and 1 mile north of the junction of said highway with State Highway 24.

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

County line, then northerly along said county line to the point of beginning.

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

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

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

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

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

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

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

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

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

The McGregor, Gilbert, farm located on the south side of State Secondary Road 1219 and 0.4 mile east of the junction of said road with State Secondary Road 1218.

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

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

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

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

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

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

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

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

Johnston County. The McArthur, Margaret, farm located 1.4 miles north of State Secondary Road 1199 and 0.9 mile west of the junction of said road and State Secondary Road 1008.

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

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

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

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

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

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

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

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

The Herring, Robert, farm located in the northwest junction of State Secondary Roads 1318 and 1316.

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

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its junction with State Secondary Road 1318.

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

The Rouse, James, farm located on the southeast side of State Secondary Road 1307 and 0.4 mile southwest of the junction of said road and State Secondary Road 1324.

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

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

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

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

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

The Sutton, W. Edward, farm located on the east side of State Secondary Road 1333 and 0.4 mile south of State Secondary Road 1330.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its junction with State Highway 55.

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

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

The Lanier, Marion, farm located on the southeast side of State Secondary Road 1224, and 0.7 mile northeast from the junction of said road and State Secondary Road 1222.

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

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

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

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

The Corbett, W.M., farm located on both sides of State Secondary Road 1201 at its junction with State Secondary Road 11200.

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

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

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

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

The Hutcheson, Katie, farm located on field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411

and 1.4 miles east of its intersection with U.S. Highway 117.

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

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

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

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

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1108 and 0.5 mile northwest of its junction with State Secondary Road 1107.

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

Pitt County. The Cannon, James, farm located on the west side of State Secondary Road 1918 and 0.1 mile north of its junction with State Secondary Road 1917.

The Couch, Ruth, farm located on the east side of State Secondary Road 1918 and 0.3 mile north of its junction with State Secondary Road 1917.

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

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

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

The Stancill, Wiley, farm located on the west side of State Secondary Road 1918 and 0.1 mile south of its junction with State Secondary Road 1919.

Richmond County. The Autry, John, farm located on the north side of State Secondary Road 1803 and 0.4 mile east of Osborne.

The Covington, Tally, farm located on private road 0.1 mile north off of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

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

The Fisher, George, farm located on the north side of State Secondary Road 1827 and 0.1 mile southeast of its junction with State Secondary Road 1825.

The Jackson, James, farm located on private road 0.2 mile north off of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

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

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

The Terry, Elijah, farm located on the northwest side of State Secondary Road 1442 and 0.2 mile northwest of its junction with State Secondary Road 1477.

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

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

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

Robeson County. The entire county.

Sampson County. The entire county.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Hoke-Scotland County line; then southwest along said highway to its junction with the Laurinburg city limits; then southwest along the Laurinburg city limits to its junction with U.S. Highway 501, then northerly on U.S. Highway 501 to its intersection with Hoke-Scotland County line; then southeasterly along said line to the point of beginning.

The Carmichael, John, farm located on both sides of State Secondary Road 1612 and 0.2 mile southwest of its junction with State Secondary Road 1611.

The Creed, George O., farm located on both sides of State Secondary Road 1426 and 0.6 mile north of its junction with State Secondary Road 1427.

The Gibson, J. C., farm located on the south side of State Secondary Road 1341 and 0.5 mile southwest of its junction with State Secondary Road 1328.

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

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

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

Wayne County. That area bounded by a line beginning at a point where State Highway 111 and State Secondary Road 1913 junction; then southwesterly along State Secondary Road 1913 to its junction with State Secondary Road 1744; then easterly along said road to its junction with State Secondary Road 1948; then southerly along said road to its intersection with State Secondary Road 1745; then westerly along said road to its junction with State Secondary Road 1915; then northerly along said road to its intersection with State Secondary Road 1744; then westerly along said road to its junction with State Secondary Road 1933; then northwesterly along said road to its junction with State Secondary Road 1120; then easterly along said road to its junction with State Secondary Road 1915; then easterly from said junction along an imaginary line to the junction of Sleepy Creek and the Neuse River; then easterly along said river to its intersection with State Highway 111; then south along said highway to the point of beginning.

The Barwick, Jack, farm located on the west side of State Secondary Road 1932 and 0.6 mile south of the junction of said road and State Secondary Road 1934.

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

The Brooks, Leonard, farm located 0.2 mile west of State Secondary Road 1934 and 1 mile south of the junction of said road and State Secondary Road 1932.

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

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

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of the junction of said road and State Highway 55.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of said road and State Secondary Road 1938.

The Grady, Zeb, farm located on the east side of State Secondary Road 1932 and 1 mile north of the junction of said road and State Secondary Road 1744.

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

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

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

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

The Hines, Lucy, farm located on the west side of State Secondary Road 1933 and 1.5 miles south of the junction of said road and State Secondary Road 1120.

The Hines, Viola, farm located on the southwest side of State Secondary Road 1932 and 0.8 mile northwest of the intersection of said road and State Secondary Road 1744.

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

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

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

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

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

The Lewis, Ben H., farm located on the northeast corner of the intersection of State Secondary Roads 1744 and 1932.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

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

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

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

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

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

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

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

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of the junction of said road and State Secondary Road 1934.

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

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Smith, M. G., farm located on the west side of State Secondary Road 1952 and 0.3 mile south of its junction with State Secondary Road 1745.

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

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

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

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

South Carolina

(1) *Generally infested area.* None.

(2) *Suppressive areas.*

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

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

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

The Johnson, William, farm located on the north side of a dirt road and 0.6 mile northwest of its junction with State Secondary Highway 133, said junction being 2 miles south of the intersection of said highway and State Secondary Highway 41.

Dillon County. The entire county.

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

That area bounded by a line beginning at a point where State Secondary Highway 794 and State Secondary Highway 72 junction and extending south along State Secondary Highway 72 to its intersection with State Secondary Highway 46, then northeast along said highway to its intersection with State Secondary Highway 34, then southeast along said highway to its junction with State Secondary Highway 380, then northeast along said highway to its junction with a dirt road, said junction being 1.6 miles northeast of the junction of State Secondary Highways 34 and 380, then southeast along said dirt road for a distance of 1.2 miles to its junction with a second dirt road, then southwest along said dirt road to its junction with State Secondary Highway 34, then south along said highway to its junction with U.S. Highway 378, then west along said highway to its junction with State Secondary Highway 47, then northwest and west along said highway to the corporate limits of the town of Scranton, then north and west along the east and north perimeter of said corporate limits to its intersection with the Seaboard Coast Line Railroad, then north along said railroad to the corporate limits of the town of Coward, then north along the east perimeter of the town of Coward to its intersection with State Secondary Highway 794, then northeast along said highway to the point of the beginning.

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

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

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along said highway to its intersection with State Secondary Highway 306, then west along said highway to its intersection with State Secondary Highway 142, then south along said highway to its junction with State Primary Highway 9, then northwest along said highway to its intersection with State Secondary Highway 59, then southwest and south along said highway to its junction with State Primary Highway 917, then southwest along said highway to its intersection with State Secondary Highway 19, then south and southeast along said highway 19 to its intersection with U.S Highway 701 at Allsbrook, then northeast along said highway to its intersection with State Primary Highway 9, then southeast and south along said highway to its intersection with the Waccamaw River, then northeast along said river to its intersection with South Carolina-North Carolina State line, then southeast along said State line to its intersection with U.S. Highway 17, then southwest along said highway to its junction with State Primary Highway 90, then west along said highway to its intersection with a dirt road known as Telephone Road, said intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along said swamp to its junction

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

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

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

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

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 miles northwest of the intersection of said dirt road with rural paved road No. 109, said intersection being 2.25 miles northeast of the junction of said rural paved road No. 109 with rural paved road No. 79.

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

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

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

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

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

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

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

Marion County. The entire county.

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

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

Authority: 7 U.S.C. 150ee, 161, 162; 7 CFR 2.17, 2.51, and 371.2(c).

Done at Washington, D.C., this 22nd day of April 1985.

William F. Helms,

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

[FR Doc. 85-9967 Filed 4-24-85; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2134S]

General Administrative Regulations; Late Planting Agreement Option Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Late Planting Agreement Option (7 CFR Part 400, Subpart A), effective with the 1985 and succeeding crop years to: (1) Change the cause of loss from excessive moisture to adverse weather conditions; and (2) publish a corrected list of crop insurance regulations to which the Late Planting Agreement Option applies. The intended effect of this rule is to broaden the cause of loss and to update the regulations authorized to include the provisions of the Late Planting Agreement Option. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is October 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) 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; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

This action is not expected to have any significant impact on the equality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

On Friday, November 16, 1984, FCIC published a notice of proposed rulemaking in the **Federal Register** at 49 FR 45444, amending the Late Planting Agreement Option of insurance on certain crops to broaden the cause of loss from "excess moisture" to include all elements of "adverse weather conditions", and to publish a correct list of crops to which the Late Planting Agreement Option applied.

Written comments were solicited by FCIC for 60 days on this rule, but none were received. Therefore, the proposed rule as published is hereby adopted as final.

List of Subjects in 7 CFR Part 400

Crop insurance, Late planting agreement option.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Late Planting Agreement Option, Subpart A of Part 400 of Title 7 of the Code of Federal Regulations, effective for the 1985 and succeeding crop years, as set forth below:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart A—Late Planting Agreement Option; Regulations for the 1985 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart A—Late Planting Agreement Option; Regulations for the 1985 and Succeeding Crop Year

§ 400.1 Availability of the Late Planting Agreement Option.

The Late Planting Agreement Option shall be offered under the provisions contained in 7 CFR Parts 402 through 499 within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), only on those crops identified in Section § 400.4 of this subpart. All provisions of the applicable contract for the insured crop apply, except those provisions which are in conflict with this part.

§ 400.2 Definitions.

For the purposes of the Late Planting Agreement Option:

(a) "Final planting date" means the final planting date for the insured crop contained in the actuarial table on file in the service office.

(b) "Late Planting Agreement Option" means that agreement between the FCIC and the insured whereby the insured elects, and FCIC provides, insurance on acreage planted for up to 20 days after the applicable final planting date. The production guarantee applicable on the final planting date will be reduced on the acreage planted after the final planting date by 10 percent for each 5 days that the acreage is planted after the final planting date.

(c) "Production guarantee" means the guaranteed level of production under the provisions of the applicable contract for crop insurance (sometimes expressed in amounts of insurance).

§ 400.3 Responsibilities of the insured.

The insured is solely responsible for the completion of the Late Planting Agreement Option Form and for the accuracy of the data provided on that form. The provisions of this subsection shall not relieve the insured of its responsibilities under the provisions of the insurance contract.

§ 400.4 Availability to crops insured.

The provisions of this subpart shall be applicable to the provisions of FCIC policies issued under the following regulations for insuring crops:

7 CFR Part 418 Wheat
7 CFR Part 419 Barley
7 CFR Part 420 Grain Sorghum
7 CFR Part 421 Cotton
7 CFR Part 422 Potatoes
7 CFR Part 423 Flax
7 CFR Part 424 Rice
7 CFR Part 425 Peanuts
7 CFR Part 427 Oats
7 CFR Part 428 Sunflowers
7 CFR Part 429 Rye
7 CFR Part 430 Sugar Beets
7 CFR Part 431 Soybeans
7 CFR Part 432 Corn
7 CFR Part 433 Dry Beans
7 CFR Part 434 Tobacco (Dollar Plan)
7 CFR Part 435 Tobacco (Quota Plan)
7 CFR Part 436 Tobacco (Guaranteed Production Plan)
7 CFR Part 438 Tomatoes
7 CFR Part 443 Hybrid Seed
7 CFR Part 447 Popcorn

The Late Planting Option shall be available in all counties in which the Corporation offers insurance on these crops.

§ 400.5 The Late Planting Agreement Option.

The provisions of the Late Planting Agreement Option are as follows:

U.S. DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Late Planting Agreement Option

Insured's Name _____
Contract No. _____
Address _____
Crop Year _____
Crop _____

Notwithstanding the provisions of Section 2 of the policy regarding the insurability of crop acreage initially planted after the final planting date on file in the service office, I elect to have insurance provided on acreage planted for 20 days after such date which delay in planting was caused by adverse weather conditions. Upon my making this election, the production guarantee or amount of insurance, whichever is applicable, will be reduced 10 percent for each five days or portion thereof that the acreage is planted after the final planting date. Each 10 percent reduction will be applied to the production guarantee or amount of insurance applicable on the final planting date. The premium will be computed based on the guarantee or amount of insurance applicable on the final planting date; therefore, no reduction in premium will occur as a result of my election to exercise this option. If planting continues under this Agreement after the acreage reporting date on file in the service office the acreage reporting date will be extended to 5 days after the completion of planting the acreage to which insurance will attach under this option.

Insured's Signature _____
Date _____
Corporation Representative's Signature and Code Number

_____
Date _____

Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)).

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and

regulations promulgated thereunder (7 CFR Part 400 *et seq.*). The information requested is necessary for FCIC to institute the Late Planting Agreement Option. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, processors, other U.S. Department of Agriculture agencies, the Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, magistrate, or administrative tribunal. Furnishing the information requested on this form is voluntary. However, failure to furnish the complete requested information may result in the Late Planting Agreement Option not being accepted by the Corporation.

Done in Washington, D.C., on March 11, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: April 22, 1985.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-10081 Filed 4-24-85; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 413

[Doc. No. 2133S; Amdt. No. 3]

Texas Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, an interim rule which was published in the **Federal Register** on December 6, 1984 (49 FR 47589). The interim rule amended the Texas Citrus Crop Insurance Regulations (7 CFR Part 413) effective for the 1986 and succeeding crop years to provide procedures for an insurance offer at a given production guarantee, after inspection, on production potential of less than 3 tons for a crop year following a crop year in which substantial damage has occurred. The intended effect of this action is to remove a restriction affecting policyholders relative to availability of insurance on low production acreage due to previous severe crop damage.

This action is taken under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: May 28, 1985.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) 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 the domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule applies are: Title-Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 6, 1984, FCIC published an interim rule in the **Federal Register** at 49 FR 47589, amending the Texas Citrus Crop Insurance Regulations (7 CFR Part 413) to provide procedures for an insurance offer at a given production guarantee, after inspection, on production potential of less than 3 tons for a crop year following a crop year in which substantial damage has occurred.

During a severe freeze on December 24, 1983, most Texas citrus trees were damaged to the extent that orange and grapefruit production was expected to be below 3 tons per acre for the 1985 crop year, placing many citrus policyholders in the position of having no insurance protection for the 1986 crop year under the provisions of the regulations for insuring citrus. It was therefore necessary to remove a restriction affecting policyholders relative to availability of insurance on low production acreage due to previous years severe crop damage.

FCIC, therefore, changed the provisions found in subsection 2.d.(2) of the policy to provide that, if such acreage is inspected by FCIC and considered acceptable and we agree in writing to insure such acreage, insurance will be available. A change in subsection 7.a. of the policy also allows FCIC to make an offer to insure the grove at a given production guarantee after inspeciton of groves that have had severe damage and have not produced 3 tons of oranges or grapefruit the previous crop year.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment may be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Part 413

Crop insurance, Texas citrus.

Final Rule

PART 413—[AMENDED]

Accordingly, the interim rule published at 49 FR 47589, December 6, 1984 is adopted as a final rule without change.

Authority: Secs. 506, 516, Pub.L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Done in Washington, D.C., on March 11, 1985.

Dated: April 22, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-10080 Filed 4-24-85; 8:45 am]

BILLING CODE 3410-08-M

Commodity Credit Corporation

7 CFR Part 1421

Special Producer Storage Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule establishes a Special Producer Storage Loan Program for wheat, corn, barley, sorghum, and oats. Under the program, a producer may pledge as collateral for such loans that collateral which is presently securing a matured Commodity Credit Corporation (CCC) farmer-owned grain reserve loan. This interim rule sets forth the terms and conditions of the program.

DATES: This interim rule shall become effective on April 25, 1985. Comments must be received on or before May 28, 1985 to be assured of consideration.

ADDRESSES: Interested persons may send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 447–8480.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1421) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0087.

This interim rule has been reviewed under USDA procedures established in accordance with provisions of Departmental Regulation 1512–1 and Executive Order 12291 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this interim rule applies are: Title—Commodity Loans and Purchases, Number 10.051 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation with respect to the Special Producer Storage Loan Program has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Statutory Authority

The program will be conducted pursuant to the Commodity Credit Corporation Charter Act, as amended. The Charter Act gives the Corporation broad authority to support the price of agricultural commodities through loans, purchases, or other operations, stabilize agricultural commodity markets and remove and dispose of surplus agricultural commodities.

Need For Program

The Farmer-Owned Grain Reserve Program has been implemented for wheat, corn, barley, sorghum, and oats in accordance with the provisions of section 110 of the Agricultural Act of 1949, as amended. Producers with matured grain reserve loans will have utilized the entire period of their reserve loan agreement which is available for the commodity. Normally, producers with matured grain reserve loans would be required to redeem the loan collateral or forfeit the collateral to CCC in full satisfaction of the loan obligation. However, under the Special Producer Storage Loan Program, producers will be given the opportunity to pledge the collateral securing a matured grain reserve loan as collateral for a loan obtained under the new program.

Need for Immediate Action

Grain reserve loans are maturing monthly. Due to the need for prompt action, it has been determined that prior notice and opportunity for public comment on the subject matter of this rule is impracticable and contrary to the public interest. Therefore, this interim shall become effective April 25, 1985. However, comments with respect to this regulation are requested and should be submitted on or before May 28, 1985, in order to be assured of consideration. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

Major Program Provisions

Special Producer Storage Loan Agreements. CCC will enter into agreements under the Special Producer Storage Loan Program with producers under which producers who have matured grain reserve loans may pledge the collateral securing grain reserve loans as collateral for a loan obtained under the provisions of that program.

Length of Agreement. Special producer storage loan agreements shall be for a 12-month period. However, the Secretary may accelerate the maturity date specified in the agreements or offer to extend the maturity date specified in the agreements if it is determined that such action is necessary to meet domestic or international needs. If the maturity date in the agreements is accelerated, producers will be required to either repay the loan principal together with any accrued interest, or forfeit the loan collateral to CCC.

Program availability. Producers with matured grain reserve loans may participate in the Special Producer Storage Loan Program whenever the program is in effect and is available for their commodity. The program will be available when announced by the Secretary for a specified crop under such terms and conditions as may be deemed to be appropriate by the Secretary.

Quantity eligible for loan. The quantity of a commodity which is eligible to be pledged as collateral for a special producer storage loan may not exceed the outstanding loan quantity of the matured grain reserve loan.

Advance storage payments. An annual advance storage payment will be paid to producers. Producers will receive storage payments at the rate of 26.5 cents per bushel for wheat, barley, and corn; 20 cents per bushel for oats;

and 47.32 cents per hundredweight for sorghum.

Interest charges. Each special producer storage loan shall bear interest during the loan period at the interest rate which is applicable to CCC price support loans in effect when the special producer storage loan is approved. The rate of interest applicable to a special producer storage loan may subsequently be increased or decreased as determined and announced by the Secretary.

Redeeming loans. Producers may redeem the commodity pledged as collateral for the loan at any time during the loan period. If the commodity is redeemed, producers will be required to repay the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral. In addition, the producer will be required to refund any unearned storage payments which have been made by CCC with respect to the loan collateral.

List of Subjects in 7 CFR Part 1421

Grains, Loan programs/agriculture, Price support programs, Warehouses.

Interim Rule

PART 1421—[AMENDED]

Accordingly, a new subpart is added to 7 CFR Part 1421 as follows:

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

* * * * *

Subpart—Regulations Governing the Special Producer Storage Loan Program

Sec.

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, (15 U.S.C. 714b and 714c).

Subpart—Regulations Governing the Special Producer Storage Loan Program

§ 1421.900 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Special Producer Storage Loan Program which provides for farm storage and warehouse storage loans with respect to eligible commodities as provided in § 1421.904. Farm storage loans will be evidenced by notes, security agreements, and chattel mortgages or financing statements. Warehouse storage loans will be evidenced by notes, security agreements, and will be secured by the pledge of warehouse receipts representing eligible commodities in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Special Producer Storage Loan Program, a producer must request and enter into a contract with CCC at the local county ASCS office. Such contract shall be for a period of time as specified in § 1421.902. Storage payments will be paid to the producer annually during the loan period for the time such commodity is serving as collateral for a loan under the Special Producer Storage Loan Program. Producers may redeem at any time during the loan period commodities pledged as collateral under the Special Producer Loan Program without repaying earned storage payments. Unearned storage payments must be repaid when the loan collateral is redeemed.

§ 1421.901 Administration.

(a) The program will be administered under the general supervision of the Administrator, ASCS, and shall be carried out in the field by ASC State and county committees (herein called "State and county committees") and the ASCS Kansas City Management Field Office (KCMO).

(b) State and county committees, the KCMO, and representatives and employees thereof do not have authority to modify or waive any of the provisions of the regulations in this subpart, as amended or supplemented.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this subpart, or

(2) Require a county committee to withhold taking any action which is not in accordance with this subpart.

(d) No delegation herein to a State or county committee shall preclude the Administrator, ASCS, or the Administrator's designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

§ 1421.902 Length of Special Producer Storage Loan Agreements.

Except as provided § 1421.914, the loan agreement shall be for a 12-month period. The loan agreement may be extended for an additional 12-month period if authorized and announced by the Secretary.

§ 1421.903 Program Availability.

Producers with matured grain reserve loans may participate in the Special Producer Loan Program whenever the program is available for their commodity. The program will be available when announced by the Secretary for a specified crop of wheat and feed grains for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. In addition whenever the loan maturity dates have been accelerated under the provision of § 1421.914, any outstanding special producer storage loan agreements will be terminated and producers of eligible commodities will not be permitted to pledge their commodities as collateral for a loan under this subpart. A producer desiring to participate in the Special Producer Loan Program shall file a request to participate in the program at the county ASCS office which approved the producer's matured grain reserve loan. An approved cooperative marketing association shall request a special producer storage loan at the county ASCS office which approved the association's matured grain reserve loan.

§ 1421.904 Eligibility Requirements.

(a) *Producer.* Whenever the Secretary has announced under the provisions of § 1421.903 that the Special Producer Loan Program is available for a specified crop of wheat or feed grains, a

producer may, upon maturity of a grain reserve loan, pledge the eligible commodity serving as collateral for the grain reserve loan as collateral for a loan offered in accordance with the Special Producer Loan Program as authorized by this subpart.

(b) *Commodities.* Wheat or feed grains serving as collateral for special producer storage loans must meet the quantity and quality requirements as set forth in § 1421.909 of this subpart.

§ 1421.905 Applicability of the General Regulations Governing Price Support for the 1978 and Subsequent Crops.

The provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353, and corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall also be applicable to loan note and security agreements entered into in accordance with the terms and conditions of this subpart.

§ 1421.906 Fees and Charges.

The producer shall pay a loan service fee and delivery charge as specified in § 1421.11.

§ 1421.907 Warehouse Receipts.

(a) *General.* Warehouse receipts tendered to CCC under this Special Producer Loan Program must meet all of the requirements of this section and any other requirements contained in this subpart, the general regulations, and the regulations governing the loan and purchase program for the applicable commodity.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent a commodity which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the loan period, except that a producer will otherwise be permitted to provide evidence satisfactory to CCC that storage charges have been paid or have otherwise been provided for through the loan period.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by warehousemen on their own commodity is invalid, the warehousemen may pledge such commodity as loan collateral to CCC only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.908 Quantity Eligible for Special Producer Storage Loans.

The quantity of a commodity which is eligible to be pledged as collateral for a special producer storage loan may not exceed the outstanding loan quantity of the commodity which is pledged as collateral for the matured grain reserve loan.

§ 1421.909 Quality Eligibility Requirements of Special Producer Storage Loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(b) *Wheat.* Wheat which is pledged as collateral for a loan made in accordance with the Special Producer Storage Loan Program must meet the quality requirements which were applicable to the collateral which secured the grain reserve loan and, in addition, may not be "Sample Grade".

(c) *Feed grains.* Feed grains which are pledged as collateral for a loan made in accordance with the Special Producer Storage Loan Program must meet the quality requirements which were applicable to the collateral which secured the grain reserve loan and, in addition, may not be "Sample Grade".

(d) *Farm-stored grain.* (1) Prior to approval of a farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that: (i) The commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan; and (ii) the commodity meets the quality eligibility requirements in accordance with the provisions of paragraphs (b) and (c) of this section.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in paragraphs (b) and (c) of this section. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral, plus any unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral, plus any unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures set forth in § 1421.22.

§ 1421.910 Storage Rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26.5 cents per bushel for wheat, barley, and corn; 20 cents per bushel for oats; and 47.32 cents per hundredweight for sorghum. These rates may be changed from time to time as determined and announced by the Secretary.

(b) Appropriate daily rates will be used when storage is computed for less than one year. The daily rates will not be less than: (1) .0726 cents per bushel for wheat, barley and corn; (2) .1296 cents per hundredweight for sorghum; and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with the provisions set forth in § 1421.911.

§ 1421.911 Storage Payments.

(a) *Advance storage payments.* An annual advance storage payment shall be paid to the producer.

(b) *Storage payment units.* Storage payments for special producer storage loans shall be based upon the quantity of the commodity which is available as loan collateral for the grain reserve loan on the date the grain reserve loan matured.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan period. However, storage credit shall stop on the date the loan matures under the provisions of § 1421.914. Any unearned advance storage payments will be collected when the loan collateral is redeemed by the producer or forfeited to CCC before maturity of the agreement.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer: (1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan; (2) makes an unauthorized disposition of the commodity with intent to defraud CCC; (3) abandons the commodity; or (4) negligently or otherwise impairs the commodity.

§ 1421.912 Interest Rates.

(a) As provided for in the note and security agreement which is signed by the producer, each special producer storage loan shall bear interest during the loan period at the rate applicable to CCC price support loans in effect on the first day of the loan period together with any subsequent increased or decreased rate of interest which may be determined and announced by the Secretary.

(b) Special producer storage loans which have not been repaid by the maturity date or the original required settlement date for loans which mature in accordance with the provisions of § 1421.914 shall bear interest at the same rate of interest which is determined by CCC for the purpose of applying late payment charges to delinquent debts as specified in 7 CFR Part 1403. Until the loan is settled, such interest will be assessed beginning on the date immediately following the loan maturity date or the original required settlement date for matured loans, whichever is applicable.

§ 1421.913 Commingling and Replacement of Grain.

(a) In the case of farm storage, grain in the Special Producer Storage Loan Program may be commingled with other eligible or ineligible grain which is from the same or any other crop year and which is of the same class if: (1) The county committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain at the producer's expense prior to commingling.

(b) *Repacement.* Farm-stored grain placed in the Special Producer Storage Loan Program may be replaced with other grain of the same kind which is of equal or better quality and which is produced by the borrower if: (1) The county committee gives prior written approval of such replacement; (2) the quantity of grain to be used for replacement is in storage on the farm or the county committee has authorized removal of the grain to CCC-approved warehouse storage before replacement in accordance with this section; (3) the county committee inspects and measures, at the producer's expense, the quantity of grain which is to replace the grain before removal of the grain; and (4) the county committee determines that the quality of grain in equal to or better than the quality of grain serving as collateral for a special producer storage loan. Disposition of farm-stored grain in the Special Producer Storage Loan Program without prior written approval from the county committee will be considered to be an unauthorized disposition.

(c) *Release for sale or livestock feed.* To assist the producer in maintaining quality of the loan collateral, the producer may be authorized to move farm-stored grain which is pledged as loan collateral under the Special Producer Storage Loan Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if, prior to the movement of the grain, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain released for livestock feed will be fed to the producer's own livestock; and (5) an inspection of the unharvested grain, which is made at the producer's expense, indicates that there will be sufficient eligible unencumbered production of equal or better quality to replace the grain in the Special Producer Storage Loan Program.

§ 1421.914 Redemption and Acceleration of Loan Maturity Date.

(a) *Redemption.* Producers may redeem the commodity pledged as collateral for the loan at any time during the loan period. Producers will be required to repay the applicable loan principal and interest which have accrued under the Special Producer Storage Loan Program together with all outstanding interest which has accrued under prior regular price support or grain reserve loan agreements which were applicable to the same loan collateral. In addition, the producer will be required to refund any unearned storage payments made in accordance with the provisions of § 1421.911.

(b) *Acceleration of loan maturity date.* Notwithstanding any other provision of this subpart, the Secretary may accelerate the maturity date of special producer storage loans if the Secretary determines that conditions exist which require that the commodity which is serving as collateral for the loan be made available in the market to meet domestic or international needs. Repayment shall be in accordance with paragraph (a) of this section. If the collateral for the matured loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity.

§ 1421.915 Maturity.

Except as otherwise provided in § 1421.914, special producer storage loans mature and are due and payable on the last day of the 12th calendar month after the maturity date of the matured grain reserve loan.

§ 1421.916 Miscellaneous Provisions.

(a) The contract between CCC and the producer shall contain such other provisions as CCC determines appropriate to carry out the program established by this subpart.

(b) The following provisions of this title concerning general program administration also apply to the program established by this subpart:

(1) Part 13, Setoffs and Withholding.

(2) Part 707, Payments Due Persons Who Have Died, Disappeared, or Been Declared Incompetent.

(3) Part 780, Appeal Regulations.

(4) Part 1403, Interest on Delinquent Debts.

§ 1421.917 Paperwork Reduction Act Assigned Numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations in accordance with 44 U.S.C. Chapter 35 and OMB Number 0560–0087 has been assigned.

Signed at Washington, D.C., on April 22, 1985.

John R. Block,

Secretary.

[FR Doc. 85–9965 Filed 4–24–85; 8:45 am]

BILLING CODE 3410–05–M

Farmers Home Administration

7 CFR Parts 1872, 1945, 1951, and 1962

Process Change in Account Terms

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) has developed new forms to facilitate processing of assumptions, rescheduling, consolidation, reamortization and debt set-aside of farmer program loans. This document amends several regulations to prescribe internal usage of the new forms. This is necessary to accommodate the accounting system in the Finance Office. The intended effect is to enable the Finance Office to process the expected increased volume of changes in account terms in a more efficient and timely manner.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: David Villano, Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Room 5309, South Agriculture Building, Washington, D.C. 20250, telephone (202) 382-1452.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291 and has been determined to be exempt from those requirements because it involves only internal Agency management in that it does not affect either FmHA borrowers or the public. Due to the Presidential initiative in farmer programs, there is an expected increase in the volume of changes in account terms. The new forms will provide greater efficiency in processing changes in account terms since they will accommodate the accounting system in the Finance Office.

It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management, and publication for comments is unnecessary.

This action does not directly affect any FmHA programs nor projects which are subject to review under Executive Order 12372, Intergovernmental Review of Federal Programs.

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major federal action significantly affecting the quality of the human environment, and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Catalog of Federal Domestic Assistance Titles and Numbers:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.410 Low-Income Housing Loans
10.414 Resource Conservation and Development Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants.

List of Subjects

7 CFR Part 1872

Foreclosure, Loan programs—agriculture, Rural areas.

7 CFR Part 1945

Disaster assistance, Loan programs—agriculture.

7 CFR Part 1951

Account servicing, Credit, Loan programs—agriculture.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—agriculture, Rural areas.

Therefore, Title 7, Chapter XVIII, Code of Federal Regulations is amended as follows:

PART 1872—REAL ESTATE SECURITY

Subpart A—Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

1. Section 1872.18 is amended by revising the entry for the last form of the table and adding two additional forms to the end of the table in paragraph (g)(2)(iii) to read as follows:

§ 1872.18 Transfer of real estate security.

* * * * *

(g) * * *
(2) * * *
(iii) * * *

FmHA form No.	Name of form	Total No. of copies	Signed by transferee	Transfer docket	Copy for transferee
*	*	*	*	*	*
*1960-6	Assumption Agreement (Information)	2(9)		1-C	
*1965-22	Information on Assumption on New Terms or Other Change of Terms	2		1-G	
*1965-23	Supplemental Information on Assumption and/or Change of Terms	2		1-G	

* * * * *

2. Section 1872.18 is further amended by removing the last sentence of paragraph (g)(9), removing paragraph (g)(11), and renumbering paragraph (g)(12) to (g)(11).

PART 1945—EMERGENCY

Subpart D—Emergency Loan Policies, Procedures and Authorizations

3. Exhibit A to Subpart D, paragraph V B 2, is amended by removing the entry for Form FmHA 1951-4, "Change in Rates and Terms," at the end of the table and adding two additional forms to the end of the table to read as follows:

Exhibit A—Processing Guide—Insured Emergency (EM) Loans

* * * * *

V * * *
B * * *
2 * * *

Form No.	Name	Use
*	*	*
1965-22	Information on Assumption on New Terms or other Change of Terms	*
1965-23	Supplemental Information on Assumption and/or Change of Terms	*

PART 1951—SERVICING AND COLLECTIONS

Subpart A—Account Servicing Policies

4. Section 1951.25 is amended by revising the first sentence in paragraph (c)(2) to read as follows:

§ 1951.25 Review of Limited Resource FO and OL Loans.

* * * * *

(c) * * *

(2) If the interest rate is to be increased, Form FmHA 1965-22, "Information on Assumption on New Terms or Other Change of Terms," and

Form FmHA 1965–23, "Supplemental Information on Assumption and/or Change of terms," will be completed and sent to the Finance Office 30 days prior to the effective date of the change.

* * * * *

5. Section 1951.33 is amended by revising the last sentence in paragraph (e)(1) to read as follows:

§ 1951.33 Deferral, consolidation and rescheduling of OL, EM and EE loans made for Subtitle B purposes.

* * * * *

(e) * * *

(1) * * * Forms FmHA 1965–22 and 1965–23 will be completed and sent to the Finance Office in accordance with the provisions of the FMI.

* * * * *

6. Section 1951.40 is amended by revising paragraph (e)(3) to read as follows:

§ 1951.40 Deferment and reamortization of FO, SW, RL, EE, or EM loans made for real estate purposes.

* * * * *

(e) * * *

(3) Forms FmHA 1965–22 and 1965–23 will be completed, signed and distributed as provided in the FMI.

* * * * *

7. Section 1951.41 is amended by revising the fourth sentence in paragraph (h)(2) to read as follow:

§ 1951.41 Special debt set-aside of a portion of the insured loan indebtedness of farmer program borrowers.

* * * * *

(h) * * *

(2) * * * The county office will forward to the Finance Office Forms FmHA 1965–22 and 1965–23 any time the interest rate is changed on a note during the set-aside period. * * *

* * * * *

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

8. Section 1962.34 is amended by adding paragraph (f)(12) and revising paragraph (g)(1) to read as follows:

§1962.34 Transfer of chattel security and EO property and assumption of debts.

* * * * *

(f) * * *

(12) Form FmHA 1960–6 "Assumption Agreement (Information)" or Form FmHA 1965–22 "Information on Assumption on New Terms or Other Change of Terms", as appropriate, and Form FmHA 1965–23 "Supplemental Information on Assumption and/or Change of Terms."

(g) * * *

(1) Upon receipt of Form FmHA 1960–6 or Form FmHA 1965–22, and Form FmHA 1965–23, the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

* * * * *

Authorities: (7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301, Sec. 10 Pub. L. 93–357, 88 Stat. 392; 7 CFR 2.23; 7 CFR 2.70; 29 FR 14764, 33 FR 9850).

Dated: April 5, 1985.

Neal Sox Johnson,

Acting Associate Administrator, Farmers Home Administration.

[FR Doc. 85–9966 Filed 4–24–85; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9160]

Ward Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions [1]

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, that five Rockville, Maryland builders and sellers of residential housing, together with a corporate officer, cease failing to fully honor valid warranty claims within a reasonable period of time; representing that materials are defect-free, unless defects due to faulty material, workmanship or design are corrected or remedied within a reasonable period of time; failing to provide purchasers with building lots substantially conforming to the physical characteristics represented by the sellers; and failing to disclose prior to the signing of a sales contract, all disclaimers or limitations of the firms' responsibilities with regard to the physical condition of the lot. The text of all written warranties must be clearly and conspicuously displayed in sales offices and model homes, and a copy of such warranties must be provided to prospective buyers if requested. In addition, the firms are required to provide future purchasers with an opportunity to a arbitrate warranty disputes; provide arbitration to homeowners who had purchased their homes in the year preceding the effective date of the order; and, subject to conditions set forth in the order, provide repairs and/or cash payments to qualified homeowners who had purchased their homes between March 10, 1978 and a date one year prior to the effective date of the order, and who still own these homes.

DATES: Complaint issued March 9, 1982. Decision and Order issued April 5, 1985.

FOR FURTHER INFORMATION CONTACT: Miriam W. Daniel, FTC/H 232, Washington, D.C. 20580. (202) 523–1670.

SUPPLEMENTARY INFORMATION: On Thursday, November 29, 1984, there was published in the **Federal Register**, 49 FR 46911, a proposed consent agreement with analysis In the Matter of Ward Corporation, Ward Development Company, Inc., Ward Component Systems, Inc., Richlynn Development, Inc., Richlynn Land Developers, Inc., corporations, and Richard E. Ward, individually and as an officer of said corporations, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions of objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising, Falsely or Misleadingly; § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.175 Quality of product or service; § 13.185 Refunds, repairs, and replacements; § 13.205 Scientific or other relevant facts; § 13.260 Terms and conditions. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533–20 Disclosures; § 13.533–25 Displays, in-house; § 13.533–35 Employment of independent agencies; § 13.533–45 Maintain records; § 13.533–55 Refunds, rebates and/or credits; § 13.533–75 Warranties. Subpart—Delaying or Withholding Corrections, Adjustments or Action Owed: § 13.675 Delaying or withholding corrections, adjustments or action owed. Subpart—Misrepresenting Oneself and Goods—Goods: § 13.1595 Condition of goods; § 13.1647 Guarantees; § 13.1710 Qualities or properties; § 13.1715 Quality; § 13.1740

[1] Copies of the Complaint and the Decision and Order filed with the original document.

Scientific or other relevant facts; § 13.1760 Terms and conditions. Subpart—Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities and Properties; § 13.1886 Quality, grade or type; § 13.1895 Scientific or other relevant facts; § 13.1905 Terms and conditions.

List of Subjects on 16 CFR Part 13

Residential housing builders and sellers, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 85-9958 Filed 4-24-85; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 84C-0223]

[Phthalocyaninato(2-)]Copper; Listing as a Color Additive for Coloring Polybutester Nonabsorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of [phthalocyaninato(2-)]copper in coloring polybutester nonabsorbable sutures that are used in general and ophthalmic surgery. This action responds to a petition filed by Davis and Geck, American Cyanamid Co. Elsewhere in this issue of the Federal Register, FDA is proposing to remove the restriction that prohibits the migration of [phthalocyaninato(2-)]copper from a suture to surrounding tissues.

DATES: Effective May 29, 1985; objections by May 28, 1985.

ADDRESS: Written objections 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: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 6, 1984 (49 FR 31340), FDA announced that a color additive petition (CAP 4C0181) had been filed by Davis and Geck, American Cyanamid Co., Danbury, CT 06810, proposing that the color additive regulations be amended to provide for the safe use of [phthalocyaninato(2-)]copper for coloring polybutester nonabsorbable sutures for general and ophthalmic surgery. The petition was filed under section 706 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376).

Polybutester is the generic designation for the suture material fabricated from 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol and α-hydro-*omega*-hydroxypoly(oxy-1,4-butanediyl), CAS Reg. No. 37282-12-5.

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices where the color additive comes in direct contact with the body for a significant period of time (section 706(a) of the act). [Phthalocyaninato(2-)]copper is added to polybutester sutures that are placed in the body and that remain there at least until healing is complete. Consequently, this use of the color additive will bring it into direct contact with the body for a significant period of time and is subject to the listing requirement.

The existing regulation for this color additive, 21 CFR 74.3045, authorizes its use for coloring contact lenses and for coloring polypropylene sutures (nonabsorbable sutures), at levels of up to 0.5 percent by weight, for use in general and ophthalmic surgery. This regulation contains a restriction in § 74.3045(c)(1)(iii) that requires that there be no migration of the color additive from the suture to the surrounding tissue. Elsewhere in this issue of the Federal Register, FDA is proposing to remove this restriction.

FDA has evaluated data in the petition, data supporting previous petitions involving this color additive, and other relevant material. The present petition includes data from 180-day muscle implantation studies in the dog and rat, experimental cardiovascular surgical studies in the dog, experimental ophthalmic surgical studies in the rabbit, and reproduction and teratology studies in the rabbit and rat respectively, all using polybutester nonabsorbable sutures with 0.5 percent of the color additive. Additionally, the agency has considered data from skin sensitization, antigenicity, genotoxicity, and cytotoxicity tests using sutures containing this color additive and or extracts of these sutures. A cytotoxicity study on the color additive itself was also reviewed. No significant compound-related effects were found in any of these studies. Collectively, these studies demonstrate that the color additive may be safely used in polybutester nonabsorbable sutures that are used in general and ophthalmic surgery.

In addition, the data in the petition demonstrate that [phthalocyaninato(2-)] copper is suitable for use in polybutester nonabsorbable sutures. These data show that sutures colored with this additive retain enough of their color to be visible for removal after the sutured area has healed.

Consequently, FDA is amending § 74.3045(c)(1) to provide for the use of the color additive in polybutester nonabsorbable sutures.

In accordance with § 71.15 (21 CFR 71.15), the color additive petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided also in 21 CFR 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously concluded that this action will not have a significant impact on the human environment, and that an environmental impact statement is not required. No new information or comments have been received that would alter this determination. The evidence supporting this finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 74 is amended in § 74.3045 by revising the introductory text of paragraph (c)(1) to read as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

§ 74.3045 [Phthalocyaninato(2-)] copper.

* * * * *

(c) *Uses and restrictions.* (1) The color additive [phthalocyaninato(2-)] copper may be safely used to color polypropylene sutures and polybutester (the generic designation for the suture fabricated from 1,4-benzenedicarboxylic acid, polymer with 1,4-butanediol and α-hydro-*omega*-hydroxypoly(oxy-1,4-butanediyl), CAS Reg. No. 37282-12-5) nonabsorbable sutures for use in general and ophthalmic surgery subject to the following restrictions:

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time, on or before May 28, 1985, file with the Dockets Management Branch (address above) written objections thereto. Objections shall show how the person filing will be adversely affected by the regulation, specify with particularity the provisions of the regulation deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of 21 CFR 71.30. If a hearing is requested, the objections shall state the issues for the hearing and shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Three copies of all documents shall be filed and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective May 29, 1985, except as to any provisions that may be stayed by the filing of proper objections. Notice of filing of objections or lack thereof will be announced by publication in the Federal Register.

(Secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 393-407 as amended (21 U.S.C. 371(e), 376))

Dated: April 18, 1985.

Joseph P. Hile

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-9956 Filed 4-22-85; 12:22 pm]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Melengestrol Acetate With Monensin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration is amending the animal drug regulations to reflect approval of a supplemental new animal drug application filed by the Upjohn Co., providing for a cattle feed supplement containing both melengestrol acetate (MGA) and monensin sodium. The combination drug supplement is intended for administration to feedlot heifers via complete feed.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Jack C. Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of approved NADA 124-309 (MGA dry supplement and monensin). The NADA provides for co-administration to heifers of MGA and monensin sodium by (1) adding to finished feed separate feed supplements containing MGA and monensin sodium, or (2) adding a MGA supplement to a complete feed containing monensin sodium. Upjohn has filed a supplement to the subject NADA to provide for a third co-administration option, the use of a supplement containing both MGA and monensin sodium for addition to a complete feed. The medicated complete feed is indicated for increased rate of weight gain, improved feed efficiency, and suppression of estrus in heifers fed in confinement for slaughter. The firm has submitted labeling and stability data supporting use of the MGA/monensin supplement. The supplemental NADA is approved and the regulations are amended to reflect the approval.

Allowing use of the combination MGA/monensin supplement does not change the approved conditions of use of the drugs in the finished feed. Accordingly, under the Center for Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the underlying safety and effectiveness data.

Approval of the supplemental NADA did not require generation of new safety or effectiveness data. Therefore, a freedom of information summary is not required for this action.

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(ii) (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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

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 Center for Veterinary Medicine (21 CFR 5.83), Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. In § 558.342 by revising the introductory text of paragraph (e)(2) and by revising paragraph (e)(2)(ii), to read as follows:

§ 558.342 Melengestrol acetate.

* * * * *

(e) * * *

(2) *Amount.* Melengestrol acetate, 0.25 to 1.6 grams per ton (to provide 0.25 to 0.40 milligram per head per day), plus monensin, 5 to 30 grams per ton (to provide 50 to 360 milligrams per head per day), see § 558.335(f)(3)(iv).

* * * * *

(ii) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and monensin by (*a*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to complete feeds containing monensin at 5 to 30 grams per ton, (*b*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound and monensin from a separate supplement containing 50 to 1,200 grams per ton to complete feeds, or (*c*) adding melengestrol acetate and monensin which are contained in the same dry supplement at the ranges in paragraph (e)(2)(ii) (*a*) and (*b*) of this section to complete feeds. Administer monensin in accordance with paragraph (f)(3)(i)(*b*) of § 558.355. Withdraw melengestrol acetate 48 hours prior to slaughter.

2. In § 558.355 by revising the introductory text of paragraph (f)(3)(iv) and by revising paragraph (f)(3)(iv)(*b*), to read as follows:

§ 558.355 Monensin.

* * * * *

(f) * * *

(3) * * *

(iv) *Amount per ton.* Monensin, 5 to 30 grams per ton (to provide 50 to 360 milligrams per head per day), plus melengestrol acetate, 0.25 to 1.6 grams

per ton (to provide 0.25 to 0.40 milligram per head per day).

* * * * *

(*b*) *Limitations.* Heifers being fed in confinement for slaughter: Administer melengestrol acetate and monensin by (*1*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound to complete feeds containing monensin at 5 to 30 grams per ton, (*2*) adding melengestrol acetate from a separate supplement containing 0.125 to 0.8 milligram per pound and monensin from a separate supplement containing 50 to 1,200 grams per ton to complete feeds, or (*3*) adding melengestrol acetate and monensin which are contained in the same dry supplement at the ranges in paragraph (f)(3)(iv)(*b*)(*1*) and (*2*) of this section to complete feeds. Administer monensin in accordance with paragraph (f)(3)(i)(*b*) of this section. Withdraw melengestrol acetate 48 hours prior to slaughter.

* * * * *

Effective date. April 25, 1985.

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

Dated: April 17, 1985.

Marvin A. Norcross,

Acting Associate Director for Scientific Evaluation.

[FR Doc. 85-9952 Filed 4-24-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 630

[Docket No. 80N-0053]

Changes in Proper Names of Certain Biological Products; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the biologics regulations by changing the proper names of certain biological products; updating all applicable regulations to reflect these new names; and updating, clarifying, and reorganizing certain regulations (50 FR 4128; January 29, 1985). A name change in 21 CFR 630.4(a)(3) was inadvertently omitted. This document corrects that error.

EFFECTIVE DATE: January 29, 1986.

FOR FURTHER INFORMATION CONTACT: Warren Howard, Division of Regulations Policy (HFC-221), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-2001, appearing on page 4128 in the **Federal Register** of Tuesday, January 29, 1985, the following correction is made: On page 4137, second column, in amendment 5.e to § 630.4 *Tests for safety*, the phrase in paragraph (b)(1) by revising "poliomyelitis vaccine" to read "poliovirus vaccine" is changed to read "in paragraphs (a)(3) and (b)(1) by revising "poliomyelitis vaccine" to read "poliovirus vaccine".

Dated: April 19, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-10091 Filed 4-24-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. R-85-1154; FR-1904]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Existing Housing and Moderate Rehabilitation

Correction

In FR Doc. 85-9159 beginning on page 14922, in the issue of Tuesday, April 16, 1985, on page 14924, in Schedule B table, the entries under the heading, "Region 3, Baltimore, Maryland Office" were incorrectly printed and should read as set forth below.

SCHEDULE B.—FAIR MARKET RENTS FOR EXISTING HOUSING (INCLUDING HOUSING FINANCE AND DEVELOPMENT AGENCIES PROGRAM) 022585 FMR AREA BY HUD JURISDICTION

[See notes at end of schedule]

	0 bedrooms	1 bedroom	2 bedrooms	3 bedrooms	4 bedrooms
* * * *		*	*		*
Region 3, Baltimore, Maryland Office					
MSA: Washington, DC-MD-VA	340	415	485	595	650
Columbia (U) MD	400	485	570	690	765
* * * *		*	*		*

BILLING CODE 1505-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 242b

General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences, DOD.

ACTION: Final rule.

SUMMARY: The Board of Regents of the Uniformed Services University of the Health Sciences is amending its regulations to add one officer reporting to the President, F. Edward Hebert School of Medicine. The rule adds the position of Associate Dean for Continuing Education.

EFFECTIVE DATE: April 15, 1985.

ADDRESS: General Counsel, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814-4799.

FOR FURTHER INFORMATION CONTACT: Merel P. Glaubiger, General Counsel, Uniformed Services University of the Health Sciences. Phone Number: (202) 295-3028.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-36169 published in the **Federal Register** on December 20, 1977 (42 FR 63775) the Uniformed Services

University of the Health Sciences published General Procedures and Delegations of the Board of Regents of the Uniformed Services University of the Health Sciences. This was amended: (1) FR Doc. 78-28367 published in the Federal Register on October 10, 1978 (43 FR 46531) to alter the number and responsibilities of officers reporting to the Dean of the University, (2) FR Doc. 81-8774 published in the Federal Register on March 23, 1981 (46 FR 18024) to realign certain functions of officers reporting to the President, (3) FR Doc. 82-15200 published in the Federal Register on June 4, 1982 (47 FR 24297) to add one officer reporting to the President, (4) FR Doc. 83-15363 published in the Federal Register on June 8, 1983 (48 FR 26451) to change the structure of the Administrative Affairs and Educational Affairs Committees of the Board of Regents, and (5) FR Doc. 84-27853 published in the Federal Register on October 25, 1984 (49 FR 42927) to alter the responsibilities of the officers reporting to the President.

Because this rule relates soley to matters of University organization and procedure, notice of proposed rulemaking and public participation in the rulemaking are not required by section 553 of Title 5 of the United States Code.

List of Subjects in 32 CFR Part 242b

Medical and dental schools, Uniformed services, Organization and functions (government agencies).

PART 242b—GENERAL PROCEDURES AND DELEGATIONS OF THE BOARD OF REGENTS OF THE UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Accordingly, pursuant to the Uniformed Services Health Professions Revitalization Act, sections 552 and 553 of Title 5 of the United States Code, and § 242b.8(a) of Title 32, Code of Federal Regulations, the Board of Regents of the Uniformed Services University of the Health Sciences amends § 242b.7, Chapter I, Title 32, Code of Federal Regulations by revising paragraphs (a)(7) and (b)(5) and adding paragraph (b)(6) to read as follows:

§ 242b.7 Officers of the University.

(a) * * *

(7) To assist in the performance of his or her duties, the President with the approval of the Board, shall appoint, to act under the President's authority and direction, officers as follows:

(i) Vice President of the University.

(ii) Dean of the School of Medicine.

(iii) Associate Dean for Academic Affairs.

(iv) Associate Dean for Operations.

(v) Associate Dean for Continuing Education.

(vi) Commandant.

* * * * *

(b) * * *

(5) *Associate Dean for Continuing Education.*

(i) The Associate Dean for Continuing Education shall be responsible for all continuing education at the University to include its accreditation.

(ii) The Associate Dean for Continuing Education shall report to the Dean, School of Medicine, or to the individual acting on behalf of the Dean.

(6) *Commandant.*

(i) The Commandant shall assist the Dean of the School of Medicine in planning, developing, and directing the military activities and functions of the School of Medicine.

(ii) In the absence of the Dean, Associate Dean for Academic Affairs, and Associate Dean for Operations, he or she shall act for the Dean.

(Uniformed Services Health Professions Revitalization Act (10 U.S.C. 2112-17))

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 22, 1985.

[FR Doc. 85-10025 Filed 4-24-85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 85-028]

Authority Citation—Update

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule revises the authority citation for Part 100 of Title 33, Code of Federal Regulations (CFR) to conform to recently adopted Federal Register standards. Due to later codification, reorganization or revision, the statutes which authorize the regulations in this part are not readily located by reference to the United States Code sections currently cited. This rule amends the authority citation to provide a direct reference to the section(s) of the current United States Code where the statutes are set out. In addition, the authority citation provides reference to regulations delegating Secretarial authority to the Commandant and further delegations to Commanders of Coast Guard Districts.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: LT Dave Shippert, Office of Chief Counsel, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Telephone (202) 426-1534.

SUPPLEMENTARY INFORMATION: This final rule was not preceded by a notice of proposed rulemaking and it is being made effective in less than 30 days. This rule merely updates the authority citation for 33 CFR Part 100 to reflect the current location of statutory authority within the United States Code and to reference the relevant delegations of authority. Therefore, notice and comment are unnecessary in accord with 5 U.S.C. 553(b)(B). This rule will benefit the public by providing a more direct reference to statutory authority as found in the United States Code. Therefore, the Coast Guard has determined that good cause exists to make this rule effective in less than 30 days after publication in the Federal Register in accord with 5 U.S.C. 553(d)(3).

Regulatory Evaluation

This rule is considered to be non-major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this rule is expected to be so minimal that further evaluation is unnecessary. This rule merely updates the citation to statutory and regulatory authority for regulations within 33 CFR Part 100 to facilitate public review.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

In consideration of the foregoing, the Coast Guard is amending Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 is revised to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

§ 100.1201 [Amended]

2. The authority citation following § 100.1201 is removed.

Edwin H. Daniels,

Chief Counsel.

[FR Doc. 85-10018 Filed 4-24-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Parts 261, 293, and 294

Boundary Waters Canoe Area Wilderness

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule updates the existing regulations governing use of the Boundary Waters Canoe Area Wilderness. The rule implements the Boundary Waters Canoe Area Wilderness Act of October 21, 1978 (92 Stat. 1650; 16 U.S.C. 472). These changes in the regulation reflect the reduction of motorboat and snowmobile use within the Wilderness required under the 1978 Act and delete obsolete administrative regulations.

DATE: Effective on May 28, 1985.

FOR FURTHER INFORMATION CONTACT: W.T. Svensen, Recreation Staff, Forest Service, USDA, (202) 382-9407.

SUPPMENTARY INFORMATION: The Forest Service has responsibility for management of the Boundary Waters Canoe Area (BWCA) Wilderness, located in the Superior National Forest, Minnesota. The Chief of the Forest Service through the Regional Forester, Forest Supervisor, and District Rangers, manages the surface resources and, in some instances, the subsurface resources of these lands.

Existing rules at 36 CFR Parts 261, 293, and 294 specify and guide the management of the wilderness and provide for enforcement of rules for the benefit of public health, safety, and welfare and the protection of wilderness resources.

The October 21, 1978, Boundary Waters Canoe Area Wilderness Act updated and provided for changes in the way the wilderness is to be managed. Among other things, the legislation expanded the boundaries of the wilderness, created a Mining Protection Area outside the wilderness, eliminated harvesting of timber within the wilderness, reduced motorized snowmobile and motorboat use, provided economic incentives to businesses affected by the legislation, and increased recreation management emphasis outside the wilderness.

36 CFR Part 261 contains general prohibitions affecting behavior of visitors to the National Forests. Specific prohibited activities in National Forest wilderness are set forth at 36 CFR 261.16. This rule changes the prohibiton against possessing or using a motor vehicle, motorboat or motorized equipment in wilderness by allowing such use when it is authorized by Federal law or regulation.

The administrative rules governing management of the BWCA Wilderness are found at 36 CFR 293.16. This section is obsolete because of the numerous changes in management prescribed by the 1978 Act. This rule specifies the lakes and portions of lakes where use of motors is permitted; size of permitted motors; portages where mechanical and mechanized devices may be permitted; snowmobile routes.

36 CFR 294.2 provides for the navigation of aircraft within an airspace reservation over major portions of the BWCA wilderness. Executive Order 10092 is the basis for this rule. The 1978 BWCA Wilderness Act incorporated this order into the Act. This rule removes those obsolete provisions which allowed permits for navigation within the airspace reservation until January 1, 1952.

This action has been reviewed pursuant to Executive Order 12291. It has been determined that this action is not a major rule and does not require a regulatory impact analysis. This rule will have a minor impact on the economy and will result in no increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. This rule will have no effect on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Assistant Secretary for Natural Resources and Environment has determined that this action does not require a regulatory flexibility analysis under the Regulatory Fexibility Act (5 U.S.C. 601 et seq) because the action will not have a significant economic impact on a substantial number of small entities; it imposes no paper work or record keeping requirements on small entities; it does not affect the competitive position of small entities in relation to large entities; and it does not affect cash flow, liquidity, or ability to remain in the market for small entities.

There are no new paperwork or information collection requirements contained in this rule.

Pursuant to 40 CFR 1501.4(a)(2), 40 CFR 1508.27(b) and Forest Service Manual Section 1951.2, this regulation has been administratively determined to be categorically excluded from analysis required by NEPA. Therefore, neither an environmental assessment nor an environmental impact statement was prepared.

On December 5, 1984, a proposed rule and request for comments was published in the Federal Register (49 FR 47505). No written comments were received on the proposed rule. Accordingly, this final rule remains unchanged from the proposed rule published on December 5, 1984.

List of Subjects in Parts 261, 293, and 294

Law enforcement—prohibitions, National forest, Navigation (air), Recreation and recreation areas, Wilderness area.

Therefore, for the reasons set forth in the preamble, Parts 261, 293, and 294 of Title 36 of the Code of Federal Regulations are amended as follows:

PART 261—PROHIBITIONS

1. Revise the authority citation for 36 CFR Part 261 to read as follows:

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); Sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526, as amended (7 U.S.C. 101, (f)); 82 Stat. 916 (16 U.S.C. 1246, (i)); 92 Stat. 1650 as amended (16 U.S.C. 1133 (c)–(d)(1)), unless otherwise noted.

2. In 36 CFR 261.16, revise paragraph (a) to read as follows:

§ 261.16 National Forest Wilderness.

The following are prohibited in a National Forest Wilderness:

(a) Possessing or using a motor vehicle, motorboat or motorized equipment except as authorized by Federal Law or regulation.

* * * * *

3. In 36 CFR 261.17, revise the heading and introductory sentence to read as follows:

§ 261.17 Boundary Waters Canoe Area Wilderness.

The following are prohibited in the Boundary Waters Canoe Area Wilderness:

* * * * *

PART 293—WILDERNESS—PRIMITIVE AREAS

4. Revise the authority citation for 36 CFR Part 293 to read as follows:

Authority: Secs. 4–6, 92 Stat. 1650, as amended (16 U.S.C. 113–136); 74 Stat. 215 (16 U.S.C. 528–531); 46 Stat. 1020 (16 U.S.C. 577–577c).

5. Revise 36 CFR 293.16 to read as follows:

§ 293.16 Special provisions governing the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

(a) Motorboat Use. (1) For purposes of this section, motorboats permitted to operate in the BWCA Wilderness are

defined as watercraft propelled by a gasoline or electric powered motor with the propeller below the waterline.

(2) Motorboats may operate without restrictions on motor size or number of motors on Sand Point Lake, Little Vermilion Lake, Loon Lake, Loon River, and that portion of Lac La Croix which lies south of Snow Bay and east of Wilkins Bay, all in Saint Louis County.

(3) Motorboats with a motor or combination of motors totaling no more than 25 horsepower may operate on Trout Lake in Saint Louis County, Fall Lake, Moose Lake, Newfound Lake, Newton Lake, Sucker Lake, Snowbank Lake, South Farm Lake, and Basswood Lake, except that portion of Basswood Lake generally north of the narrows at the north end of Jackfish Bay and north of a point on the International Boundary between Ottawa Island and Washington Island, all in Lake County, and East Bearskin Lake and Saganaga Lake, except that portion west of American Point in Cook County.

(4) Motorboats with a motor or combination of motors totaling no more than 10 horsepower may operate on Clearwater Lake, North Fowl Lake, South Fowl Lake, Alder Lake, Canoe Lake, Sea Gull Lake, and Island River east of Lake Isabella, all in Lake County, except that motorboats may not operate (i) after January 1, 1999 on that portion of Sea Gull Lake west of Threemile Island, and (ii) after January 1, 1994, on Brule Lake in Cook County or until the termination of the operation of the resort adjacent to Brule Lake in operation as of 1977, whichever occurs first.

(5) Motorboats with a combination of motors that exceed 25 horsepower may travel on that portion of Saganaga Lake in Cook County described as the Saganaga Corridor extending from the Saganaga Narrows north to the International Boundary east of Campers, Clark and Horseshoe Islands and west of Oskenonton Island; provided that the motor or motors in operation at one time do not exceed 25 horsepower.

(b) Mechanical and Mechanized Portages. (1) BWCA visitors may use portage wheels and other non-motorized devices to transport watercraft over the following routes:

(i) The portages along the International Boundary

(ii) Four Mile Portage from Fall Lake to Hoist Bay of Basswood Lake.

(iii) The portage from Back Bay to Pipestone Bay of Basswood Lake.

(iv) The portages from Fall Lake to Newton Lake to Pipestone Bay of Basswood Lake.

(v) The portage from Vermilion Lake to Trout Lake.

(2) The Forest Service may authorize, by special use permit, the use of motor vehicles to transport watercraft over the following portages:

(i) Four Mile Portage From Fall Lake to Hoist Bay of Basswood Lake.

(ii) Vermilion Lake to Trout Lake.

(iii) Prairie Portage from Sucker Lake to Basswood Lake

(iv) Loon River to Loon Lake and from Loon Lake to Lac La Croix.

(c) Snowmobile Use. (1) A snowmobile is defined as a self-propelled, motorized vehicle not exceeding forty inches in width designed to operate on ice and snow, having a ski or skiis in contact with the snow and driven by a track or tracks.

(2) The Forest Service permits use of snowmobiles only on the following routes:

(i) The overland portages in Saint Louis County from Crane Lake to Little Vermilion Lake in Canada.

(ii) The route in Cook County from Sea Gull River along the eastern portion of Saganage Lake to Canada.

(3) The Forest Service may issue special-use authorizations to use snowmobiles for the grooming of specified cross-country ski trails near existing resorts.

PART 294—SPECIAL AREAS

6. Revise the heading of 36 CFR 294.2 to read as follows:

§ 294.2 Navigation of aircraft within airspace reservation over the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

7. Amend 36 CFR 294.2, by revising the heading by removing paragraph (d) in its entirety, by redesignating existing paragraphs (e) and (f) as paragraphs (d) and (e), and by revising the text of new paragraph (d) to read as follows:

§ 294.2 Navigation of aircraft within airspace reservation over the Boundary Waters Canoe Area Wilderness, Superior National Forest, Minnesota.

* * * * *

(d) *Official flights.* The provisions of §§ 294.2(b) and 294.2(c) do not apply to flights made for conducting or assisting in the conduct of official business of the United States, of the State of Minnesota or of Cook, St. Louis, or Lake Counties, Minnesota.

8. Revise the authority citation which follows §294.2 to read as follows:

(16 U.S.C. 1131; 16 U.S.C. 472)

Dated: April 2, 1985.

Douglas W. MacCleery,

Deputy Assistant Secretary for U.S. Department of Agriculture.

[FR Doc. 85-9825 Filed 4-24-85; 8:45 am]

BILLING CODE 3410-11-M

VETERANS ADMINISTRATION

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly costs.

EFFECTIVE DATE: April 19, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3042).

SUPPLEMENTARY INFORMATION: The Administrator is required by section 1819(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum

interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to Ch. 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fufill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Administrator by Secs. 210(c), 1803(c)(1), 1811(d)(1) and 1819 (f) and (g) of Title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), Title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: April 18, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 36—LOAN GUARANTY

The Veterans Administration is amending 38 CFR Part 36 as follows:

1. In § 36.4212, paragraph (a) is revised as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1819 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date.

(38 U.S.C. 1819(f))

(1) Effective April 19, 1985, 15 percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective April 19, 1985, 14½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective April 19, 1985, 14½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 12½ per centum per annum, effective April 19, 1985, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 12½ per centum per annum on the unpaid principal balance.

(38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 12¾ per centum per annum, effective April 19, 1985, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 12¾ per centum per annum.

(38 U.S.C. 1803(c)(1))

(c) Effective April 19, 1985, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 14 per centum per annum on the unpaid principal balance.

(38 U.S.C. 1803(c)(1))

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 12½ percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 14 percent per annum.

(38 U.S.C. 1811(d)(1) and (2)(A))

* * * * *

[FR Doc. 85–10012 Filed 4–24–85; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 162

[OPP-30076A; PH-FRL 2825-5]

Effective Date for Application Procedures To Ensure Protection for Data Submitters' Rights

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; effective date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted a final regulation establishing procedures intended to protect the economic interests of pesticide data submitters under FIFRA to both Houses of Congress for review prior to the regulation taking effect. This regulation was published in the **Federal Register** of August 1, 1984 (49 FR 30884). The minimum 60-day period for Congressional review has ended.

EFFECTIVE DATE: The regulation is effective on April 25, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS–767C), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–0592).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation, which was published in the **Federal Register** of August 1, 1984 (49 FR 30884), under sections 3 and 25(a) (1) and (3) of FIFRA, as amended, 7 U.S.C. 136 through 136y. The regulation establishes procedures intended to protect the economic interests of pesticide data submitters. At the same time, the rule gives applicants a wide choice of ways in which to comply with FIFRA section 3(c)(1)(D). However, as required by section 25(A)(4) of FIFRA, the regulation could not take effect until it had been submitted to both Houses of Congress for a period of 60 days of continuous Congressional session, as defined by section 25(a)(4). Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate **Federal Register** notice after the review period was over announcing the effective date of the regulation. The period of 60 days of continuous Congressional session has now elapsed.

Accordingly, the final regulation promulgated on August 1, 1984, is effective on April 25, 1985.

List of Subjects in 40 CFR Parts 152 and 162

Administrative practice and procedure, Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests.

(Sec. 25, as amended, 94 Stat. 3195 (7 U.S.C. 136w))

Dated: April 17, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–9988 Filed 4–24–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 158

[OPP–30063B; PH FRL #2825–6]

Data Requirements for Pesticide Registration; Effective Date for Data and Information Requirements To Support Pesticide Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; Effective Date.

SUMMARY: As required by section 25(a)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA submitted a final regulation specifying the kind of data and information that must be submitted to EPA to support pesticide registration under FIFRA to both Houses of Congress for review prior to the regulation taking effect. This regulation was published in the **Federal Register** of October 24, 1984 (49 FR 42856). The minimum 60-day period for Congressional review has ended.

EFFECTIVE DATE: The regulation is effective on April 25, 1985.

FOR FURTHER INFORMATION CONTACT:

By mail: Fred S. Betz, Hazard Evaluation Division (TS–769), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 821A, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–9307).

SUPPLEMENTARY INFORMATION: EPA issued a final regulation, which was published in the **Federal Register** of October 24, 1984 (49 FR 42856), under sections 3 and 25(a)(1) and (3) of FIFRA, as amended, 7 U.S.C. 136 through 136y. The regulation outlines the full range of data requirements pertaining to the registration/reregistration or experimental use of each product under FIFRA, specifies the types of data and information EPA requires to make regulatory judgments with respect to the safety of each pesticide proposed for registration or experimental use and the test substance to be used in test conducted to fulfill the data requirements.

However, as required by section 25(a)(4) of FIFRA, the regulation could not take effect until it had been submitted to both Houses of Congress for a period of 60 days of continuous Congressional session, as defined by section 25(a)(4).

Since it was not possible to predict an exact date on which the Congressional review period would end, the preamble to the final regulation stated that EPA would issue a separate **Federal Register** notice after the review period was over announcing the effective date of the regulation. The period of 60 days of continuous Congressional session has now elapsed.

Accordingly, the final regulation promulgated on October 24, 1984 is effective on April 25, 1985.

List of Subjects in 40 CFR Part 158

Administrative practice and procedure, Pesticides and pests, Data requirements.

(Sec. 25, as amended, 94 Stat. 3195 (7 U.S.C. 136w))

Dated: April 19, 1985.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85–9987 Filed 4–24–85; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 716

[OPTS–84018; FRL–2824–3]

Health and Safety Data Reporting; Establishment of Termination Date

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This **Federal Register** document establishes October 4, 1985, as the termination date for reporting unpublished health and safety data studies on the substances listed in 40 CFR 716.17(a)(1). The October 4, 1985, termination date will allow for a full 3 years of reporting on these substances, an event provided for in § 716.19. However, failure to publish this **Federal Register** document would allow an automatic termination provision in § 716.19 to cut short the reporting period by 5 months.

DATES: In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern standard time on May 9, 1985. This rule shall become effective on April 25, 1985.

FOR FURTHER INFORMATION CONTACT:

Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543, 401 M

Street, SW., Washington, D.C. 20460.
Toll free: (800-424-9065).
In Washington, D.C.: (554-1404).
Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number 2070-0004.

I. Background

Pursuant to section 8(d) of the Toxic Substances Control Act (TSCA), EPA promulgated a model Health and Safety Data Reporting Rule (40 CFR Part 716). The section 8(d) model rule requires manufacturers, importers, and processors of listed chemical substances and mixtures (henceforth referred to as substances) to submit to EPA copies and lists of unpublished health and safety studies on the listed substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, and 8. Since promulgation of the model rule, EPA has amended the rule 7 times to list approximately 117 substances.

On the same date that EPA promulgated the section 8(d) model rule, EPA listed the substances found at § 716.17(a)(1). The reporting period for these substances began on October 4, 1982. Section 716.19, the sunset provision, provides that the reporting period shall last 3 years, in this instance until October 4, 1985. However, in order to provide for a full three years of reporting, EPA must publish in the **Federal Register** a document that establishes October 4, 1985 as the termination date. Failure to publish such a **Federal Register** document, would allow an automatic termination provision in § 716.19 to cut short the reporting period by up to 6 months (in this instance 5 months, May 1, 1985). Hence this **Federal Register** document sets the termination date for the reporting period on the substances listed at 40 CFR 716.17(a)(1) as October 4, 1985.

In a separate and future **Federal Register** document, EPA will propose to amend the section 8(d) Health and Safety Data Reporting Rule by: Revising the rule's sunset provision, limiting two reporting exemptions, and clarifying the rule's confidentiality provisions. EPA believes that these three amendments will increase the number and usefulness of the health and safety data reports submitted to EPA, and will provide these reports during the same time period that EPA performs its chemical testing, hazard/risk assessment, and risk management determinations.

II. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it will not have an effect of $100 million or more on the economy. It is not anticipated to have a significant effect on competition, costs, or prices.

This final rule was not submitted to the Office of Management and Budget (OMB) for review, because a 3-year reporting period is provided for in 40 CFR 716.19. Both the proposed and final rule which developed § 716.19 were previously reviewed by OMB as required by Executive Order 12291.

B. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. In a study of submitters reporting under the section 8(d) model rule, EPA found that only 1 of 69 submitters had less than $100 million in sales. EPA does not expect this action to affect this distribution. Therefore, in accordance with the Regulatory Flexibility Act (Pub. L. 95-354), EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2070-0004.

List of Subjects in 40 CFR Part 716

Chemicals, Environmental protection, Hazardous substances, Health and safety, Recordkeeping and reporting.

(Sec. 8, 90 Stat. 2029 (15 U.S.C. 2607(d))

Dated: April 18, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

PART 716—[AMENDED]

Therefore, Chapter I of Title 40, is amended by revising the introductory text of § 716.17(a)(1) to read as follows:

§ 716.17 Substances and designated mixtures to which this subpart applies.

(a)(1) *Substances.* The following substances are subject to this subpart as of October 4, 1982. Unless extended by rule, the reporting period for these substances will terminate on October 4, 1985.

* * * * *

[FR Doc. 85-9994 Filed 4-24-85; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6601

[ES-27765]

Florida; Transfer of Jurisdiction From the Department of Defense to the Forest Service

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order transfers jurisdiction of 281.97 acres of lands from the Department of Defense to the Forest Service to be restored to the Choctawahtchee National Forest. The lands have been and remain open to surface entry, mining and mineral leasing.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Mary Weaver, BLM Eastern States Office, 350 South Pickett Street, Alexandria, VA 22304, 703-274-0121.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the President pursuant to Executive Order 10335 of May 26, 1952 (17 FR 4831), it is ordered as follows:

1. The following described lands which were transferred from the Department of Agriculture to the Department of Defense under Pub. L. 76-668 (54 Stat. 655), dated June 27, 1940, are hereby returned to the jurisdiction of the Department of Agriculture for management by the Forest Service:

Tallahassee Meridian, Florida

T. 2 N., R. 23 W.,
Sec. 2: NW¼NE¼ and NE¼NW¼; approx. 79.90 acres.
T. 2 N., R. 23 W.,
Sec. 4: NW¼NE¼; approx. 40.85 acres.
T. 3 N., R. 20 W.,
Sec. 22: NE¼; approx. 160.00 acres.
T. 3 N., R. 21 W.,
Sec. 22: Lot 2 Mossy Head Tract; approx. 1.22 acres.

The areas described aggregate 281.97 acres in Walton and Okaloosa Counties, Florida.

2. This transfer is effective immediately. The lands have been and remain open to such forms of disposition as may by law be made of national forest lands, including mineral location

and entry under the United States mining laws, and applications and offers under the mineral leasing laws, subject to valid existing rights and the requirements of applicable regulations.

Robert N. Broadbent,

Assistant Secretary of the Interior.

April 16, 1985.

[FR Doc. 85-10045 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 61 and 62

[Docket No. FEMA-FIA]

National Flood Insurance Program; Assistance to Private Sector Property Insurers

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the National Flood Insurance Program (NFIP) regulations dealing with the issuance of flood insurance policies and the adjustment of claims arising under such contracts of insurance and sets forth pertinent detail relative to the underwriting, claims adjustment and financial control operational procedures established by the Federal Insurance Administrator in connection with the Financial Assistance/Subsidy Arrangements (the Arrangement) which may be entered into by and between the Administrator and private sector insurers under the "Write-Your-Own" (WYO) program authorized pursuant to Subpart C, Part 62 of these regulations and section 1310 of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001 et seq.).

Under the WYO Program, the Standard Flood Insurance Policy (the form and substance of which is approved by the administrator) may be issued by insurers signatory to the Arrangement in their own names. Insurers are then responsible for all aspects of service, including policy issuance to new policyholders and to those policyholders insured by them under other lines of property insurance; endorsements to and renewals of policies; and the adjustment of claims brought under the policies. The insurers pay losses and loss adjustment expenses, as well as the commissions of agents, out of written premiums. Under the Arrangement, the Government backs the policies. Thus, insurers are able to offer flood insurance in the private insurance market, the NFIP will increase its policy-in-force base by reason of WYO Companies' marketing efforts, and policyholders will benefit from an infusion into the NFIP of considerable private sector insurance expertise and service.

EFFECTIVE DATE: June 1, 1985.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, Room 429, 500 C Street, SW., Washington, D.C. 20472, Telephone number (202) 646-3419.

SUPPLEMENTARY INFORMATION: These amendments more fully effectuate the propose of the National Flood Insurance Act of 1968, as amended (Pub. L. 90-448, 42 U.S.C. 4001), while providing a direct and tangible benefit to persons insured against property insurance perils, other than flood, by setting forth the general parameters of the procedural approach being taken in respect to the WYO program by the Administrator and the WYO Companies engaged in this program in the provision of NFIP flood insurance coverage to policyholders insured by these companies for other lines of property insurance business.

Regarding the purposes of the 1968 Act, the NFIP enabling legislation establishes the direction of having the program "carried out to the maximum extent practicable by the private insurance industry" (42 U.S.C. 4011) and authorizes the Director, FEMA, to "encourage and arrange for . . . appropriate financial participation and risk sharing in the program by insurance companies" (42 U.S.C. 4011). The rationale for the enabling legislation recognizes the benefits to be derived from the operation of a national program of flood insurance by private sector property insurers, who are the traditional providers of insurance to the public. In this connection, the Act declares, as its purpose, that there be "a flood insurance program by means of which flood insurance, over a period of time, can be made available on a nationwide basis through the cooperative efforts of the Federal Government and the private insurance industry" (42 U.S.C. 4001).

Against this background, FEMA published a final rule, on October 14, 1983, entitled "National Flood Insurance Program; Assistance to Private Sector Property Insurers" (48 FR 46789), which established the WYO program authorized under Pub. L. 90-448 under the rulemaking procedures of the Administrative Procedure Act, following notice of proposed rulemaking (48 FR 34482, July 29, 1983) and receipt of public comment. During the first year of operation, forty-eight private sector insurers were signatory to WYO arrangements with the Administrator and twelve of these commenced the underwriting of over 131,000 flood insurance policies. On May 29, 1984, the Administrator published an "Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy" (49 FR 22438), inviting private sector property insurers to enter into similar arrangements for WYO program year October 1, 1984 to September 30, 1985. As of this writing, over two hundred and fifteen (215) insurance companies have become signatory to the Arrangement for the current year.

It is the intention of the regulation to publish pertinent procedural details of the WYO program regarding its operations in the areas of under writing, claims adjustment, and the financial controls which have been and will continue to be exercised with respect to the program and to normalize the business of issuing flood insurance policies by WYO Companies along the lines of the customary business practices engaged in by these insurers in their other lines of property insurance business. In this way, persons insured by WYO Companies against the peril of flood under the WYO program and against the usual property insurance peril under their traditional policies of insurance with the companies (e.g., Homeowners insurance) will not be discriminated against as to the effective date of their coverage, for example, by the flood insurance policy issued under the Arrangement.

Toward these ends, on December 13, 1984 (49 FR 48652), FEMA published a proposed rule, which proposed that both the Arrangement and the WYO financial control plan be included in the program's rules, as Appendices to Subpart C.

Publication of the Arrangement in this rule also constitutes, for the WYO Program Arrangement year of October 1, 1985-September 30, 1986, the Administrator's "Offer to Assist Insurers in Underwriting Flood Insurance Using the Standard Flood Insurance Policy" (see last year's offer, at 49 FR 22438, published on May 29, 1984).

It was also proposed that the Arrangement should be amended to set forth a constant formula for the reimbursement of operating and administrative expenses (at Article III [B] and to recognize, as a "Loss Cost" or expense of doing business under the Arrangement, an award or judgment of punitive damages arising out of the

scope of the Arrangement, assuming timely notice of any claim for such damage being given to FEMA, (at Article III [D]). Rules were proposed, as well, to conform, to the extent practicable, the policy issuance, premium payment and claims adjustment procedures of the flood insurance contract with the procedures employed by WYO Companies in their other lines of property insurance business. The Agency received seven (7) comments, including two from FEMA regional offices seeking clarification of the WYO program and offering advice, one from a national association of mortgage lenders supporting the proposed rule as a benefit to policyholders by reason of the infusion of private sector experience and expertise into the flood program, and four from private sector property insurers providing input and raising issues for clarification. One of these, from an Assistant Counsel of one of the leading property insurers, provided technical suggestions and viewed the proposed rulemaking "as a sincere effort to deliver flood insurance coverage on a comprehensive national basis through the active efforts of the private insurance industry in cooperation with the Federal Government".

Regarding the comments from FEMA's regional offices, a Regional Counsel pointed out that the operational procedures did not specifically reference that WYO companies would cooperate with FEMA's Office of General Counsel in matters pertaining to litigation and subrogation and report claims litigation to the Agency. These matters have been addressed in the final rule at § 62.23(i)(6) and (11). The other Agency comments, from a Regional Director, were extensive. What follows, repeated in their entirety, are the Regional Director's comments followed, in each case, by FIA's response:

49 FR 48653 (of the Proposed Rule)

Part 61—Insurance Coverage and Rates

at f(1) Does this waive the waiting period for WYO applicants?—Amend the "cancellation" rules for the WYO insureds?

Response: Yes, as to both questions, but only in cases in which the WYO Company's flood insurance policy is underwritten with an effective date identical with the effective date of a companion policy, e.g., Homeowners, to be issued to the same named insured. To allow the placing in effect of a flood insurance contract at the same time as companion Homeowners business without regard to the waiting period, in addition to normalizing the provision of flood insurance coverage with other private sector lines of property insurance business, is somewhat analogous to the waiver of the waiting period, at §61.11, in cases in which flood insurance becomes effective, at a real property closing or settlement, at transfer of title, without regard to any waiting period. Concerning cancellation mid-term with premium refund, it would be impermissible unless the companion policy was also cancelled. Also, as to any installment plan for the payment of premiums covering both a flood insurance policy and a companion policy, in case of default, the WYO Company will remain liable for the premium under the flood insurance policy until it has effected cancellation as to both the companion policy and the WYO Policy (see § 61.11(f)(1) of the final rule and discussion, below).

at f(2) Are envelopes retained by NFIP and does NFIP use "postmark" or is WYO operating differently?

Response: No, envelopes are not retained by the NFIP. The retention of envelopes and utilization of the "postmark" date was, as the rule states, intended to relate to the operations of insurers which underwrite their business directly with the policyholders, and not through an agent. In the final rule, as the discussion below indicates, care has been taken to assure that policyholders insured by WYO Companies are subject to the same effective date rules as are applicable to NFIP business, so long as the flood insurance policy has the same effective date and named insured as a companion policy issued by the WYO Company on the property.

49 FR 48654

at h(5) Why is WYO Company permitted to reject or decline flood insurance, if risk is eligible under NFIP? Will NFIP use original submission date to WYO Company for "effective date"?

Response: The WYO Company is acting in its capacity as an insurer which, under State law, has the right to reject or decline insurance business. In this case, it is not in the best interests of the program for the NFIP to seek to impose a different set of rules on insurers in the States in which they do business, particularly since a flood insurance risk rejected by a WYO Company can readily be insured under the NFIP. The acceptance of such a risk by the NFIP would be governed by the effective date rule, at §61.11. As a matter of practice, the "rejection" would, typically, occur in the office of the WYO Company's agent, who would place the business, instead, with the NFIP. In such a case, so long as the application and premium are timely received, the effective date will be the same as it would have been had the WYO Company underwritten the risk.

at (1) Why is WYO adjustment binding on FIA, while CSC adjustments (independent adjustors) are not until accepted/approved by FIA?

Response: In the case of the WYO adjustment, the WYO Company, having issued the policy in its own name, is the insurer, adjusting a loss sustained by one of its policyholders. The NFIP servicing agent is not the insurer under NFIP business, in which case the policy is issued by the Federal Government.

at i(2) Do staff adjustors of WYO Company have to be approved by FIA? Why not? What effect of fee schedule in multi-peril adjustments—How is entire loss adjustment cost allocated—% to flood and % to other peril(s)?

Response: Basic to an understanding of the WYO Program is the concept that "Write-Your-Own" describes the undertaking between the government and the insurer. In exchange for the provision of marketing and property insurance skills to the benefit of the government and the taxpayer, the WYO Company, when it issues its flood insurance policy, becomes the insurer of its own policyholder and is responsible for the adjustment of claims brought under that policy. It is responsible, under the program's financial controls, for the premium income derived from its policyholders and responds to government operational reviews of its underwriting, claims and financial practices. These responsibilities, however, do not detract from the WYO Company's essential role as the *insurer* of flood insurance coverage. As such, it would be an unnecessary exercise for the government to approve or disapprove of the use or hiring of staff adjusters by WYO Companies. As a practical matter, if these adjusters are qualified to adjust claims arising under the Company's other lines of business, they should be able to adjust flood insurance losses, as well. To assure this result, FIA has provided companies with specialized claims adjustment information, through documentary matter and training sessions conducted by the NFIP servicing agent.

The fee schedule only relates to the flood portion of a combined wind and flood loss and each loss would be allocated, depending upon the degree of flood and wind damage involved in the total damages.

at i(9) What is ". . . above normal adjustment practices"?

Response: A special investigation fee, for example, the use of a real estate appraiser to determine the value of a building totally damaged by flood, based on comparable values in the neighborhood, would be "above normal adjustment practices".

49 FR 48655

Article II—Undertaking of the Company

at 2.0 2nd sentence—Why not require the use of FIA developed materials?

Response: There is nothing to be gained by the imposition of a number of requirements to use FIA developed materials when the provision of these documents as guides serves the same purpose. The WYO Arrangement is not an undertaking in which the parties impose requirements on each other. It is a cooperative Arrangement and, to repeat the words to the Rules Docket of the Assistant Counsel from one of the companies, is "a sincere effort to deliver flood insurance coverage on a comprehensive national basis through the active efforts of the private insurance industry in cooperation with the Federal Government".

49 FR 48656

at 4.0 Why reserved to "licensed" companies only?

Response: The several States do not normally permit one to engage in the business of insurance without being licensed by the State in which the business is to be conducted. Through the licensure procedures, the States can monitor the insurer's operations and solvency. FIA, which does not license or regulate insurers, believes it best for flood insurance coverage to be issued by licensed insurers.

at F. See comment on P. 48654 [i(1)]

Response: See response to "P. 48654, at i(1)."

Article III—Loss Costs, Expenses, etc.

at B. "taxes"—What taxes does the Federal government pay? NFIP is a "federal" program whether direct or as "re-insurer"—all "premium" are taxpayers monies.

15.0% commission—Why no mention of max/min commission to agents? Why doesn't graduated commission scale apply to WYO Company's (see P. GR22 of Flood Insurance Manual)?

Response: Regarding the reference to taxes, the Federal government is not paying any taxes. The reference is part of a formula or convention used to establish a reasonable level of company operating and administrative expense reimbursement, in connection with WYO business, which level is keyed to the average of what property insurers report to the several States as to their operating and administrative expense ratios for other aquisition, general expenses and company taxes. Concerning the commission allowance, it is intended that the companies pay commissions to their agents "pursuant to their customary business practices" (see § 62.23[a]. Again, the idea is to normalize the flood insurance business with other lines of property insurance engaged in by WYO Companies.

at D. Does this include the "agent" of WYO Company who have been ajudged guilty of "wrong doing/ unfair claims practices, etc." and the awards and/or judgments against them? If not, why?

Response: No, because the provision relates to loss payments, via award or judgment, including punitive damages, arising under policies of flood insurance and the Arrangement. Agents are not insurers nor are they parties to the Arrangement.

Article IV—Undertakings of the Government

at C. What if WYO Company cancels its "agent" for any reason—what happens to "agents book of flood business"?

Response: The handling of the "agents book of flood business" would be a contractual matter between the company and the agent.

49 FR 48657

Article IX—Errors and Omissions

at 1st paragraph—Is the NFIP liable? If not, why?

Article XIII—Restriction on Other Flood Insurances

at 2nd paragraph—Why? Max limits available from NFIP should be required to be placed with the NFIP and all other coverage written as "excess of NFIP available limits".

Response: Regarding liability of the parties to the Arrangement, as a negotiated provision, neither is liable to the other for acts or omissions of ordinary negligence. As to the comment regarding the "Restriction on other Flood Insurance", the provision relates to flood insurance coverage provided by a WYO Company as part of a multi-peril policy or excess flood insurance coverage issued by the company under conditions whereby the company has assumed the entire financial underwriting risk. The NFIP would not discourage the private sector from offering flood insurance coverage under such circumstances.

49 FR 48658

Exhibit A—G Schedule

Why is "fee" limited to the "amount of insurance purchased"?

Response: The NFIP does not pay losses in excess of policy limits and, consistent with this, the fee is limited by the amount of insurance purchased. See the reference to "Range (by covered loss)".

Appendix E—NFIP

A Plan to Maintain Financial, etc.,

at 1st paragraph—What/whose definition of "eligible property"?

Response: The Arrangement is subject to the National Flood Insurance Act of 1968 and regulations issued pursuant thereto. Accordingly, only properties eligible under the NFIP's enabling legislation and implementing rules are eligible under the WYO program.

at 2nd paragraph—Who pays for State examinations of WYO flood business? Max/Min? Have "States" agreed to audit "NFIP" business?

Response: The extent to which States may review WYO Program business will evolve through efforts of the State insurance departments and the individual insurers signatory to the Arrangement.

at 3rd paragraph—Who pays auditing fees? Which re-insurance markets have access to State, NAIC Zone exams and independent CPA audits?

Response: Audits of insurers by independent CPA firms are paid for by the insurers. The relevance of the second question is unclear. The Arrangement is not a re-insurance policy.

at 5th paragraph, 9.—restricted to "fraud"—Why? How about OGC?

Response: As indicated, above, this suggestion has been accommodated, at § 62.23(i)(11).

49 FR 48659

Underwriting Audit Outline

at 3. Verify compliance only to WYO Company procedures? What about NFIP procedures?

Response: WYO Company procedures may not be the same as NFIP procedures or, for that matter, the procedures of other insurers. As long as the business is written in accordance with NFIP regulations, company procedures may differ from NFIP operational procedures.

at 4. a. Policies are issued *on* eligible risks?

b. Whose rates? Government/or WYO

Company?
f. Any "Guides" authorizations given to anyone? If so, should be listed.
k. all material S/B in one file
l. Example?

Response: a. No, policies are issued *for* the insuring of eligible risks.

b. The rates utilized by WYO Companies are established by the Federal Insurance Administrator for both NFIP and WYO Program policyholders.

f. The NFIP regulations, which are adhered to by WYO Companies, adequately cover the subject of risk binding authority.

k. This is a procedural matter for companies to handle in such way as to assure availability of these documents for FIA operational review.

l. An example of an unavailable file will not be available until the occurrence of such an event.

49 FR 48662

at 6. Rating Data Verification
"Phone calls or on-site * * * of the WYO Company *and* should be 'or' the FIA * * *"

Response: The substitution of the disjunctive would provide a less efficient method of reviewing risks. As written, the system allows for *both* the WYO Company and the FIA to undertake review of the individual risk.

49 FR 48665

as Part 6 Financial Audits and State Insurance Department Examinations
1st paragraph—Why is it expected? Who pays for?

Response: As indicated above, the extent to which these audits will occur will evolve from the normal activities of State insurance departments and insurers and be paid for in the manner customary as to each state. FIA cannot view such State-insurer interaction involving WYO policies of flood insurance as being anything but beneficial to the NFIP.

With respect to comments from the private sector, a national association of mortgage bankers viewed the WYO program as a benefit to flood insurance policyholders and expressed the belief "that the rule will make clear the processes, requirements, and benefits of WYO participation to private insurance companies.

The Assistant Counsel for one private sector property insurer viewed as unfair to policyholders the proposed rule, at § 61.11(f)(2), which would permit insurers who deal directly with their applicants for insurance and policyholder (rather than through an insurance agent or broker), to calculate the waiting period under the effective date rule from the postmark date on the envelope transmitting the premium payment. Under the example given, it is conceivable that an applicant for flood insurance to be purchased from a direct writer, by inadvertently delaying the posting of premium several days, would be unable to place the insurance in effect as early as an applicant could who dealt directly with an insurance agent. For example, if an applicant were to order flood insurance on the telephone on April 1, 1985 from a direct writer (the application form being completed by the WYO Company), then, fail to post the premium payment until April 8, 1985, the proposed effective date rule would, normally, provide for the inception of flood insurance coverage as of April 13, 1985 (five days from the postmark date). Further, if the envelope did not bear a postmark date, the waiting period, under the rule as proposed, would not commence until 12:01 A.M. on the day prior to the actual receipt date by the WYO Company. Thus, in the example given, if there was no discernable postmark on the evelope and the insurer received the premium on April 11, 1985, the earliest date on which coverage could be effectuated would be April 15, 1985 (five-day waiting period calculated from 12:01 A.M. of the day prior to receipt).

On the other hand, applicants for flood insurance who request their coverage from the NFIP through their insurance agent will always have the effective date of the policy calculated from the date of the application, provided the premium payment is received by the NFIP within ten (10) days of the date of the application. In the example given, above, the effective date of the coverage, if placed with the NFIP or a WYO Company which operates through insurance agents, brokers or other producers, such as employees, would be April 6, 1985, even if the postmark was April 8, 1985 and provided that the premium payment was received on or before April 11, 1985. To alleviate the unfairness to applicants of direct writers which the proposed "postmark" rule engenders, the final rule provides for uniform effective date treatment to be accorded all applicants for NFIP flood insurance coverage, whether the coverage is being applied for from the NFIP, or a WYO "Agency" company or direct writer. Similarly, the effective date rules as to renewals of in-force policies and endorsements to existing policies, which add coverage or increase the limits of coverage, are being made uniform for all NFIP insurance business.

In connection with these changes, the Financial Control Plan (Appendix E) self-audit procedures and FIA's Underwriting operational review procedures are being expanded to facilitate adherence to the Section 61.11 effective date rules by WYO Companies and the review of effective date procedures by FIA's underwriting examining staff. In so doing, the Financial Control Plan recognizes that normal company procedures in this regard may differ from company to company, yet produce the same documented result in respect to premium receipt dates, application dates and the like. For this reason, specific procedures, such as use of postmark date and envelope retention; date-stamping of documents and checks received in payment of premium; computer input of financial receipt transactions; and other reasonable insurer methods of verifying requests for coverage and receipts of premium will be acceptable in this regard.

Recognition of these alternative methods of policy effective date/premium receipt verification has additional merit in that it removes the paperwork burden of retaining envelopes, as a requirement, leaving verification to the insurer's customary practices and procedures. It should be noted that the Assistant Counsel for the major insurer, in this regard, commented that the retention of envelopes, as a requirement, "is unduly burdensome" to his company "in this 'paper-less' age of processing information." This particular company inputs premium receipt dates into its computer system on date of receipt and the system cannot be adjusted to back-date a premium receipt.

Another recommendation made by this gentleman concerns the underwriting procedures (proposed at § 62.23[h]) to be utilized by WYO Companies. The recommendation was made that the final rule expressly recognize that, when a NFIP policy of insurance is converted to the WYO Company, at the request of the agent of record, who signs a specific document authorizing the transaction, State countersignature laws should not apply to the issuance of a new policy, at renewal time, insuring the same property.

The countersignature laws generally require that all insurance contracts covering persons or property in a State be countersigned by a representative of the insurer in that State, usually a licensed resident insurance agent, the rationale for concluding that the countersignature procedure is satisfied

by the insurance company's representative's signed request for conversion of the policy to the WYO Company's book of business and, thereby, creating a limited exception to the State countersignature procedure by a preemptive federal rule is that it would "reduce the unnecessary administrative burden upon both producers and WYO insurers in beginning the WYO program * * * [and] * * * facilitate the introduction of the WYO program by agents and brokers in states with high concentrations of flood insurance policies". It is noted, further, that these NFIP policies designated by the agent or record for conversion to his WYO Company's book of business, as issued by the Administrator, are not now subject to State countersignature laws.

In view of the statutory framework within which the National Flood Insurance Program is administered, to pre-empt State countersignature laws by rule in the case of Administrator-issued policies of flood insurance (which are not subject to countersignature provisions), which are assumed by WYO Companies, is a reasonable accommodation of the Congressional policy that the Administrator exercise the basic authority to "carry out a national flood insurance program" under which the Administrator "shall to the maximum extent practicable, encourage and arrange for * * * appropriate participation on other than a risk-sharing basis, by insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organization * * *" To submit WYO Company issuances of policies, which have been issued and renewed by the Administrator, to a countersignature process would place an impracticable and expensive burden on the WYO Companies, but, more important, from the NFIP standpoint, the added process would put a strain on a smooth policy conversion process and create an obstacle to the successful implementation of the WYO Program. The logistics of accommodating countersignature laws as to NFIP policies being converted to WYO status, since the Administrator issued contracts were not countersigned by federal representatives in the several States, would most likely require the new insurer to copy the policy and send it to its agent (who, as NFIP agent of record, has already authorized the NFIP to send the policy to the WYO company at the outset of the conversion process) whereupon, the agency would be required to formally countersign the policy he or she authorized to be sent to the insurer in the first place, and mail it back to the insurer. What follows is the form of Authorization the agent of record executes to start the conversion process:

BILLING CODE 6718-01-M

EXHIBIT #1

REPRODUCE THIS FORM ON YOUR LETTERHEAD

AUTHORIZATION TO RELEASE POLICY INFORMATION AND/OR CHANGE PAYOR ADDRESS FOR BOOK OF BUSINESS

NAIC # ☐☐☐☐☐

REGION # ☐☐

The undersigned, having determined to place flood insurance policies with one or more participating Write Your Own (WYO) companies, effective the _____ day of _____, 19_____, authorizes the National Flood Insurance Program (NFIP) to do the following: (Check the appropriate item(s) and provide the requested information.)

Tax Identification No.'s

☐ Release policy data for the entire book of business currently written with the NFIP for the tax identification numbers shown, and forward it to the address shown below. Identify ☐ Company ☐ Agent ☐ Region ☐ Other

(NOTE: Information can only be sent to ONE recipient.)

Name

Address

City State Zip Code

☐ Change the payor (section 2 of the flood insurance application) on the entire book of NFIP business for tax identification numbers shown to "Bill Other" [5] at the following address: Identify ☐ Company ☐ Agent ☐ Region ☐ Other

Name

Address

City State Zip Code

Tax Identification No.'s
☐☐☐☐☐☐☐☐☐
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As agent(s) of record for these policies, I (we) assume responsibility to notify the insured and other interested parties of the change of insurer, and to assure that continuity of coverage is not affected by this authorization.

NOTARY ACKNOWLEDGEMENT

Subscribed and sworn to me this _____ day of, _____, 19_____ A Notary Public in and for the State of _____

_____
Signature

My commission expires _____
(SEAL)

_____
Name (Agent-Agency-Broker)

_____
Authorized Signature

_____
Print Name and Title

The NFIP's enabling legislative does not require that impractical, expensive, and vain acts be undertaken to effectuate its purpose. The initiating of the conversion process by the agent, in a real sense, is the equivalent of and complies with the spirit of the countersignature process and vitiates the need for the more formalized procedure, expecially since the latter is not in the best interests of the NFIP WYO Program.

Therefore, the final rule, at § 62.23(h)(8), provides a limited exemption from the countersignature process for only the issuance of policies, which were formerly issued by the Administrator by a WYO Company where the NFIP policy has been converted to the WYO Company at the written and signed request of a licensed agent acting in the capacity of an agent of that company and under contract to the company, or an employee of the company. All other WYO Company policies of flood insurance may be subject to the countersignature process, depending upon the requirements of the several States.

Another major insurer, commenting on the self-audit standards in the "Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program", expressed the view that these standards "may be adopted so as to conform to the company's usual and customary audit procedures . . . " and inquired whether claims reinspection costs are part of the operating and administrative expense allowance. As to the first inquiry, as long as "Part 1—Model Self—Audit Program's Minimum Standards" (p. 48659 of the proposed rule) are complied with, the company could follow its usual and customary audit procedures. With respect to the expense of claims reinspections, these are subsumed under the 3.3% allowance for unallocated loss adjustment expenses (Article III, Section C [1] of the Arrangement, at p. 48656 of the proposed rule).

Representatives of another major property insurer recommended technical changes to the Arrangement from an accounting standpoint and suggested changes to the proposed rule dealing with the effective date rule and premium collection, which would further normalize the issuance of flood insurance coverage by private sector property insurers by making the procedures compatible with the practices of insurers as to its companion lines of property insurance business.

The accounting changes include amendments to Article III, Sections D and E of the Arrangement to make clear that loss payments and premium refunds made to policyholders are to be reimbursed to the WYO Company from bank account funds containing collected premium funds and, if depleted, from the letter of credit established with the United States Treasury. In addition, an editorial misprint (Article VII, Section C) was pointed out, as well as a redundancy in the reporting requirements relative to loss reserves, at Part 2, Exhibit A of the financial control plan (the plan calls for the production of the same data, both monthly and quarterly and the suggestion is to delete the quarterly reporting requirement in favor of the monthly requirement). The final rule incorporates these changes.

In addition, regarding policy effective date and premium collection, the final rule makes clear what was intended in the proposed rule, at proposed § 61.11(f)(1), at page 48653, which proposed that the procedures for the submission of an application or renewal with the proper premium in the case of a flood insurance policy issued be a WYO Company in tandem with a "companion policy" (Homeowners, Farmowners, or Standard Fire Insurance Policy) should be the same as the company's procedures for issuance of the companion policy. To clearly effectuate this purpose, the final rule provides additional language at § 61.11(f)(1) acknowledging that, while a WYO Company may collect flood insurance premium on the same installment payment basis as it uses in respect to a companion policy, in the event of default as to any installment by the policyholder, the WYO Company will remain liable to the Administrator for the premium until it has effected cancellation for nonpayment of premium of both the companion policy or policies and the flood insurance policy. By providing for installment payments of premiums in this manner, the insurance consumer benefits and the NFIP also benefits, in terms of the marketing advantages inherent in premium installment plans. Also, with regard to cancellation, the final rule will include, at § 61.11(f)(1), the recommended provision that, should a policyholder cancel a companion policy before its expiration, but not the flood insurance policy, to facilitate the insurer's accounting and computer system practices, the flood insurace policy may be continued in effect to the end of its term or may be cancelled, with retention of the premium for the remainder of the term, which premium will be applied to a re-issue, with no lapse in coverage, of a new policy to the policyholder having the same expiration date as the cancelled policy. Renewal of the new policy will be offered by the WYO Company for, at least, a term of one year.

FEMA has determined, based upon an Environmental Assessment, that this rule does not have signficant impact upon the quality of the human environment. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 "C" Street SW., Washington, D.C. 20472.

These regulations do not have a significant economic impact on a substantial number of small entities and have not undergone regulatory flexibility analysis.

The rule is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981 and, hence, no regulatory analysis has been prepared.

FEMA has determined that the rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 61 and 62

Flood insurance.

Accordingly, Parts 61 and 62 of Subchapter B of Chapter 1 of Title 44 are amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. Section 61.11 (e) is amended by the removal of its last sentence.

2. Section 61.11 is amended by the addition of a new paragraph (f) to read as follows:

§ 61.11 Effective date and time of coverage under the Standard Flood Insurance Policy—New Business Applications and Endorsements.

* * * * *

(f) With respect to the submission of an application in connection with new business, a renewal of a policy in effect and an endorsement to a policy in effect, the payment by an insured to an agent or the issuance of premium payment to a Write-Your-Own (WYO) Company by the agent, accompanied by a properly completed application, renewal or endorsement form, as appropriate, shall commence the calculation of any applicable waiting period under this section, provided that the agent is acting in the capacity of an agent of a Write-Your-Own (WYO) Company authorized by 44 CFR 62.23, is under written contract to or is an employee of such Company, and such WYO Company is, at the time of such submission of an

application in connection with new business or a renewal of or endorsement to flood insurance coverage, engaged in WYO business under an arrangement entered into by the Administrator and the WYO Company pursuant to § 62.23.

(1) It is further provided that:

(i) With respect to any submission of an application with the proper premium in connection with new flood insurance business to a WYO Company and a renewal, with the proper premium of a flood insurance policy in effect by a WYO Company, which flood insurance policy is to be issued with an effective date identical to the effective date of a Homeowners, Farmowners, or Standard Fire Insurance Policy ("companion policy") to be issued to the same named insured and insuring the same property, the flood insurance policy may be issued in accordance with the WYO Company's customary business practices, as are used in the case of the companion policy, including premium receipt practices, and may have the same effective date as the companion policy, anything to the contrary in this section notwithstanding; provided, the flood insurance policy may not be cancelled by the named insured with a return of premium during its term unless the companion policy, or policies, is also cancelled by the named insured, effective the same date of cancellation as the flood insurance policy.

(ii) Provided, further, if the premium payments in repect to a companion policy, or policies, are being made on an installment basis, the premium payments in respect to the flood insurance policy may be made by the insured on the same basis; however, should the insured default in the payment of any installment of flood insurance premium when it is due, the WYO Company shall remain liable to the Administrator for any uncollected flood insurance premium until it effects cancellation of both the companion policy, or policies, and the flood insurance policy.

(iii) Provided, further, in the event the named insured of a flood insurance policy cancels a companion policy before its expiration, but does not cancel the flood insurance policy, the WYO Company may continue the flood insurance policy in effect to the end of its term or may cancel the flood insurance policy and, effective upon its cancellation, issue a new flood insurance policy with the same expiration date as the cancelled policy, which policy, if renewed by the named insured, will be renewed for a term of, at least, one (1) year.

(2) With respect to any renewal of an NFIP policy in effect by a WYO Company, or any renewal of a flood insurance policy issued by a WYO Company, where payment of premium is not tendered to an agent under written contract to the WYO Company or to an employee of such WYO Company but, instead, is mailed by the policyholder directly to the WYO Company, the renewal premium payment shall be deemed to be received by the WYO Company prior to the expiration date of the policy if the renewal premium payment is mailed to the WYO Company prior to the expiration date and is received by the WYO Company prior to or within five (5) days following the expiration date.

(3) Subject to the provisions of this paragraph (f), the rules set forth in paragraphs (a), (b), (c), (d) and (e) of this section apply to WYO Companies, except that premium payments and accompanying applications and endorsements shall be mailed to and received by the WYO Company, rather than the NFIP.

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

Subpart C—Write-Your-Own (WYO) Companies

3. Section 62.63 is redesignated as § 62.23 (and will remain in Subpart C).

* * * * *

4. Newly designated § 62.23 (a) is amended by the addition of the following at the end thereof:

§ 62.23 WYO Companies authorized.

(a)* * * Arrangements entered into by WYO Companies under this Subpart shall be in the form and substance of the standard arrangement, entitled "Financial Assistance/Subsidy Arrangement", a copy of which is included in Appendix A of this part and made a part of these regulations.

* * * * *

5. Newly designated § 62.23(f) is amended by the addition of the following at the end thereof:

§ 62.23 WYO Companies authorized.

* * * * *

(f)* * * In furtherance of this end, the Administrator has established "A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program", a copy of which is included in Appendix B of this part and made a part of these regulations.

* * * * *

6. Newly designated § 62.23 is amended by the addition of new paragraphs (h), (i), (j), and (k) and of an OMB control number at the end of the section to read as follows:

§ 62.23 WYO Companies authorized.

* * * * *

(h) To facilitate the underwriting of flood insurance coverage by WYO Companies, the following procedures will be utilized by WYO Companies:

(1) To expedite business growth, the WYO Company will encourage its present property insurance policyholders to purchase flood insurance and to transfer to the WYO Company, at the time of policy renewal, business placed by its producers with the NFIP Servicing Agent.

(2) To conform its underwriting practices to the underwriting rules and rates in effect as to the NFIP, the WYO Company will establish procedures to carry out the NFIP rating system and to provide its policyholders with the same coverage as is afforded under the NFIP.

(3) The WYO Company may follow its customary billing practices to meet the Federal rules on the presentment of premium and net premium deposits to a Letter of Credit bank account authorized by the Administrator and reduction of coverage when an underpayment is discovered.

(4) The WYO Company is expected to meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported by the WYO Company under the WYO Statistical Plan will be analyzed by the NFIP Servicing Agent. A monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of WYO Company submissions, the disposition of transactions which have not passed systems edits and the reconciliation of the totals generated from transaction reports with those submitted on the WYO Company's reconciliation reports.

(5) If a WYO Company rejects an application from a producer, the producer should be notified so that the business can be placed through the NFIP Servicing Agent, or another WYO Company.

(6) Flood insurance coverage will be issued by the WYO Company on a separate policy form and will not be added, by endorsement, to the Company's other property insurance forms.

(7) Premium payment plans can be offered by the WYO Company so long as the net premium depository requirements specified under the NFIP/WYO Program accounting procedures are met. A cancellation by the WYO Company for non-payment of premium will not produce a pro-rata return of the net premium deposit to the WYO Company.

(8) NFIP business will not be assumed by the WYO Companies at any time other than at renewal time, at which time the insurance producer may submit the business to the WYO Company as new business. However, it is permissible to cancel and rewrite flood policies to obtain concurrency of expiration dates with other policies covering the property. Where the insurance agent or producer of record of a flood insurance policy issued by the Administrator has authorized the NFIP, in writing, to release policy information for the conversion of the NFIP coverage to a designated WYO Company represented by the agent or producer of record, in order to facilitate policy issuance and reduce administrative burdens upon the NFIP and WYO Companies and their agents and producers, countersignature requirements in the several States shall not apply.

(i) To facilitate the adjustment of flood insurance claims by WYO Companies, the following procedures will be utilized by WYO Companies.

(1) Under the terms of the Arrangement set forth at Appendix A of this part, WYO Companies will adjust claims in accordance with general Company standards, guided by NFIP Claims manuals. The Arrangement also provides that claim adjustments shall be binding upon the FIA. For example, the entire responsibility for providing a proper adjustment for both combined wind and water claims and flood-alone claims its the responsibility of the WYO Company.

(2) The WYO Company may use its staff adjusters and/or independent adjusters. It is important that the Company's Claims Department verifies the correctness of the coverage interpretations and reasonableness of the payments recommended by the adjusters.

(3) An established loss adjustment Fee Schedule is part of the Arrangement and cannot be changed during an Arrangement year. This is the expense allowance to cover costs of independent or WYO Company adjusters.

(4) The normal catastrophe claims procedure currently operated by a WYO Company should be implemented in the event of a claim catastrophe situation. Flood claims will be handled along with other catastrophe claims.

(5) It will be the WYO Company's responsibility to try to detect fraud (as it does in the case of property insurance) and coordinate its findings with FIA.

(6) Pursuant to the Arrangement, the responsibility of defending claims will be upon the Write-Your-Own Company and defense costs will be part of the unallocated or allocated claim expense allowance, depending on whether a staff counsel or an outside attorney handles the defense of the matter. Claims in litigation will be reported by WYO Companies to FIA upon joinder of issue and FIA may inquire and be advised of the disposition of such litigation.

(7) The claim reserving procedures of the individual WYO Company can be utilized.

(8) Regarding the handling of subrogation, if a WYO Company prefers to forego pursuit of subrogation recovery, it may do so by referring the matter, with a complete copy of the claim file, to FIA. Subrogation initiatives may be truncated at any time before suit is commenced (after commencing an action, special arrangement must be made). FIA, after consultation with FEMA's Office of General Counsel (OGC), will forward the cause of action to OGC or to the NFIP Servicing Agent for prosecution. Any funds received will be deposited, less expenses, in the National Flood Insurance Fund.

(9) Special allocated loss adjustment expenses will include such items as: nonstaff attorney fees, engineering fees and special investigation fees over and above normal adjustment practices.

(10) The customary content of claim files will include coverage verification, normal adjuster investigations, including statements where necessary, police reports, building reports and investigations, damage verification and other documentation relevant to the adjustment of claims under the NFIP's and the WYO Company's traditional claim adjustment practices and procedures. The WYO Company's claim examiners and managers will supervise the adjustment of flood insurance claims by staff and independent claims adjusters.

(11) The WYO Company will extend reasonable cooperation to FEMA's Office of General Counsel on matters pertaining to litigation and subrogation, under paragraph (i)(8) of this section.

(j) To facilitate establishment of financial controls under the WYO Program, the WYO Company will:

(1) Conduct an annual self-audit of flood insurance business in respect to which the audit standards, level and frequency of financial, claims and underwriting audits are set forth at Appendix B of this part.

(2) Submit an annual report of the WYO Company self-audit activities to the Standards Committee established pursuant to Appendix B of this part.

(3) Participate in an evaluation of the WYO Company self-audit plan on at least a triennial basis. The evaluation will be conducted by FIA and the WYO Company internal audit manager. A report of the evaluation will be filed with the Standards Committee and the Administrator.

(4) Participate in WYO Company/FIA Operational Reviews. The FIA Claims Director and the FIA Underwriting Director will conduct a review of the WYO Company flood insurance activities at least once every three (3) years. These reviews, like the internal audit evaluation, will be conducted at the offices of the WYO Company. As a part of these reviews, actual files (up to fifty [50]) will be reconciled with a listing of transactions submitted by the Company under the WYO Statistical Plan. A report of the Operational Review will be filed with the Standards Committee.

(5) Meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported to the National Flood Insurance Program's (NFIP's) Servicing Agent by the WYO Company under the WYO Statistical Plan will be analyzed by the Servicing Agent and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company submissions, the disposition of transactions which do not pass systems edits and the reconciliation of the total generated from transaction reports with those submitted on WYO Company reports.

(6) Cooperate with FEMA's Office of the Comptroller on Letter of Credit matters.

(7) Cooperation with FIA's Claims Director in the implementation of a claims reinspection program.

(8) Cooperation with FIA's Underwriting Director in the verification of risk rating information.

(9) Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

(k) To facilitate the operation of the WYO Program and in order that a WYO Company can utilize its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act the Administrator, for good cause shown, may grant exceptions to and waivers of the regulations contained in this Title relative to the administration of the NFIP.

[Information collection requirements contained in this section approved by Office of Management and Budget under Control No. 3067–0169]

Appendices A and B are added to Part 62 to read as follows:

Appendix A to Part 62

Federal Emergency Management Agency—Federal Insurance Administration

Financial Assistance/Subsidy Arrangement

Purpose: TO ASSIST THE COMPANY IN UNDERWRITING FLOOD INSURANCE USING THE STANDARD FLOOD INSURANCE POLICY

Accounting Data: Pursuant to section 1310 of the Act, a Letter of Credit shall be issued under Treasury Department Circular No. 1075, Revised, for payment as provided for herein from the National Flood Insurance Fund.

Effective Date: October 1, 1985.

Issued by: Federal Emergency Management Agency, Federal Insurance Administration, Washington, D.C. 20472.

Article I—Findings, Purpose, and Authority

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, as amended, ("the Act") recognized the benefit of having the National Flood Insurance Program (the Program) "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Insurance Administration (FIA) recognizes this Arrangement as coming under the provisions of section 1310 of the Act; and

Whereas, the goal of the FIA is to develop a program with the insurance industry where, over time, some risk-bearing role for the industry will evolve as intended by the Congress (section 1304 of the Act); and

Whereas, the Program, as presently constituted and implemented, is subsidized, and the insurer (hereinafter the "Company") under this Arrangement shall charge rates established by the FIA; and

Whereas, this Arrangement will subsidize all flood policy losses by the Company; and

Whereas, this Financial Assistance/Subsidy Arrangement has been developed to involve individual Companies in the Program, the initial step of which is to explore ways in which any interested insurer may be able to write flood insurance under its own name; and

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of structures at risk and because the insurance industry has marketing access through its existing facilities not directly available to the FIA, it has been concluded that coverage will be extended to those who would not otherwise be insured under the Program; and

Whereas, flood insurance policies issued subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the principal vehicle for delivering flood insurance to the public; and

Whereas, the direct beneficiaries of this Arrangement will be those Company policyholders and applicants for flood insurance who otherwise would not be covered against the peril of flood.

Now, therefore, the parties hereto mutually undertake the following:

Article II—Undertakings of the Company

A. In order to be eligible for assistance under this Arrangement the Company shall be responsible for:

1.0 Policy Administration, including

1.1 Community Eligibility/Rating Criteria
1.2 Policyholder Eligibility Determination
1.3 Policy Issuance
1.4 Policy Endorsements
1.5 Policy Cancellations
1.6 Policy Correspondence
1.7 Payment of Agents Commissions

The receipt, recording, control, timely deposit and disbursement of funds in connection with all the foregoing, and correspondence relating to the above in accordance with the Financial Control Plan requirements.

2.0 Claims processing in accordance with general Company standards. The FIA Claims Manual and Adjuster Management Outline, and Adjuster handbook can be used as guides by the Company, along with the National Flood Insurance Program (NFIP) Write-Your-Own (WYO) Financial Control Plan, Claims Questions and Answers Manual, the Flood Insurance Claims Office (FICO) Manual and other instructional materials.

3.0 Reports.

3.1 Monthly Financial Reporting and Statistical Transaction Reporting shall be in accordance with the requirements of Natonal Flood Insurance Program Statistical Plan for the Write-Your-Own (WYO) program and the Financial Control Plan for business written under the WYO Program. These data shall be validated/edited/audited in detail and shall be compared and balanced against Company financial reports.

3.2 Monthly financial reporting shall be prepared in accordance with the WYO Accounting Procedures.

3.3 The Company shall establish a program of self audit acceptable to the FIA or comply with the self audit program contained in the Financial Control Plan for business written under the WYO Program. The Company shall report the results of this self-audit to the FIA annually.

B. The Company shall use the following time standards of performance as a guide:

1.0 Application Processing—15 days (Note: If the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, a request for correction or added monies shall be mailed within 10 days);

1.1 Renewal Processing—7 days;

1.2 Endorsement Processing—7 days;

1.3 Cancellation Processing—15 days;

1.4 Correspondence, Simple and/or Status Inquiries—7 days;

1.5 Correspondence, Complex Inquiries—20 days;

1.6 Supply, Materials, and Manual Requests—7 days;

1.7 Claims Draft Processing—7 days from completion of file examination;

1.8 Claims Adjustment—45 days average from receipt of Notice of Loss (or equivalent) through completion of examination.

1.9 For the elements of work enumerated above, the elapsed time shown is from date of receipt through date of mail out. Days means working, *not* calendar days.

In addition to the standards for timely performance set forth above, all functions performed by the Company shall be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing industries.

These standards are for guidance. Although no immediate remedy for failure to meet them is provided under this Arrangement, nevertheless, performance under these standards can be a factor considered by the Federal Insurance Administrator (the Administrator) in determining the continuing participation of the Company in the Program.

C. The Company shall coordinate activities and provide information to the FIA or its designee on those occasions when a Flood Insurance Catastrophe Office is established.

D. Policy Issuance

1.0 The Flood insurance subject to this Arrangement shall be only that insurance written by the Company in its own name pursuant to the Act.

2.0 The Company shall issue policies under the regulations prescribed by the Administrator in accordance with the Act;

3.0 All such policies of insurance shall conform to the regulations prescribed by the Administrator pursuant to the Act, and be issued on a form approved by the Administrator;

4.0 All policies shall be issued in consideration of such premiums and upon such terms and conditions and in such States or areas or subdivisions thereof as may be designated by the Administrator and only where the Company is licensed by State law to engage in the property insurance business;

5.0 The Administrator may require the Company to immediately discontinue issuing policies subject to this Arrangement in the event Congressional authorization or appropriation for the National Flood Insurance Program is withdrawn.

E. The Company shall establish a bank account, separate and apart from all other Company accounts, at a bank of its choosing for the collection, retention and disbursement of funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. (Reference: Article IV, Section A). The Company shall invest all funds held in the accounts established pursuant hereto, which funds are not necessary to meet current expenditures, in obligations of the United States Government. Such income as is derived from these investments shall be utilized to meet the obligations of the Company pursuant to flood insurance policies issued hereunder.

F. The Company shall investigate, adjust, settle and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company shall be binding upon the FIA.

G. The Company may market flood insurance policies in any manner consistent with its customary method of operation.

Article III—Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company shall be liable for operating, administrative and production expenses, including any taxes, dividends, agent's commissions or any board, exchange or bureau assessments, or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement.

B. The Company shall be entitled to withhold as operating and administrative expenses, other than agents or brokers commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's operating and administrative expenses, except for allocated and unallocated loss adjustment expenses described in C. below, which amount shall equal the average of industry expense ratios for "Other Acq." "Gen. Exp." and "Taxes" as published in the latest available (as of March 15 of the prior Arrangement year) "Best's" Aggregates and Averages Property Casualty, Industry Underwriting—by Lines (1982) for Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril combined (weighted average using premiums earned as weights) calculated and promulgated by the Administrator. Premium income net of reimbursement (net premium income) shall be deposited in a special account for the payment of losses and loss adjustment expenses (see Article II, Section E).

The Company shall be entitled to withhold 15.0% of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet commissions and/or salaries of their insurance agents, brokers, or other entities producing qualified flood insurance applications and other marketing expense.

With the agreement of the Administrator, the company may pay 3% of the company's written premium on the policies covered by this Arrangement for the right to obtain a reimbursement of state or municipal tax paid on the policies covered by this Arrangement.

C. Loss Adjustment Expenses shall be reimbursed as follows:

1. Unallocated loss adjustment shall be an expense reimbursement of 3.3% of the incurred loss (except that it does not include "incurred but not reported").

2. Allocated loss adjustment expense shall be reimbursed to the Company pursuant to Exhibit A, entitled "Fee Schedule."

3. Special allocated loss expenses shall be reimbursed to the Company for only those expenses the Company has obtained prior approval of the Administrator to incur.

D. Loss payments under policies of flood insurance shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Loss payments may include payments as a result of awards or judgments for punitive damages arising under the scope of this Arrangement and policies of flood insurance issued pursuant to this Arrangement provided that prompt notice of any claim for punitive damages is received by the Assistant Administrator of the FIA's Office of Insurance Policy Analysis and Technical Services, along with a copy of any material pertinent to the claim for punitive damages.

E. Premium refunds to applicants and policyholders required pursuant to rules contained in the National Flood Insurance Program (NFIP) "Flood Insurance Manual" shall be made by the Company from funds retained in the bank account established under Article II, Section E and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV.

Article IV—Undertakings of the Government

A. A Treasury Financial Communication System Letter(s) of Credit shall be established by the Federal Emergency Management Agency (FEMA) against which the Company may withdraw funds daily, if needed, pursuant to prescribed Federal Reserve Letter of Credit procedures as implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III, Sections (C), (D), and (E). Request for funds shall be only when net premium income and income derived from investments and disinvestments have been depleted. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit costs.

Request for payment on Letters of Credit shall not ordinarily be drawn more frequently than daily nor in amounts less than $5,000, and in no case more than $5,000,000 unless so stated on the Letter of Credit. This Letter of Credit may be drawn against the Company for any of the following reasons:

1. payment of claim as described in Article III, Section D; and

2. refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund as described in Article III, Section E; and

3. allocated and unallocated Loss Adjustment Expenses as described in Article III, Section C.

B. The FIA shall provide technical assistance to the Company as follows:

1. The FIA's policy and history concerning underwriting and claims handling.

2. A mechanism to assist in clarification of coverage and claims questions.

3. Other assistance as needed.

Article V—Commencement and Termination

A. Upon signature of authorized officials for both the Company and the FIA, this Arrangement shall be effective for the period October 1 through September 30. The FIA shall provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting and eligibility rules.

B. By June 1, of each year, the FIA shall publish in the **Federal Register** and make available to the Company the terms for the re-subscription of this Financial Assistance/Subsidy Arrangement. In the event the Company chooses not to re-subscribe, it shall notify the FIA to that effect by the following July 1.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, or the FIA chooses not to renew the Company's participation, the FIA, at its option, may require (1) the continued performance of this entire Arrangement for one (1) year following the effective expiration date only for those policies issued during the original term of this Arrangement, or any renewal thereof, (2) the transfer to the FIA of:

a. All data received, produced, and maintained through the life of the Company's participation in the Program; and

b. A plan for the orderly transfer to the FIA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance; and

c. All claims and policy files, including those pertaining to receipts and disbursements which have occurred during the life of each policy. In the event of a transfer of the services provided, the Company shall provide the FIA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.

D. Financial assistance under this Arrangement may be cancelled by the FIA in its entirety upon 30 days written notice to the Company by certified mail stating one of the following reasons for such cancellation: (1) Fraud or misrepresentation by the Company subsequent to the inception of the contract, or (2) nonpayment to the FIA of any amount due the FIA. Under these very specific conditions, the FIA may require the transfer of data as shown in Section C., above. If transfer is required, the unearned expenses retained by the Company shall be remitted to the FIA.

E. In the event the Act is amended, or repealed, or expires, or if the FIA is otherwise without authority to continue the Program, financial assistance under this Arrangement may be cancelled for any new or renewal business, but the Arrangement shall continue for policies in force which shall be allowed to run their their term under the Arrangement.

F. In the event that the Company is unable to, or otherwise fails to, carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any Jurisdiction to which the Company is subject, the Company agrees to transfer, and the Government will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event the Government will assume all obligations and liabilities owed to policyholders under such policies arising before and after the date of transfer and the Company will immediately transfer to the Government all funds in its possession with respect to all such policies transferred and the unearned portion of the Company expenses for operating, administrative and loss adjustment on all such policies.

Article VI—Information and Annual Statements

The Company shall furnish to the FIA such summaries and analyses of information in its records as may be necessary to carry out the purposes of the National Flood Insurance Act of 1968, as amended, in such form as the FIA, in cooperation with the Company, shall prescribe. The Company shall be a property/casualty insurer domiciled in a State or territory of the United States. Upon request, the Company shall file with the FIA a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof, as filed with the State Insurance Authority of the Company's domiciliary State.

Article VII—Cash Management and Accounting

A. The FEMA shall make available to the Company during the entire term of this Arrangement and any continuation period required by FIA pursuant to Article V, Section C., the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System upon which the Company may draw for reimbursement of its expenses as set forth in Article IV which exceed net written premiums and interest income collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw.

B. At the end of each fiscal year, the Company shall remit to the FIA any funds in excess of those required to meet expenses for loss and loss adjustment. Such liabilities shall be defined as liabilities established for case reserves and reserves established for losses incurred but not reported, plus $5,000.

C. In the event the Company elects not to participate in the Program in any subsequent fiscal year, the Company and FIA shall make a provisional settlement of all amounts due or owing within three months of the termination of this Arrangement. This settlement shall include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FIA agree to make a final settlement of accounts for all obligations arising from this Arrangement within 18 months of its expiration or termination, except for contingent liabilities which shall be listed by the Company. At the time of final settlement, the balance, if any, due the FIA or the Company shall be remitted by the other immediately and the operating year under this Arrangement shall be closed.

Article VIII—Arbitration

A. If any misunderstanding or dispute arises between the Company and the FIA with reference to any factual issue under any provisions of this Arrangement or with respect to the FIA's non-renewal of the Company's participation, other than as to legal liability under or interpretation of the standard flood insurance policy, such misunderstanding or dispute may be submitted to arbitration for a determination which shall be binding upon approval by the FIA. The Company and the FIA may agree on and appoint an arbitrator who shall investigate the subject of the misunderstanding or dispute and make a determination. If the Company and the FIA cannot agree on the appointment of an arbitrator, then two arbitrators shall be appointed, one to be chosen by the Company and one by the FIA.

The two arbitrators so chosen, if they are unable to reach an agreement, shall select a third arbitrator who shall act as umpire, and such umpire's determination shall become final only upon approval by the FIA.

The Company and the FIA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FIA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article IX—Errors and Omissions

The parties shall not be liable to each other for damages caused by ordinary negligence arising out of any transaction or other performance under this Arrangement, nor for any inadvertent delay, error, or omission made in connection with any transaction under this Arrangement, provided that such delay, error, or omission is rectified by the responsible party as soon as possible after discovery.

Article X—Officials Not to Benefit

No Member or Delegate to Congress, or Resident Commissioner shall be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article XI—Offset

At the settlement of accounts the Company and the FIA shall have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and the FIA. This right of offset shall not be affected or diminished because or insolvency of the Company.

All debt of credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset. Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XII—Equal Opportunity

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

Article XIII—Restriction on Other Flood Insurance

As a condition of entering into this Arrangement the Company agrees that in any area in which the Administrator authorizes the purchase of flood insurance pursuant to the Program, all flood insurance offered and sold by the Company to persons eligible to buy pursuant to the Program for coverages available under the Program shall be written pursuant to this Arrangement.

However, this restriction applies solely to policies providing only flood insurance. It does not apply to policies provided by the Company of which flood is one of the several perils covered, or where the flood insurance coverage amount is over and above the limits of liability available to the insured under the Program.

Article XIV—Access to Books and Records

The FIA and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records which fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. The FIA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

Article XV—Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto shall be subject to the provisions of the National Flood Insurance Act of 1968, as amended, the Flood Disaster Protection Act of 1973, as amended, and Regulations issued pursuant thereto and all Regulations affecting the work that are issued pursuant thereto, during the term hereof.

Article XVI—Relationship Between the Parties (Federal Government and Company) and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, i.e., to assure that any taxpayer funds are accounted for and appropriately expended.

The Company is not the agent of the Federal Government. The Company is solely responsible for its obligations to its insured

under any flood policy issued pursuant hereto.

In witness whereof, the parties hereto have accepted this Arrangement on this——day of————, 1985.

Company

The United States of America Federal Emergency Management Agency

By ———

(Title)

By ———

(Title)

Exhibit A

FEE SCHEDULE

Range (by covered loss)	Fee
Erroneous assignment	$40.00
CWP	70.00
$0.01 to $200.00	70.00
$200.01 to $400.00	90.00
$400.01 to $600.00	110.00
$600.01 to $800.00	130.00
$800.01 to $1,000.00	150.00
$1,000.01 to $1,500.00	180.00
$1,500.01 to $2,000.00	200.00
$2,000.01 to $2,500.00	220.00
$2,500.01 to $3,000.00	240.00
$3,000.01 to $3,500.00	260.00
$3,500.01 to $4,000.00	280.00
$4,000.01 to $4,5000.00	300.00
$4,500.01 to $5,000.00	320.00
$5,000.01 to $6,000.00	350.00
$6,000.01 to $7,000.00	370.00
$7,000.01 to $8,000.00	380.00
$8,000.01 to $9,000.00	400.00
$9,000.01 to $10,000.00	420.00
$10,000.01 to $15,000.00	460.00
$15,000.01 to $20,000.00	490.00
$20,000.01 to $25,000.00	520.00
$25,000.01 to $30,000.00	550.00
$30,000.01 to $35,000.00	580.00
$35,000.01 to $40,000.00	610.00
$40,000.01 to $45,000.00	640.00
$45,000.01 to $50,000.00	670.00
$50,000.01 to $75,000.00	800.00
$75,000.01 to $100,000.00	950.00
$100,000.01 to $125,000.00	1,100.00
$125,000.01 to $150,000.00	1,250.00
$150,000.01 to $175,000.00	1,400.00
$175,000.01 to $200,000.00	1,550.00
$200,000.01 to limits	1,700.00

Allocated fee schedule entry value is the covered loss under the policy based on the standard deductibles ($500 and $50) and limited to the amounts of insurance purchased.

Appendix B to Part 62

National Flood Insurance Program

A Plan to Maintain Financial Control for Business Written Under the Write-Your-Own Program

Under the Write-Your-Own (WYO) Program, the Federal Insurance Administrator (Administrator) may enter into arrangements with individual private sector insurance companies that are licensed to engage in the business of property insurance, whereby these companies may offer flood insurance coverage to eligible property owners utilizing their customary business practices. To facilitate the marketing of flood insurance coverage, the Federal Government will be a guarantor of flood insurance coverage for WYO Company policies issued under the WYO Arrangement. To ensure that any taxpayer funds are accounted for and appropriately expended, the Federal Insurance Administration (FIA) and WYO Companies will implement this Financial Control Plan. Any departures from the requirements of this Plan must be approved by the Administrator. The authority for the WYO Program is contained in 44 CFR Parts 61 and 62, §§ 61.13 and 62.63. The WYO Financial Assistance/Subsidy Arrangement (Arrangement) is hereby made a part of this Plan, and a copy is contained in Part 8 of this Plan.

WYO Companies are subject to audit, examination, and regulatory controls of the various states. Additionally, insurance company operating departments are customarily subject to examinations and audits performed by Company internal audit (and/or quality control) departments and independent CPA firms. It is intended that this Plan utilize to the extent possible, the findings of these examinations and audits as they pertain to business written under the WYO Program (Parts 6 and 7).

The WYO Financial Control Plan contains several checks and balances which can, if properly implemented by the WYO Company, significantly reduce the need for extensive on-site reviews of Company files by the FIA staff or their designee. Furthermore, we believe that this process is consistent with customary reinsurance practices and avoids duplication of examinations performed under the auspices of individual State Insurance Departments, NAIC Zone examinations, and independent CPA firms.

The WYO Financial Control Plan requires the WYO Company to meet the minimum requirements established by the Standards Committee. The Standards Committee consists of three (3) members from FIA, one (1) member from the Federal Emergency Management Agency's (FEMA's) Office of the Inspector General, one (1) member from FEMA's Office of the Comptroller, and one (1) member from each of five (5) designated WYO Companies, pools or other entities.

The WYO Financial Control Plan must require the WYO Company to:

1. Conduct self-audit programs to meet the minimum requirements established by the Standards Committee and the AICPA Insurance Industry Audit Guide.

2. Submit an annual report of the WYO Company self-audit activities to the Standards Committee.

3. Participate in an evaluation of the WYO Company self-audit plan on at least a triennial basis. The evaluation will be conducted by the FIA Examination Division and the WYO Company's internal audit manager. A report of the evaluation will be filed with the Standards Committee and the Administrator.

4. Participate in a WYO Company/FIA Operation Review. The FIA Claims Director or designee and the FIA Underwriting Director or designee will conduct a review of the WYO Company's flood insurance activities at least once every three (3) years. These reviews, like the internal audit evaluation, will be conducted at the offices of the WYO Company. As a part of these reviews, acutal files (up to fifty [50]) will be reconciled with a listing of transactions submitted by the Company under the WYO Statistical Plan. A report of the Operation Review will be filed with the Standards Committee (Parts 3 and 4).

5. Meet the recording and reporting requirements of the WYO Statistical Plan. Transactions reported to the National Flood Insurance Program's (NFIP's) Servicing Facility by the WYO Company under the WYO Statistical Plan will be analyzed by the Servicing Facility and a monthly report will be submitted to the WYO Company and the FIA. The analysis will cover the timeliness of the WYO Company's submissions, the disposition of transactions which do not pass systems edits, and the reconciliation of the total generated from transaction reports with those submitted on the WYO Company's reports (Part 2).

6. Cooperate with FEMA's Office of the Comptroller on Letter of Credit matters.

7. Cooperate with FIA's Claims Director or designee in the implementation of a claims reinspection program (Part 5).

8. Cooperate with FIA's Underwriting Director or designee in the verification of risk rating information.

9. Cooperate with FEMA's Office of the Inspector General on matters pertaining to fraud.

The Standards Committee will review and make a recommendation to the Administrator concerning any adverse action arising from the implementation of the Financial Control Plan. Adverse actions include, but are not limited to:

1. FIA Examination Division's recommendation to perform extensive on-site audits of WYO Company files. On-site audits will be conducted by third-party, independent firms as selected by FEMA.

2. FIA Examination Division's recommendation to not renew a particular Company's WYO arrangement.

3. Complaints by the WYO Company of unprofessional and/or uncooperative actions of FIA staff and/or the NFIP Servicing Facility.

This Plan includes the following guidelines:

Part 1—Model Self-Audit Program's Minimum Standards
Part 2—Statistical Plan Reconciliation Procedures
Part 3—Underwriting Operation Review Procedures
Part 4—Claims Operation Review Procedures
Part 5—Claims Reinspection Program
Part 6—Financial Audits and State Insurance Department Examinations
Part 7—Reports Certifications
Part 8—WYO Financial Assistance/Subsidy Arrangement (Incorporated by Reference)
Part 9—Statistical Plan (Incorporated by Reference)
Part 10—Write-Your-Own (WYO) Accounting Procedures (Manual)

Part 1—Model Self-Audit Program's Minimum Standards

Self-Audit Program Objectives

The objectives are to establish minimum requirements by which all WYO Companies will conduct annual self-audits in the areas of

underwriting, claims, financial control and statistical reporting. These requirements are consistent with guidelines established by the Standards Committee and the AICPA Insurance Industry Audit Guide.

These self-audits should:

1. Evaluate individual risk underwriting and claims handling based on the underwriting and claims examination process.

2. Ensure that standard underwriting and claims programs, systems and procedures are being utilized in an effective and proper manner.

3. Ensure that all financial and statistical reporting is reconcilable and conforms with established goverment procedures.

4. Review the quality of service and identify reasons for problems where applicable.

5. Provide recommendations to correct deficiencies and follow progress until deficiencies have been corrected.

6. Departures from these minimum standards require the written approval of the Federal Insurance Administrator.

Types of Samples

The use of any of the following samples is suitable in meeting the minimum standards of this self-audit program:

1. Judgment Sample—a sample based upon the judgment of the auditor.

2. Block Sample—a sample selected on the basis of consecutive time, with a 100% verification of all items in the "block".

3. Random Sample—a sample based on the concept that each item in the population has an equal chance of being in the sample.

4. Stratified random sample—a sample based on a specific portion of the population (i.e., A Zones, structures with basements, etc.) and random within that portion.

The sample size is adequate if it contains a sufficient number of items to show the same results as would be found in another sample of the same size from the same population. The sample should be a systematic representation of files selected based on a profile amount of premium represented in policy size groups. By using this method, a more meaningful file review could be made approaching 90% accuracy. The following sample sizes are suggested with the random sample or stratified random sample:

Population size	Sample size
0 to 99	27
100 to 149	36
150 to 249	40
250 to 399	45
400 to 599	48
600 to 1499	50
1,500 to 3,499	52
3,500 and up	54

Any other reviews which are conducted such as special ratings, large losses, repetitive losses should be specified and labeled as "special reviews".

Underwriting Audit Outline

1. Review of the Underwriting Department's responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. Through examination of a random sample of underwriting files to measure the quality of work. At a minimum, files should be reviewed to verify the following:

Application Processing

a. Policies are issued for eligible risks.

b. Rates are correct and consistent with the amount of insurance requested on the application.

c. Waiting period for new business is consistent with government regulations.

d. Elevation certification or difference is correctly shown on application.

e. The coverage does not include more than one principal building and/or its contents per policy.

f. No binder is effective unless issued with the authorization of FIA.

g. The FIRM zone shown on the application is applicable to the community in which the property is located.

h. Community shown on application is eligible to purchase insurance under the NFIP.

i. Information on type of building, etc. is fully completed.

j. Applicable deductibles are recorded.

k. A new, fully completed application or a photocopy of the most recent application, or similar documentation, with appropriate updates to reflect current information is on file for each risk, including those formerly written by the NFIP Servicing Facility.

l. If any files to be audited are unavailable, determine the reason for their absence.

Endorsement Processing

a. Complete tasks above as applicable.

b. Review requests for additional coverage to ensure that they are subject to the waiting period rule.

c. Review controls established to ensure that no risk is insured under endorsement provisions that is not acceptable as a new business risk (i.e., a property located in a suspended community).

Cancellation Processing

Verify controls to ensure that one of the necessary reasons for cancellation exists and that the transaction is accompanied by proper documentation.

Renewal Processing

Determine controls to ensure that all necessary information needed to complete the transaction is provided.

Expired Policies

Determine controls to ensure that each step is carried out at the proper time.

Observance of Waiting Period

Establish procedures to document, as a matter of WYO Company business record and in each transaction involving a new application, renewal, and endorsement, that any applicable effective date and premium receipt rules have been observed (44 CFR 61.11). Documentation reasonably suitable for the purpose includes retention of postmarked envelopes (for three (3) years from date, or until the performance of an operational underwriting review, whichever is sooner); date-stamping and retention (via hard-copy or microfilm process) of application, renewal, and endorsement documents and checks received in payment of premium; computer input of document and premium receipt transactions and retention of such records in the computer system; and other reasonable insurer methods of verifying transactions involving requests for coverage and receipts of premium.

Claims Audit Outline

1. Review of the Claims Department's responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. Thorough examination of a random sample of claims files to measure the quality of work. At a minimum, the files should be reviewed to verify the following:

a. Verify controls to ensure that a file is set up for each Notice of Loss received.

b. Review adjuster reports to determine whether they contain adequate evidence to substantiate the payment or denial of claims, including amount of losses claimed, any salvage proceeds, depreciation and potential subrogation.

c. Ascertain that building and contents allocations are correct.

d. Determine whether file contains evidence identifying subrogation possibilities.

e. Verify that partial payments were properly considered in processing the final draft or check.

f. Verify that loss payees are listed correctly (consider insured and mortgagee).

g. Verify that the total amount of the drafts or checks is within the policy limits.

h. Ascertain the relevance and validity of the criteria used by the carrier to judge effectiveness of its claim servicing operation.

i. Confirm that when information is received from an independent adjuster, the examiner either acts promptly to give proper feedback with instructions or takes action to pay or deny the loss.

j. Determine whether the Claims Department is using an "impression of risk" program in reporting misrated policies, etc.

k. Where attempts at fraud occur, verify that these instances are being reported to FIA's Assistant Administrator for Insurance Policy Analysis and Technical Services for referral to FEMA's Inspector General.

l. If any files to be audited are unavailable, determine the reason for their absence.

Statistical Plan Audit Outline

1. Review of the Accounting and Statistical/Data Processing Departments' responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. Review general controls in data processing system to determine whether (1) the controls have been designed according to management direction and known requirements of the Arrangement, (2) the controls are operating effectively to provide reliability of and security over the data being processed, (3) the reporting is made timely and (4) error resubmissions receive appropriate priorities.

Financial Audit Outline

1. Review of the Accounting Department's responsibilities, authorities and composition.

2. Personal interviews with management and key clerical personnel to determine current processing activities, planned changes and problems.

3. Administrative review to verify compliance with company procedures.

4. The reviewer shall test the transactions and operations of the WYO Company to determine whether the program is in conformity with compliance requirements that have a material effect upon the NFIP financial position. Specifically, the auditor shall establish whether the carrier has incurred any unrecorded liabilities—contingent or actual—through failure to comply with, or through violation of, pertinent laws and regulations.

5. The reviewer shall determine whether the carrier is: (1) maintaining an effective control on revenues, expenditures, assets and liabilities; (2) properly accounting for resources, liabilities and operations; (3) submitting external financial reports that contain accurate, reliable, and useful financial data and that they are fairly presented including proper statistical reconciliation procedures; and (4) expending federal funds for authorized purposes.

6. The review of the financial system will be used to determine whether:

a. Accounting is fully responsive to the reporting requirements of FEMA.

b. Financial transactions are executed as authorized and properly recorded.

c. Effective cash management is exercised. The management of cash includes the areas of accounts' receivable and payable and the custodial responsibilities and control systems over cash and the use of Letters of Credit cash advances.

d. Retention of various allowances and/or reimbursements are in conformity with the "Financial Assistance/Subsidy Arrangement".

Part 2—Statistical Plan Reconciliation Procedures

Statistical Plan Reconciliation Objectives

The objectives are: to reconcile transaction detail with monthly financial statements submitted by the WYO Companies; to assess the quality and timeliness of submitted data; and to provide for the identification and resolution of discrepancies in the data. The reliance on computer processing to perform the review of submitted data will help minimize the necessity for on-site audits of WYO Companies. Reconciliation of the statistical reports submitted will be performed by the WYO Companies and independently by CSC (Computer Sciences Corporation), the NFIP servicing contractor.

The review of monthly financial statements and transaction level detail will involve five areas:

1. Financial control;
2. Quality control (audit trails);
3. Quality review of submitted data;
4. Policy rating; and
5. Timeliness of reporting.

Financial Control

1. WYO Companies are required to submit a reconciliation report (Exhibit "A") with the submission of transaction level detail. This report will reconcile the transaction records data to the financial report, explaining any discrepancies.

2. The NFIP will review, at a minimum, the categories on the attached format and produce a similar report reconciling the transaction data to the monthly financial statement submitted by each WYO Company.

3. To facilitate financial reconciliation, transaction records which do not pass various edits employed by the NFIP to review the quality of submitted data will be so identified, but still maintained until the error is corrected by the company in order to reconcile all financial data submitted to the NFIP.

Quality Control

Transaction level detail will be maintained in policy and claim history files for recordkeeping and audit purposes.

Quality Review of Submitted Data

1. Transaction records will be edited for correct format and values.

2. Relational edits will be performed on individual transactions as well as between policy and claim transactions submitted against those policies.

3. Record validation will be performed to check that the transaction type is allowable for the type of policy or claim indicated.

4. Errors will be categorized as critical or non-critical. The rate of critical errors in the submission of statistical data will be the basis by which company performance is reported to the Standards Committee. Critical errors include those made in required data elements (Type A record transactions). Non-critical errors are those made in data elements reported by the WYO Companies at their option (Type B record transactions).

Policy Rating

The rating will be validated by the NFIP for all policies for which the following transactions have been submitted:

1. New Business;
2. Renewals;
3. Endorsements involving type A transaction records; and
4. Corrections of type A transaction records previously submitted for premium transactions.

Incorrect rating will be considered a critical error.

Timeliness of Reporting

WYO Companies will be expected to submit monthly statistical and financial reports within thirty days of the end of the month of record.

The NFIP will produce reports based on review of submitted data within thirty days after the due date or receipt date of WYO Company submissions, whichever is later.

Monthly Reports

Reports for each WYO Company's data submission will be sent to the respective WYO Company and the FIA explaining any discrepancies found by the NFIP review.

Report to WYO Companies:

1. Transaction records that fail to pass the quality review or policy rating edits will be reported to the appropriate Company in transaction detail with error codes, classification of errors as either critical or non-critical and any codes used by the Company to identify the source of the transaction data.

Reports to WYO Companies and the FIA:

2. Summary statistics will be generated for each monthly submission of transaction data, separately for initial and correction transactions. These will include:

a. Absolute numbers of transactions read, transactions accepted and transactions in error, separately for Type A and Type B transactions.

b. Relative values for the number of Type A transactions containing errors stated as percentages of total Type A transactions read.

c. Absolute numbers of critical and non-critical errors.

3. Summary statistics for all policy and claim records submitted to date (which may each be the result of multiple transactions) will be generated, separately for critical and non-critical errors. These will include:

a. Absolute number of policy and claim records on file and those containing errors.

b. Relative values for the number of records containing critical errors.

4. Control totals will be generated for tapes submitted to and processed by the NFIP. These will include:

a. Number of records submitted according to the WYO Company.

b. Number of records actually submitted according to NFIP.

5. In cases where the NFIP reconciliation of transaction level detail with the financial statements does not agree with the reconciliation report submitted by the WYO Company, a separate report will be generated and transmitted to the Company for resolution and to the FIA.

Reporting of Company Rating to the Standards Committee and the Administrator

Satisfactory Rating

An annual end of the year report will be submitted to convey the satisfactory rating of WYO Companies' submission of transaction

data and the reconciliation of this data with financial reports.

Unsatisfactory Rating

The report of an unsatisfactory rating will be submitted as soon as errors and problems reach critical threshold levels. This rating will be based on: continuing problems in reconciling transaction data with financial reports; statistics on the percentage of transactions submitted with critical errors; the percentage of policy and claim records on file that contain critical errors; and, late submission of statistical and financial reports.

BILLING CODE 6718-01-M

EXHIBIT "A"

MONTHLY RECONCILIATION - NET WRITTEN PREMIUMS

COMPANY NAME _____ COMPANY NUMBER _____

MONTH/YEAR ENDING _____ DATE SUBMITTED _____

PREPARER'S NAME _____ TELEPHONE NO. _____

	MONTHLY FINANCIAL REPORT	MONTHLY STATISTICAL TRANSACTION REPORT
NET WRITTEN PREMIUMS	(Income Statement-Line 100)	Total of Pre-Paid premium transactions (11, 17, 20, 23, 26, 29).
UNPROCESSED STATISTICAL:		
+ Prior Month	_____	
- Current Month	_____	
OTHER - EXPLAIN		
(1)	_____	
(2)	_____	
TOTAL ABOVE	_____	_____

COMMENTS:

EXHIBIT "A" (CONT.)

MONTHLY RECONCILIATION - NET PAID LOSSES

COMPANY NAME _____ COMPANY NUMBER _____

MONTH/YEAR ENDING _____ DATE SUBMITTED _____

		MONTHLY FINANCIAL REPORT	MONTHLY STATISTICAL TRANSACTION REPORT
100	NET PAID LOSSES	(Income Statement-Line 115)	Total of loss paid transactions (31, 34, 40, 43, 49, 64). (Extract from transactions 31 and 34 only claim payments)
110	NET SALVAGE RECOVERY		Transactions 52, 67 (Salvage only)
120	NET SUBROGATION RECOVERY		Transactions 52, 67 (Subrogation only)
130	CLAIM PAYMENT RECOVERY		Transactions 52, 67 (Extract claim payment recoveries only.)
	UNPROCESSED STATISTICAL:		
140	+ PRIOR MONTH	_____	
150	- CURRENT MONTH	_____	
160	SALVAGE NOT TO BE REPORTED BY TRANSACTION (Explain)	_____	
170	OTHER - EXPLAIN		
	(1)	_____	
180	TOTAL ABOVE	_____ (Sum of lines 100, 140, 160, 170 minus line 150)	_____ (Line 100 minus sum of lines 110, 120, 130)

COMMENTS:

EXHIBIT "A"

MONTHLY RECONCILIATION - SPECIAL ALLOCATED LAE

COMPANY NAME _____ COMPANY NUMBER _____

MONTH/YEAR ENDING _____ DATE SUBMITTED _____

	MONTHLY FINANCIAL REPORT	MONTHLY STATISTICAL TRANSACTION REPORT
SPECIAL ALLOCATED LOSS ADJUSTMENT EXPENSES	(Other Loss & LAE Calculation-Line 655)	Transactions 71, 74
UNPROCESSED STATISTICAL		
+ Prior Month	_____	
- Current Month	_____	
OTHER - EXPLAIN		
(1)	_____	
(2)	_____	
TOTAL ABOVE	_____	_____

COMMENTS:

BILLING CODE 6718-01-C

EXHIBIT "A" (CONT.)

MONTHLY LOSS RESERVE DOCUMENTATION

COMPANY NAME _____ COMPANY NUMBER _____

MONTH/YEAR ENDING _____ DATE SUBMITTED _____

NUMBER OF OPEN CLAIM CASES WITH RESERVES _____

TOTAL AMOUNT OF RESERVES _____

Part 3—Underwriting/Policy Administration Operation Review Procedures

The objectives are to establish procedures by which the FIA underwriter or designee will conduct at least a triennial review of a WYO Company's flood insurance policy administration/underwriting activities.

Notice

The WYO Company's representative would be notified in writing of the FIA underwriter's plan to conduct an Operation Review. This notice would profide the WYO Company at least 30 days to prepare for the Operation Review.

These Operation Reviews should:

1. Evaluate with the WYO Company's representative the underwriting/policy administration processes used to write flood insurance, furnishing financial and statistical data to the NFIP and ensuring accuracy and service in the issuance of policies.

2. Evaluate the timeliness and accuracy of actual transactions submitted in accordance with the Statistical Plan instructions. Up to 50 policy files should be matched with printed transaction data extracted from NFIP statistical records. FIA may select policies which would be beneficial to the WYO Company's understanding of the underwriting and rating procedures.

3. Provide the WYO Company's representative a briefing on the results of the evaluation under (1) and (2) to facilitate improvements in the underwriting/policy administration process.

4. Provide the WYO Company's representative an opportunity to respond to the evaluation and resolve outstanding matters.

5. Establish a schedule under which the FIA and/or the WYO Company's representative should provide additional information on matters still outstanding at the conclusion of the on-site visit.

6. Provide the WYO Company's representative with a copy of the draft report. The WYO Company's underwriter should be provided with a reasonable amount of time to respond in writing. The WYO Company's written response is to be made part of the Operation Review Report.

7. Provide the Standards Committee with a report on the results of the Operation Review.

Note.—The following information is presented solely as a suggested Underwriting/Policy Administration Operation Review outline. The precise review format and the techniques employed to fulfill review objectives for a specific WYO Company would be based on that Company's processing environment and organizational configuration. In addition, the following information could be used as a guideline for a WYO Company's annual self-audit Program.

Underwriting/Policy Administration Operation Review Outline

1. *WYO Company Summary Report.*

An overview would be provided by the WYO Company to the FIA underwriter prior to the on-site review. See Exhibit "A".

2. *Administrative Review.*

The review provides for the identification of and compliance with existent administrative, technical and functional policies or procedures. See Exhibit "B".

3. *Operational Activity (Applications, Policy and Endorsement Issuance, Cancellations).*

The review provides for a three-year analysis of operational activities as follows:

a. Analysis of policies in force, applications entered, declinations and cancellations.

b. Analysis of type of business (Dwelling, General Property business).

c. Renewal processing systems.

d. Endorsement processing.

e. Analysis of observance of effective date rules relative to the above, as detailed in Part 1, under "Underwriting Audit Outline", at "Observance of Waiting Periods."

4. *File Review.*

The review provides for a sampling of policy files. The general details to be covered in the individual files are in the "Specific Risk Review Checklist" (Exhibit "C"). Also, an "Underwriting Review Summary" (Exhibit "D") would be compiled for the Risk Review portion of the report.

5. *Rating.*

A review of rating activity would cover the following areas:

a. Internal review of rating accuracy.

b. Use of specific rates.

c. Correction procedure.

d. Timeliness of service.

e. Training procedures for staff and/or agents.

6. *Rating Data Verification.*

A sampling of risks would be reviewed. A check would be made to determine:

a. Type of occupancy.

b. Type of structure.

c. Number of floors.

d. Basement type.

e. Elevated with enclosures.

f. Contents location.

g. Program.

h. Community.

i. Zone.

j. Elevation from elevation certificate.

k. Floodproofing.

l. Mortgagee.

m. Deductible.

n. Condominium.

Phone calls or on-site physical inspections of selected risks may be undertaken at the discretion of the WYO Company and the FIA Underwriting Division.

7. *Review of Appeals and/or Complaints (Those to the Insurance Department and those filed directly with the WYO Company).*

The review would include the following:

a. Analysis of actions.

b. Analysis of average time frame required to resolve these cases.

8. *Reports.*

The FIA underwriter or designee would file a report of the Operation Review with the WYO Company representative, the Standards Committee and the Administrator. The minimum level of detail in the report would be as follows:

a. *Satisfactory Rating.* The report would contain the time, place, and a list of participants in the review process. It would also contain the number of files examined along with any comments on their accuracy and condition that would be appropriate.

b. *Unsatisfactory Rating.* The report would be written as specifically as possible. Each unsatisfactory condition would be described and documented. Recommendations to the WYO Company's representative on steps to be taken to rectify any delay, error, or omission would be clearly stated with a time frame in which the corrective action would be accomplished. Follow up procedures would be worked out with the WYO Company's representative which would indicate the dates any progress reports would be filed with the Standards Committee and the Administrator.

Note.—A suggested rating criteria would be the use of an overall error percentage. The overall error percentage would be applied to a standard and a rating would be developed. For instance, an overall error percentage of 20% or higher would be a basis for an unsatisfactory rating until a baseline developed from actual experience is determined. The overall percentage would be developed from the results of the file review. The errors on a file would be categorized as either critical or non-critical. One or more critical errors or three or more non-critical errors identified in a file would be considered as only one error when developing the overall error percentage.

The determination of what constitutes a critical or non-critical error would be based on established significant conditions. For example, critical error conditions would be as follows:

(1) Any error which impacted the correct rating of the policy (coverage amount, zone).

(2) The insuring of an ineligible risk.

Exhibit "A"—WYO Company

Summary Report

The WYO Company would prepare a report summarizing the flood insurance operation within the Company including the following items:

1. A general statement describing the nature of the operational setup, whether in-house or through a vendor.

2. If in-house, the number of processing locations, person in charge of operations, staffing arrangement as appropriate, and operating relationships to other insurance activities.

3. If through a vendor, name and address, number of states involved, WYO Company representative responsible for dealing with vendor.

4. Optionally, exhibits and flow charts as appropriate.

Exhibit "B"—Administrative Review Report

A report would be prepared covering the following points, summarizing the activity in each area, giving examples and identifying those areas in need of attention.

1. *Policywriting, Rating and Endorsements:*

a. Prompt within service guidelines?

b. Is policy writing audited?

c. Are policy writing errors held to a minimum?

d. Is satisfactory action normally taken to ensure established eligibility standards are met?

e. Are there adequate procedures for handing specifically rated property?

2. *Bulletins, Guidelines and Manuals:*

a. Does each underwriter, policywriter, rater and coder have proper manuals available for their use?

b. Is there a procedure for maintaining manuals?

3. *Correspondence Files:*

a. In good order?

b. Procedures for destruction?

4. *Cancellation and Declination:*

a. Are procedures understood and requirements knowledgeably attended to?

5. *New Business:*

a. Are applications being properly checked?

6. *Specific Risk Review:*

Review areas that need attention from "Specific Risk Review Checklist" giving examples and recommendations for improvement.

7. *Renewal Procedures:*

a. Are they satisfactory?

b. Are non-renewal procedures satisfactory?

8. *Mortgagee Procedures:*

a. Are they satisfactory?

Exhibit "C".—Specific Risk Review Checklist

Date: _____

Audit for:

[ ] Single Family Dwelling
[ ] 2-4 Family Dwelling
[ ] Other Residential
[ ] Non Residential

File No. _____
Amount of Ins. _____
Bldg. _____
Cts. _____
Occupancy: _____

	Yes	No	Comment if checked "No"
Application:			
Properly completed?			
Met eligibility—location requirements?			
Policy:			
Properly issued?			
Required Premium Received?			
Limits of Insurance:			
Are limits within the NFIP statutory allowances?			
Comment on conditions below that are unsatisfactory:			
(a) Obstruction below elevated floor of an elevated building			
(b) Property in violation of building codes			
(c) Other			

	Yes	No	Comment if checked "No"
Timeliness of service satisfactory within established time standards:			
(a) Application?			
(b) Policy issuance?			
(c) Notice of declination?			
(d) Renewal or cancellation?			
(e) Premium notices?			
(f) Waiting period observed?			
File satisfactory for:			
(a) Documentation?			
(b) Rate verification?			
(c) Other/_____			

WYO Company Underwriter Comments

Answered by _____
Date _____

Resolution

Exhibit "D".—Underwriting Review Summary

Type of file or item	Total number reviewed	Total number held for manager
1. General property (commercial) files		
2. Single-family and 2-4 family dwelling files		
3. Multi-family dwelling and other general property files		
4. Quote files		
5. Declination files		
Community not eligible		
Incomplete application (unable to rate)		
Risk not eligible		
Premium not submitted		
Premium not sufficient		
6. Other (designate type)		
7		
8		
9		

Part 4—Claims Operation Review Procedures

Claims Operation Review Objectives

The objectives are to establish procedures by which the FIA examiner or designee will conduct at least a triennial review of a WYO Company's flood insurance claims administration activities.

These Claims Operation Reviews should:

1. Evaluate with the WYO Company's claims manager or designee the claims administration processes used to: settle flood insurance claims; provide financial and statistical data to the NFIP; and ensure accuracy and service in the handling of claims.

2. Evaluate the timeliness and accuracy of actual transactions submitted in accordance with the Statistical Plan instructions. Up to 50 policy files should be matched with printed transaction data extracted from NFIP statistical records.

3. Provide the WYO Company's claims manager a briefing on the results of the evaluation under (1) and (2) to facilitate improvements in the claims administration processes.

4. Provide the WYO Company's claims manager an opportunity to respond to the evaluation and resolve outstanding matters.

5. Establish a schedule under which the FIA examiner and/or the WYO Company's claims manager should provide additional information on matters still outstanding at the conclusion of the on-site visit.

6. Provide the WYO Company's claims manager with a copy of the draft report. The WYO Company's claims manager should be provided with a reasonable amount of time to respond in writing. The WYO Company's written response is to be made part of the Operation Review Report.

7. Provide the Standards Committee with a report on the Operation Review.

Notice

The WYO Company's claims manager would be notified in writing of the FIA examiner's plans to conduct and Operation Review. This notice would provide the WYO Company at least 30 days to prepare for the Operation Review.

Note.—The following information is presented solely as a suggested Claims Operation Review Outline. The precise review format and the techniques employed to fulfill review objectives for a specific WYO Company would be based upon the Company's processing environment and organizational configuration. In addition, the following information could be used as a guideline for a WYO Company's annual self-audit Program.

WYO-FIA Claims Operation Review Outline

1. *Claim Department's Responsibilities, Authorities, and Composition.* An overview of the Department's responsibilities, authorities and staffing composition (managerial, technical and clerical) would be provided by the WYO Company to the FIA examiner (Exhibit "A") prior to the on-site review. The overview would contain the following information:

a. Statement of Primary Function(s);

b. Relationship;

(1) WYO Company Management;

(2) Claim Division (FIA);

c. Responsibilities and Authorities; and

d. Staffing Composition.

2. *Administrative Review.* The review provides for the identification of and compliance with existent administrative, technical and functional policies or procedures. It examines relationships with other WYO Company Departments (Executive, Accounting, Underwriting and Data Processing) and inquiries as to the adequacy of controls and security.

a. Administrative Policies and/or Procedures.

b. Technical Procedures.

c. Functional (Clerical) Procedures.

In undertaking this portion of the examination, the "Administrative Review Checklist" (Exhibit "B") would be utilized.

3. *Claim Volumes—Payment (Loss and Expense) Review.* It provides for a three-year analyses of claim frequency and payment (loss and allocated expense) figures. Also, it would inquire into distribution of losses by size of loss and examine unallocated expenses. The analyses would be as follows:

a. Analysis of Claim Volumes and Payments (Exhibit "C").

b. Analysis of Special Allocated Claims Expenses ("Exhibit "C").

c. Analysis of Salvage and Subrogation Recoveries (Exhibit "C").

d. Analysis of Recovery Results (Exhibit "C").

e. Analysis of Losses by Size of Loss (Exhibit "D").

4. *Review of Appeals and/or Complaints (Those to the Insurance Department and those filed directly with the WYO Company).* The review would include the following:

a. Analysis of actions.

b. Analysis of average time frame required to resolve these cases.

5. *File Review.* It provides for a thorough examination of a random sampling of claim files (open and closed) to measure the quality of investigations, adjustments and supervision. Claim Review Summary Worksheets (Exhibit "E") will be completed on each file examined. Specific comments on

the file would be indicated on the worksheet. Further audit letters (Exhibit "F" and "G") would be sent on a representative number of closed cases.

Any circumstances indicating a substantive variance from existing Underwriting Rules would be communicated to the Underwriting Review Team (if present) and to the WYO Company's Underwriting Department.

6. *Worksheet Files.* The FIA claims examiner or designee would maintain separate operation review files for each Company. These files and any draft report written that relies on these files would include the WYO Company's responses. At the WYO Company's request, the FIA claims examiner would provide a copy of these files to the WYO Company's claims manager.

7. *Reports.* The FIA claims examiner or designee would file a report of the Operation Review with the WYO Company (Claims Manager and Internal Audit Manager), the Standards Committee and the Administrator. The minimum level of detail in the report would be as follows:

a. *Satisfactory Rating.* The report would contain the time, place, and a list of participants in the review process. It would contain the number of files examined with any comments on their accuracy and condition that would be appropriate.

b. *Unsatisfactory Rating.* The report would be written as specifically as possible. Each unsatisfactory condition would be described and supported by documentation. Recommendations to the WYO Company's claims manager on steps to be taken to rectify any delay, error, or omission would be clearly stated with a time frame in which the corrective action would be accomplished. Follow up procedures would be worked out with the WYO Company's claims manager which would indicate the dates progress reports would be filed with the Standards Committee and the Administrator.

Note.—A suggested rating criteria would be the use of an overall error percentage. The overall error percentage would be applied to a standard and a rating would be developed. For instance, an overall error percentage of 20% or higher would be a basis for an unsatisfactory rating until a baseline developed from actual experience is determined. The overall percentage would be developed from the results of the file review. The errors on a file would be categorized as either critical or non-critical. One or more critical errors or three or more non-critical errors identified in a file would be considered as only one error when developing the overall error percentage.

The determination of what constitutes a critical or non-critical error would be based on established significant conditions. For example, critical error conditions would be as follows:

(1) An error which resulted in a claim payment where no coverage was present.

(2) An error which resulted in an incorrect payment amount.

(3) Failure to process a claim in accordance with established procedures which caused significant delay in closing.

Exhibit "A"—Claim Department Responsibilities, Authorities, and Composition

The WYO Company would prepare a report summarizing the flood insurance Claim Department's organizational position within the Company and the resources available to perform the claims settlement function.

1. *Attach Organization Chart.*

a. Indicate lines of authority and functional dependencies for only those departments involved in the WYO Company's flood insurance activities.

b. Show the names of key personnel involved in the WYO Company's flood insurance activities.

2. Attach exhibits and the written description of the information required under Item 1. of the WYO–FIA Claims Operations Review Outline.

Exhibit "B"—Administrative Review Checklist

1. *Investigation and Adjustments.*

a. Application of Coverage.

	Yes	No	N/A
(1) Insurable interest?	[ ]	[ ]	[ ]
(2) Is loss from the flood peril?	[ ]	[ ]	[ ]
(3) Did loss occur within policy term?	[ ]	[ ]	[ ]
(4) Does location and description of risk coincide with policy information?	[ ]	[ ]	[ ]
(5) Were proper deductibles applied?	[ ]	[ ]	[ ]
(6) Other insurance considered?	[ ]	[ ]	[ ]
(7) Other losses?	[ ]	[ ]	[ ]

b. Application of Sound Adjusting Practices.

	Yes	No	N/A
(1) Was adjuster's report accurate/complete?	[ ]	[ ]	[ ]
(2) Was an attorney used in the settlement?	[ ]	[ ]	[ ]
(3) Was a technical expert used in the settlement?	[ ]	[ ]	[ ]

c. Documentation.

	Yes	No	N/A
(1) Are damages clearly identified?	[ ]	[ ]	[ ]
(2) Are damages flood related?	[ ]	[ ]	[ ]
(3) Are damages clearly and completely itemized and documented by the adjuster?	[ ]	[ ]	[ ]
(4) Was depreciation considered?	[ ]	[ ]	[ ]
(5) Has subrogation been considered?	[ ]	[ ]	[ ]
(6) Has salvage been properly handled?	[ ]	[ ]	[ ]
(7) Was salvage timely?	[ ]	[ ]	[ ]

2. *Supervision.*

a. Assignments.

	Yes	No	N/A
(1) Are assignments made promptly?	[ ]	[ ]	[ ]
(2) Is insured contacted promptly?	[ ]	[ ]	[ ]

b. Reserves.

	Yes	No	N/A
(1) Are initial reserves indicated on the first report?	[ ]	[ ]	[ ]
(2) Are they adequate?	[ ]	[ ]	[ ]
(3) Does final settlement compare favorably with last reserve established?	[ ]	[ ]	[ ]

c. Diary Control.

	Yes	No	N/A
(1) Automatic?	[ ]	[ ]	[ ]
(2) Timely?	[ ]	[ ]	[ ]
(3) Is file reviewed at diary date with examiner's comments?	[ ]	[ ]	[ ]

d. Examiner Evaluation and Settlement Performances.

	Yes	No	N/A
(1) Is examiner directing adjuster when needed?	[ ]	[ ]	[ ]
(2) Are files documented?	[ ]	[ ]	[ ]
(3) Is adequate control maintained over in-house adjuster?	[ ]	[ ]	[ ]
(4) Is adequate control maintained over outside adjuster?	[ ]	[ ]	[ ]

e. Salvage and subrogation.

	Yes	No	N/A
(1) Is salvage evaluated by salvors?	[ ]	[ ]	[ ]

	Yes	No	N/A
(2) Is salvage disposed of promptly?	[ ]	[ ]	[ ]
(3) Are salvage returns adequate?	[ ]	[ ]	[ ]
(4) Is potential subrogation being promptly and properly investigated?	[ ]	[ ]	[ ]
(5) Are proper subrogation forms used?	[ ]	[ ]	[ ]
(6) Are subrogation and salvage files properly opened, diaried, and referred (if appropriate)?	[ ]	[ ]	[ ]
(7) Are recovery funds for subrogation and salvage being properly handled?	[ ]	[ ]	[ ]

f. Suits.

	Yes	No	N/A
(1) Are suits properly identified?	[ ]	[ ]	[ ]
(2) Are suits being properly evaluated	[ ]	[ ]	[ ]
(3) Are suits being referred to attorneys promptly?	[ ]	[ ]	[ ]
(4) Are attorneys being advised as to handling settlement or compromise?	[ ]	[ ]	[ ]
(5) Are suits being properly controlled?	[ ]	[ ]	[ ]
(6) Are suits files properly diaried?	[ ]	[ ]	[ ]

g. Other.

	Yes	No	N/A
(1) Was there other coverage by the WYO Company?	[ ]	[ ]	[ ]
(2) Were damages correctly apportioned?	[ ]	[ ]	[ ]
(3) Was a solo adjuster used?	[ ]	[ ]	[ ]
(4) Were there prior flood claims?	[ ]	[ ]	[ ]
(5) Were prior damages repaired?	[ ]	[ ]	[ ]
(6) Were prior claim files reviewed?	[ ]	[ ]	[ ]
(7) Was a congressional complaint letter in file?	[ ]	[ ]	[ ]
(8) Was it responded to promptly?	[ ]	[ ]	[ ]

EXHIBIT "C"—Analysis of Claim Volumes and Payments

CLAIM VOLUME

Line	Number of claims CAT#	Number of claims CAT#	Number of claims CAT#	Number of claims CAT#	Total Number of claims non-CAT#
Dwelling form					
General prop					
Totals					

LOSS PAYMENTS

Line	Payments	Payments	Payments	Payments	Payments
Dwelling form					
General prop					
Totals					

SPECIAL ALLOCATED EXPENSE PAYMENTS

Line	Payments	Payments	Payments	Payments	Payments
Dwelling form					
General prop					
Totals					

SALVAGE RECOVERY

Line	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected
Dwelling form					
General prop					
Totals					

SUBROGATION CASES

Line	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected	Number of claims affected
Dwelling form					
General prop					
Totals					

RECOVERY RESULTS ANALYSIS

	19—recoveries				Pct to payments			
	Subrogation		Salvage		Subrogation		Salvage	
	Gross	Net	Gross	Net	Gross	Net	Gross	Net
1st Quarter								
2d Quarter								
3d Quarter								
4th Quarter								
Year totals								

Note.—Gross means the total amount recovered. Net means the "gross" less expenses of recovery.

EXHIBIT "D"

ANALYSIS OF LOSSES BY SIZE OF LOSS

Size	Building coverage		Contents coverage	
	WYO Company number of claims	Total NFIP number of claims	WYO Company number of claims	Total NFIP number of losses
$1 to $2,000				
$2,001 to $5,000				
$5,001 to $10,000				
$10,001 to $15,000				
$15,001 to $20,000				
$20,001 to $50,000				
$50,001 and Up				
Total				
Average Claim Cost	$	$	$	$

ANALYSIS OF LOSS RESERVES

Size	Building coverage		Contents coverage	
	WYO Company number of claims	Total NFIP number of claims	WYO Company number of claims	Total NFIP number of losses
$1 to $2,000				
$2,001 to $5,000				
$5,001 to $10,000				
$10,001 to $15,000				
$15,001 to $20,000				
$20,001 to $50,000				
$50,001 and Up				
Total				
Average Claim Cost	$	$	$	$

Note.—These exhibits will be developed by the NFIP for review with the WYO Company's claims manager.

BILLING CODE 6718-01-M

EXHIBIT "E"

CLAIM REVIEW SUMMARY WORKSHEET

NCPI

Company ________________ Examiner ____________ Date ________

FILE NUMBER	INSURED	DATE				POLICY FORM	CAUSE OF LOSS	ADJUSTER	CLAIM PAYMENT	TIMELINESS			COVERAGE			INVESTIGATION					VERIFY LOSS		ADJUST CLAIM			MISCELLANEOUS					WAS SUPERVISION ADEQUATE	COMMENTS
		OF LOSS	NOTICE REC.	PAID	CLOSED					CONTACT	CLAIM CONTROL	TIMELY & ADEQ. RESERVES		COVERED HAZARD	COVERED PROPERTY	DESCRIPTION OF LOSS	POLICE/FIRE RPT. SECURED	SALVAGE	SUBROGATION	INSURABILITY QUESTION RESOLV	HOW WAS AMOUNT OF LOSS VERIFIED	IS VERIFICATION ADEQUATE	DEDUCTIBLE APPLIED	CO-INS CONSIDER'D	DEPRECIATION TAKEN	STATEMENT OF LOSS	ADJ. REPORT	CLAIMANT RECORD CARD	DRAFT ISSUED CORRECTLY	SETTLEMENT AUTHORITY		

FIA-WYO Program

Part 4 - Second Printing 4-14 June 1, 1984

BILLING CODE 6718-01-C

Exhibit "F".—NCPI

Suggested Letter Where Photocopy of Claim Payment Draft Is Available

Dear _____
Claim # _____
Date of Loss: _____

Our auditors are conducting a routine examination of our operations, one phase of which is a review of claim payments. Will you be good enough to confirm a payment made to you? To provide you with what we believe is sufficient information, a copy of the claim payment draft is enclosed.
Is the information shown on draft #_____(as enclosed) correct? (Yes or No)
Your Signature

If you find the enclosed information to be accurate, please sign in the space provided above. If the information is incorrect in any way, please indicate the discrepancy on the reverse side of this letter. In either event, we would appreciate your returning this letter in the enclosed business reply envelope.
Thank you for your cooperation.
Very truly yours,

Exhibit "G".—NCPI

Suggested Letter Where Photocopy of Claim Payment Draft Is Not Available

Dear _____

Our auditors are conducting a routine examination of our operations, one phase of which is a review of claim payments.
If you find the following record to be accurate, please sign in the space provided. If this information is incorrect in any way, please indicate the discrepancy on the reverse side. In either event, we would appreciate your returning this letter to our auditors in the enclosed business reply envelope.
Thank you for your cooperation.
Very truly yours,

Claim No. Date of Loss Policy Number

Date Claim Paid Amount Paid

Name of Insured Payment Made to

The Information is Correct? (Yes or No)
Your Signature _____

Part 5—Claims Reinspection Program

WYO—NFIP Claims Reinspection Program

To keep WYO-NFIP Claims Management informed, to assist in the overall claims operation, and to provide necessary assurances and documentation for dealing with GAO, Congressional Oversight Committees, and the public, the FIA and WYO Companies have established a Claims Reinspection Program. The Program is comprised of the following major elements:

1. All files are subject to reinspection.
2. Files for reinspection may be randomly selected by flood event, or size of loss, class of business, as determined by WYO-NFIP Claims Management.
3. Ten percent of open files will be reinspected prior to payment unless WYO-NFIP Claims Management determines that a larger or smaller sample is in order (e.g., due to the size of the catastrophe).
4. An agreed upon sample of closed files, by event, will be subjected to reinspection as well.
5. A WYO representative will conduct the reinspection, accompanied by an NFIP General Adjuster.
6. A joint, single report will be issued by the WYO Company representative and the NFIP General Adjuster.
7. Copies of reinspection reports will be forwarded to the Claims Management of both the WYO Company and the NFIP.
8. The reinspection report, adapted for flood insurance business, may be in the format of the "Property Reinspection Report" developed by the Functional Audit Task Force of the National Committee on Property Insurance (EXHIBIT "A").

EXHIBIT "A"

NCPI

PROPERTY REINSPECTION REPORT

INSURED'S NAME _____ FILE # _____ TELEPHONE # _____
INSURED'S ADDRESS _____
ADJUSTER'S NAME _____ OFFICE OR ADDRESS _____
TYPE OF LOSS _____ DATE OF LOSS _____
AMOUNT PAID _____ DATE PAID _____
DATE ASSIGNED _____ DATE INSURED CONTACTED _____ DATE OF INSPECTION _____

REFERENCE IN SCOPE OF DAMAGE YES NO
IF YES - EXPLAIN _____

ADJUSTER USED CORRECT AMOUNTS FOR LABOR/MATERIALS? YES NO
COMBINED WIND AND FLOOD LOSS? Yes No
IF NO - EXPLAIN _____

ADJUSTER APPLIED POLICY PROVISIONS? YES NO
IF NO - EXPLAIN _____

INSURED'S COMMENTS ON HANDLING
DID ADJUSTER VISIT INSURED/LOSS PERSONALLY? YES NO
DID ADJUSTER SUGGEST ANY REPAIRERS, ETC.? YES NO

INSURED'S COMMENTS _____

GENERAL COMMENTS _____

DATE OF REINSPECTION _____ REINSPECTOR SIGNATURE _____

Part 6—Financial Audits and State Insurance Department Examinations

It is expected that audits of WYO Companies by independent accountants and/or state insurance departments, aside from those conducted by the FIA or its designee, will include flood insurance activity. When such audits occur, a financial officer for the WYO Company will notify the FIA, identifying the auditing entity and a brief statement of the overall conclusions that relate to flood insurance and the insurer's financial condition when available. In the case of an audit in progress, a brief statement on the scope of the audit should be provided the FIA. A checklist will be utilized for this reporting and will be provided to WYO Companies by the FIA.

The WYO Companies will maintain on file the reports resulting from audits, subject to on-site inspection by the FIA or its designee. At the FIA's request, the WYO Company will submit a copy of the auditor's opinion, should one be available, summarizing the audit conclusions.

Part 7–Reports Certifications

A. Certification Statement for Monthly Financial and Statistical Reconciliation Reports

I have reviewed the accompaning financial and statistical reconciliation reports of XYZ Company as of _____. All information included in these statements is the representation of the XYZ Company.

Based on my review (with the exception of the matter(s) described in the following paragraphs, if applicable), I certify that I am not aware of any material modifications that should be made to the accompanying reports.

Signed _____

(Responsible Financial Officer)

Date _____

B. Certification Statement for Monthly Statistical Transaction Report

I have reviewed the accompanying statistical transaction report control totals in conjunction with appropriate statistical reconciliation reports. All information included in these reports is the representation of the XYZ Company.

Signed _____

(Responsible Reporting Officer)

Date _____

(National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968), 42 U.S.C. 4001–4128; Reorganization Plan No. 3 of 1978 (43 FR 4193), E. O. 12127, dated March 31, 1979 (44 FR 19367), E. O. 11988, dated May 24, 1977 and 44 CFR Part 8, Delegation of Authority to Federal Insurance Administrator)

Issued at: Washington, D.C.

Jeffrey S. Bragg,

Federal Insurance Administration.

[FR Doc. 85–9747 Filed 4–24–85; 8:45 am]

BILLING CODE 6718–01–M

COMMISSION ON CIVIL RIGHTS

45 CFR Part 701

Statement of Organization and Functions of the Commission

AGENCY: United States Commission on Civil Rights.

ACTION: Final rule.

SUMMARY: This rule summarizes the statutory functions of the Commission and describes the organization of the Commission. Publication of this rule is appropriate in view of the enactment of a new statute and reorganization of the Commission staff.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Glick, Solicitor, U.S. Commission on Civil Rights, Washington, D.C. 20425, (202) 376–8339

SUPPLEMENTARY INFORMATION: Pursuant to 42 U.S.C. 1975a(1), the United States Commission on Civil Rights is required to Separately state and currently publish in the **Federal Register**: (1) Descriptions of its central and field organization including the established places at which, and methods whereby, the public may secure information or make requests; (2) statements of the general course and methods by which its functions are channeled and determined, and (3) rules adopted as authorized by law.

In view of the re-establishment of the Commission by Pub. L. 98–183 of November 30, 1983, and recent staff reorganization, it is appropriate to amend and republish the Commission's statement of organization and functions.

Since these amendments to the Commission's regulations constitute only an informational statement of Commission jurisdiction and its staff structure and does not directly affect the public, it is deemed unnecessary to provide an opportunity for public participation in the rulemaking process.

List of Subjects in 45 CFR Part 701

Organization and functions (government agencies).

45 CFR Chapter VII is amended as set forth below:

Part 701 is revised to read as follows:

PART 701—ORGANIZATION AND FUNCTIONS OF THE COMMISSION

Subpart A—Operations and Functions

Sec.

Subpart B—Organization Statement

Authority: Secs. 2–8, 97 Stat. 1301–1307 (42 U.S.C. 1975–1975f).

Subpart A—Organizations and Functions

§ 701.1 Establishment.

The United States Commission on Civil Rights (hereinafter referred to as the "Commission") is a bipartisan agency of the executive branch of the Government. The predecessor agency to the present Commission was established by the Civil Rights Act of 1957, 71 Stat. 634. This Act was amended by the Civil Rights Act of 1960, 74 Stat. 86; the Civil Rights Act of 1964, 78 Stat. 241; by 81 Stat. 582 (1967); by 84 Stat. 1356 (1970); by 86 Stat. 813 (1972); and by the Civil Rights Act of 1978, 92 Stat. 1067. The present Commission was established by the United States Commission on Civil Rights Act of 1983, 97 Stat. 1301. The statutes are codified in 42 U.S.C. 1975–1975f. (Hereinafter, the 1983 Act will be referred to as "the Act.")

§ 701.2 Responsibilities.

(a) The Commission's authority under section 5 of the Act may be summarized as follows:

(1) To investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of color, race, religion, sex, age, handicap, or national origin;

(2) To study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap or national origin or in the administration of justice;

(3) To appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(4) To serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin;

(5) To investigate sworn allegations that citizens are being accorded or denied the right to vote in Federal elections as a result of patterns or practices of fraud or discrimination;

(6) To appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are of eastern and southern European ethnic groups and report its findings to the Congress.

(b) Under section 5(c) of the Act, the Commission is required to submit reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable.

(c) In fulfilling these responsibilities the Commission is authorized by the Act to hold hearings and to issue subpenas for the production of documents and the attendance of witnesses; to consult with governors, attorneys general, other representatives of State and local governments, and private organizations; and is required to establish an advisory committee in each State. The Act also provides that all Federal agencies shall cooperate fully with the Commission so that it may effectively carry out its functions and duties.

Subpart B—Organization Statement

§ 701.10 Membership of the Commission.

(a) The Commission is composed of eight members, not more than four of whom may be of the same political party. Four members are appointed by the President: Two members are appointed by the President pro tempore of the Senate and two members are

appointed by the Speaker of the House of Representatives.

(b) The Chairman and Vice Chairman of the Commission are designated by the President with the concurrence of a majority of the Commission's members. The Vice Chairman acts as Chairman in the absence or disability of the Chairman or in the event of a vacancy in that office.

(c) No vacancy in the Commission affects its powers and any vacancy is filled in the same manner and is subject to the same limitations with respect to party affiliations as previous appointments.

(d) Five members of the Commission constitute a quorum.

§ 701.11 Commission meetings—Duties of the Chairman.

(a) At a meeting of the Commission in each calendar year, the Commission shall, by vote of the majority, adopt a schedule of Commission meetings for the following calendar year.

(b) In addition to the regularly scheduled meetings, it is the responsibility of the Chairman to call the Commission to meet in a special open meeting at such time and place as he or she shall deem appropriate; *provided however,* that upon the motion of a member, and a favorable vote by a majority of Commission members, a special meeting of the Commission may be held in the absence of a call by the Chairman.

(c) The Chairman, after consulting with the Staff Director, shall establish the agenda for each meeting; *provided however,* that at the meeting of the Commission such agenda may be modified by the addition or deletion of specific items pursuant to the motion of a member and a favorable vote by a majority of the members.

(d) In the event that after consulting with the members of the Commission and consideration of the views of the members, the Chairman determines that there are insufficient substantive items on a proposed meeting agenda to warrant holding a scheduled meeting, the Chairman may cancel such meeting.

§ 701.12 Staff Director.

A Staff Director for the Commission is appointed by the President with the concurrence of a majority of the Commissioners. The Staff Director is the Chief Executive Officer of the agency.

§ 701.13 Staff organization and functions.

The Commission staff organization and function are as follows:

(2) *Office of the Staff Director.* Under the direction of the Staff Director, this Office defines and disseminates to staff, policies established by the Commissioners; develops program plans for presentation to the Commissioners; evaluates program results; supervises and coordinates the work of other agency offices; manages the administrative affairs of the agency and conducts agency liaison with the Executive Office of the President, the Congress and other Federal agencies.

(b) *Office of the Deputy Staff Director.* Under the direction of the Deputy Staff Director, this Office is responsible for the day-to-day administration of the agency; evaluation of quantity and quality of program efforts; personnel administration and the supervision of Office Directors who do not report directly to the Staff Director. Units reporting directly to the Office of Deputy Staff Director are:

(1) *Equal Employment Opportunity Unit.* Under the direction of the Equal Employment Opportunity Officer, this Unit is responsible for the conduct of the agency's inhouse Equal Employment Opportunity Program.

(2) *Solicitor's Office.* Under the direction of the Solicitor, this Office is responsible for administrative law matters, including contracts, openness in government and government ethics, and the legal aspects of personnel, and labor relations issues.

(3) *Planning and Coordination Unit.* Under its Director, this unit is responsible for: coordinating the presentation of project proposals and coordinating the assignment of resources to approved projects: developing goals and priorities for projects and evaluating their implementation and coordinating periodic program reports.

(c) *Office of the General Counsel.* Under the direction of the General Counsel, who reports directly to the Staff Director, this Office serves as legal counsel to the Commissioners and to the agency; plans and conducts hearings and consultations for the Commission; conducts legal studies; prepares reports of legal studies and hearings; drafts or review proposals for legislative and executive action and reviews all agency publications and congressional testimony for legal sufficiency.

(d) *Office of Program and Policy.* Under the direction of an Assistant Staff Director, who reports directly to the Staff Director, this Office is responsible for the development of concepts for programs, projects and policies directed toward the achievement of Commission goals; program management and the preparation of the publication *New Perspectives.*

(e) *Office of Management.* Under the direction of an Assistant Staff Director, this Office is responsible for all administrative, management and facilitative services necessary for the efficient operation of the agency, including financial management, personnel, publications and the National Clearing House Library.

(f) *Office of Federal Civil Rights Evaluation.* Under the direction of an Assistant Staff Director, this Office is responsible for: monitoring, evaluating and reporting on the civil rights enforcement effort of the Federal Government; preparing documents which articulate the Commission's views and concerns regarding Federal civil rights to Federal agencies having appropriate jurisdiction.

(g) *Office of Research.* Under the direction of an Assistant Staff Director, this Office is responsible for: conducting or stimulating studies to advance basic knowledge of the extent, causes and consequences of civil rights denials; preparing monographs dealing with subjects which are current national civil rights issues; monitoring, planning and conducting consultations on the civil rights implications of Federal programs and policies and current civil rights issues.

(h) *Office of Congressional and Public Affairs.* Under the direction of an Assistant Staff Director, this Office is responsible for liaison with the news media and the preparation of periodical publications on civil rights issues; liaison with committees and members of Congress, monitoring legislative activities relating to civil rights and preparing testimony for presentation before committees of Congress when such testimony has been requested by a committee; planning and managing conferences at which the Commission receives information regarding civil rights issues; establishing and maintaining liaison with government and private civil rights agencies; representing the Commission at government and private organization conferences and conventions; managing the Commissions consumer affairs program.

(i) *Office of Regional Programs.* Under the direction of an Assistant Staff Director, this Office is responsible for: Directing and coordinating the programs and work of the regional offices and State Advisory Committees to the Commission on Civil Rights and maintaining liaison between the regional offices and the various headquarters offices of the Commission.

(j) *Regional Offices.* The addresses of the Regional Offices of the Commission and the States which they serve are:

Region I

New England Regional Office, 55 Summer Street, Eighth Floor, Boston, Massachusetts 02110, (617) 223–4671
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont

Region II

Eastern Regional Office, Jacob K. Javits Building, 26 Federal Plaza, Room 1639, New York, N.Y. 10278, (212) 264–0400
New Jersey and New York

Region III

Mid-Atlantic Regional Office, 2120 L Street NW., Room 510, Washington, D.C. 20037, (202) 254–67177
Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia

Region IV

Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue NE., Room 362, Atlanta, Georgia 30303, (404) 221–4391
Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee

Region V

Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353–7371
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin

Region VI

Southwestern Regional Office, Heritage Plaza, 418 South Main, First Floor, San Antonio, Texas 78204, (512) 229–5570
Arkansas, Louisiana, Oklahoma, Texas, and New Mexico

Region VII

Central States Regional Office, 911 Walnut Street, Room 3103, Kansas City, Missouri 64106, (816) 374–5253
Iowa, Kansas, Missouri, and Nebraska

Region VIII

Rocky Mountain Regional Office, The Executive Tower Building, 1405 Curtis Street, Suite 2950, Denver, Colorado 80202, (303) 844–2211
Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

Region IX

Western Regional Office, 3660 Wilshire Boulevard, Suite 810, Los Angeles, California 90010, (213) 688–3437
Arizona, California, Hawaii, and Nevada

Region X

Northwestern Regional Office, 915 Second Avenue, Room 2854, Seattle, Washington 98174, (206) 442–1246
Alaska, Idaho, Oregon, and Washington.

Dated: April 18, 1985.

Linda Chavez,

Staff Director.

[FR Doc. 85–9866 Filed 4–24–85; 8:45 am]
BILLING CODE 6335-01-M

Proposed Rules

Federal Register
Vol. 50, No. 80
Thursday, April 25, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

Revised Grade Standards for American Pima Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and notice of meeting.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to reduce the number of physical grade standards for American Pima cotton from nine to six. There would also be a wider range of color included within each of the proposed standards.

This action is proposed because the color of American Pima cotton has changed since the standards were last revised in 1970. The changing color is due to the introduction and cultivation of new varieties since that time.

The proposed standards are intended to provided a more meaningful and accurate description of the qualities found in the American Pima cotton crop. The proposed physical standards will be available for inspection at the American Pima Standards Conference. Interested persons may also examine supporting data and offer comments and suggestions for the record.

DATES: Comments must be received on or before May 28, 1985. The meeting will be held on May 15, 1985, in Memphis, Tenn.

ADDRESSES: Written comments may be sent to H.H. Ramey, Jr., Chief, Standards and Testing Branch, Cotton Division, AMS, USDA, Washington, D.C. 20250, (202) 447-2167. The meeting will be held at the Cotton Division AMS Office, 4841 Summer Ave., Memphis, Tenn. 38122.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined not be be a"major rule" since it does not meet the criteria for a major regulatory as stated in the Order.

William T. Manley, Deputy Administrator, AMS, has certified that this action would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because American Pima cotton accounts for less than one percent of the annual total U.S. cotton production, the revised standards would not have the requisite economic impact. The proposed changes do not impose any additional costs or duties upon users of the service or any other segment of the cotton industry. Further, the standards are applied equally to all size entities by employees of the Department and would be revised to reflect current industry practices.

Pursuant to the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), any standard or change or replacement to the standards shall become effective not less than one year after publication of a final rule establishing the changes (7 U.S.C. 56). It is anticipated that if adopted these proposed changes would be implemented on July 1, 1986, to coincide with the beginning of the crop year.

Background

Pursuant to the authority contained in the United States Cotton Standards Act (7 U.S.C. 51), the Secretary of Agriculture has established the official cotton standards of the United States for the grades of American Pima cotton which provide a basis for the determination of value and quality for commercial purposes.

The existing official cotton standards for the grades of American Pima cotton are listed and described in the regulations at 7 CFR 28.501-28.510. There are nine physical standards represented by practical forms, and one descriptive standard for which a practical form is not made.

The first grade standards for American Pima cotton were promulgated by USDA in 1918. They have been revised several times since, mainly because of changing varietal characteristics and harvesting practices.

The last complete revision of the grade standards became effective in 1970 (34 FR 9847). The changes included permitting a wider color range within the standards from white to yellow, reducing the size of leaf particles, reducing the bark in quantity and size in the lower grades, and changing the name of the cotton from American Egyptian to American Pima.

Need for Revising Standards

Color

The Cotton Division of AMS annually conducts a Color and Trash Survey of the American Pima cotton crop. Cotton samples, randomly selected from those submitted for classification, are measured on the Nickerson-Hunter cotton colorimeter. The color readings taken from the annual surveys show that over the past several years there has been a slight but perceptible shift in the overall color of the American Pima cotton crop. The color shift has been from white to a creamy color which tends toward yellow as the color deepens.

This gradual shift in color results from a genetic characteristic of new American Pima cotton varieties developed since the current standards went into effect, and it mirrors the cultivation of these new varieties.

In 1970, Pima S-4 was the predominent variety planted. The Pima S-5 variety was introduced in 1975 and by 1980 was the only variety grown. Starting in 1981, Pima S-5 has gradually been replaced by Pima S-6. By 1984, 93 percent of the American Pima cotton harvested was Pima S-6.

The color shift generally corresponds with these varietal changes, and was especially pronounced in 1983 when the amount of Pima S-6 harvested increased to 31 percent over 9 percent in 1982. The 1984-85 color readings show that the trend continued strongly last season.

A significant amount of American Pima cotton now tends to fall outside the color range of the grade standards. Since the grade standards exist to help describe the quality of the cotton accurately, it appears that the color range of each grade standard should be widened to include more of the creamy-yellow that is a natural characteristic of the Pima S-6 variety.

Number of Standards

Nearly all the cotton in recent years has been graded into only three of the 10 grades. Grade Nos. 3, 4, and 5 included 89.3 percent of the 1982 crop, 91.1 percent of the 1983 crop, and 91.3

percent of the 1984 crop. The remaining cotton has been more evenly distributed among the other grades.

Aside from this concentration of cotton into a few grades, informed comments from the trade have been received which assert that the grade standards are too close together and not easily differentiated, especially Grade Nos. 6 through 9. As measured on the colorimeter, the color range of the nine physical American Pima standards covers a reflectance area equivalent to only 3½ Upland cotton grades.

The closeness of the grades is emphasized by the Cotton Division's measurement of color within bales of American Pima cotton purchased for use in standards work. Samples from bales in the lower grades often show a color variability of up to 3 grades within the same bale of cotton, and sometimes 4 grades.

In addition, the narrow color tolerances in the lower grades of the present standards are not justified by marketing data. The volume of cotton falling into the low grades is very small and the price differences are insignificant. This is largely attributable to the fact that the spinning performance of American Pima cotton is not easily differentiated among the lower grades.

On the basis of the above information, a reduced number of American Pima cotton grade standards would provide a more meaningful description of the range of quality found in the crop than do the current standards.

Public Meetings

AMS has held a series of informal open meetings with interested members of the public to discuss the need to revise the standards and the anticipated revisions. These meetings took place in El Paso, Texas on September 10, 1984; Phoenix, Arizona on September 11, 1984; and San Antonio, Texas on January 25, 1985. All segments of the U.S. cotton industry that would be affected by changes in the standards were represented at these meetings. Comments were solicited and questions answered. All of those voicing an opinion were in favor of the revisions proposed herein.

The proposed physical standards will be presented at a formal American Pima Standards Conference to be held by the Cotton Division, AMS, in Memphis, Tennessee, May 15, 1985. Participants will be afforded the opportunity to inspect the proposed standards, examine the supporting data, and offer comments and suggestions for the record.

Proposed Revisions

In consideration of the foregoing, AMS proposes to reduce the number of physical grade standards for American Pima cotton from 9 to 6. This revision would involve consolidating some of the existing grades and adjusting the amount of trash in each of the revised grades. Concurrently, each of the physical grade standards would be revised to include more color. The color quadrants of the physical standards would be extended to include more creamy yellow as determined by the colorimeter, thus encompassing a larger portion of the crop.

The proposed grade standards can be roughly compared to the current grade standards as follows:

Proposed Standards	Current standards	
	Color reading	Approximately leaf and/or bark levels
Grade 1	Grade 1 & 2	Grade 2.
Grade 2	Grade 3	Grade 3.
Grade 3	Grade 4	Grade 4.
Grade 4	Grade 5	Grade 5.
Grade 5	Grade 6 & 7	Grade 7.
Grade 6	Grade 8 & 9	Grade 9.
Grade 7	Grade 10	Grade 10.

These proposed revisions would be effected by revising § 28.507 to designate Grade No. 7 as the descriptive standard for all cotton inferior in grade to Grade No. 6. Grade Nos. 8, 9, and 10 would be removed by deleting §§ 28.508, 28.509, and 28.510.

The table of symbols and code numbers for grades of American Pima cotton contained in § 28.525 would also be amended to conform with the proposed revisions to the standards.

The physical standards are represented by practical forms which are available for purchase pursuant to section 28.123 of the regulations. If the proposed changes are adopted, the fees charged for practical forms will be reviewed and changed if necessary and appropriate.

List of Subjects in 7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staples, Market News, Testing.

PART 28—[AMENDED]

Accordingly, it is proposed to amend Subpart C, Part 28, Chapter I, Title 7 of the Code of Federal Regulations as shown. The Table of Contents would be amended accordingly.

1. The authority citation for Part 28, Subpart C reads as follows:

Authority: Secs. 28.501 to 28.525 issued under Sec. 10, 42 Stat. 1519, 7 U.S.C. 61. Interpret or apply Sec. 6, 42 Stat. 1518, as amended; 7 U.S.C. 56.

§§ 28.501, 28.502, 28.503, 28.504, 28.505, 28.506 [Amended]

2. In all of the following sections it is proposed to remove the date "1970" and replace it with "1986": Sections 28.501, 28.502, 28.503, 28.504, 28.505, 28.506.

3. Section 28.507 would be amended by revising it to read as follows:

§ 28.507 Grade No. 7.

American Pima cotton which in grade is inferior to Grade No. 6 shall be designated as "Grade No. 7."

§§ 28.508, 28.509, and 28.510 [Removed]

4. Sections 28.508, 28.509, and 28.510 would be removed.

5. Paragraph (b) of § 28.525 would be amended by revising it to read as follows:

§ 28.525 Symbols and code numbers.

* * * * *

(b) *Symbols and Code Numbers for Grades of American Pima Cotton.*

Full grade name	Symbol	Code No.
Grade No. 1	AP 1	01
Grade No. 2	AP 2	02
Grade No. 3	AP 3	03
Grade No. 4	AP 4	04
Grade No. 5	AP 5	05
Grade No. 6	AP 6	06
Grade No. 7	AP 7	07

* * * * *

Dated: April 19, 1985.

William T. Manley,

Deputy Administrator Marketing Programs.

[FR Doc. 85-9968 Filed 4-24-85; 8:45 am]

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Federal Crop Insurance Corporation

7 CFR Part 430

[Doc. No. 1972S]

Sugar Beet Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years. The intended effect of this rule is provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records;

(2) changing the method of computing indemnities when acreage, share or practice is underreported; (3) changing the method of crediting the replanting payments; (4) changing the stage guarantees; (5) allowing inspection of harvested sugar beets within 72 hours after harvest; (6) changing the cancellation and termination dates in certain counties; (7) defining total production to count when an inspection is not made within 48 hours after harvest; (8) defining at what stage of guarantee a replanting payment will be determined; (9) adding a definition for "Loss ratio"; (10) amending definitions for the terms "Crop year" and "Harvest"; and (11) deleting Appendix A. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than May 28, 1985, to be sure of consideration.

ADDRESS: Written coments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures establishes by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under the procedures. The sunset review date established for these regulations is January 1, 1990.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs of prices for consumers, individual industries, federal, State, or local governments, or a geographic region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment not an Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the sugar beet policy are:

1. Section 4.b.—Eliminate the current second stage guarantee and make the current third stage guarantee the second stage gurantee to provide protection which more closely reflects the investment cost of producing sugar beets after the first stage. Sugar beets which are destroyed in the second stage will now receive a full indemnity.

2. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an acutal production history (APH) basis. Coverages will, therefore, reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1990 crop year until their loss experience causes them to loss the advantage, whichever is earlier.

Remove the provisions for the transfer of insurance experience and for premium computation when participation has been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

3. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. in cases when the billing date for a crop has passed on the date the replanting payment is made it will be deducted and applied to payment of the billed premium. This is a change from the current practice of applying the replanting payment to the outstanding premium in all cases.

4. Section 8.b.—Add a new section to provide FCIC the right to inspect any harvested sugar beets which are not delivered to or acceptable under the contract within 72 hours after harvest. This inspection will give us the opportunity to appraise the sugar beets closer to the time of damage.

5. Section 9.d.—Allow the guarantee only on the acreage, share or practice reported but credit production on the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted if the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the complexity of calculations.

6. Section 9.e.—Add a new provision to give FCIC the right to count 90 percent of the appraised gross weight of production harvested if the producer does not notify us within 48 hours.

7. Section 9.f.—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Currently, the total of any replanting payment and indemnity cannot exceed the FCIC liability on the unit in the event of partial loss.

8. Section 9.f.(1)(a)—Clarify the stage guarantee in determining a replanting payment.

9. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

10. Section 15.e.—Change cancellation date from July 15 to August 31 in Arizona and Imperial County, California. Add a November 30 termination date for all other California counties. These changes are made to have a uniform billing date in California.

11. Section 17.—Add a definition for "Loss ratio." Redefine "Crop year" and "Harvest."

12. In addition to the policy changes, FCIC also proposes to eliminate the codification of Appendix A. The FCIC service offices will be able to advise a producer if insurance is offered in any county.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 430

Crop Insurance, Sugar beets.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to revise and reissue the Sugar Beet Crop Insurance Regulations (7 CFR Part 430), effective for the 1986 and succeeding crop years, to read as follows:

PART 430—SUGAR BEET CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Year

§ 430.1 Availability of sugar beet crop insurance.

Insurance shall be offered under the provisions of this subpart on sugar beets in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 430.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for sugar beets which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 430.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 430) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

§ 430.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the Contract.

§ 430.5 Good faith reliance on misrepresentation

Notwithstanding any other provision of the sugar beet insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 430.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the sugar beet crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 430.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the sugar beet crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the **Federal Register** upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discountinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a sugar beet contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Sugar Beet Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Sugar Beet—Crop Insurance Policy

(This is a continuous contract. Refer to section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured to the insured shown on the accepted Application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;

(2) Fire;

(3) Insects;

(4) Plant disease;

(5) Wildlife;
(6) Earthquake;
(7) Volcanic eruption; or
(8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(8).

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants, or employees;

(2) The failure to follow recognized good sugar beet farming practices;

(3) The impoundment of water by any governmental, public, or private dam or reservoir project; or

(4) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be sugar beets grown under a contract with a processor for processing as sugar, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be sugar beets planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured sugar beets at the time of planting.

d. We do not insure any acreage:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(2) Which is irrigated and an irrigated practice is not provided for in the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(3) Which is destroyed, it is practical to replant to sugar beets and such acreage is not replanted;

(4) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(5) Of sugar beets not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year [the Contract must be executed and effective before you report your acreage.];

(6) Planted to a type of variety of sugar beets not established as adapted to the area or excluded by the actuarial table;

(7) Planted to sugar beets:

(a) The preceding crop year in Michigan, Minnesota, North Dakota and Ohio unless the acreage is designated as insurable by the actuarial table; or

(b) The two preceding crop years in all other states unless the acreage is designated as insurable by the actuarial table;

(8) In California, except Imperial county, planted before filing of the application until a normal stand is obtained;

(9) Of volunteer sugar beets; or

(10) Planted with another crop.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water, at the time of planting, to carry out a good sugar beet irrigation practice; and

(2) Any loss of production caused by failure to carry out a good sugar beet irrigation practice, except failure of the water suppy from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. Acreage which is planted for the development or production of hybrid seed or for experimental purposes is not insured unless we agree in writing to insure such acreage.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress if we advise you of the limit prior to planting.

3. Report of acreage, share, and practice

You must report on our form:

a. all the acreage of sugar beets in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any sugar beets planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantees in the actuarial table are the second stage guarantees. The first stage guarantee is 60 percent of the second stage guarantee. The stages are:

(1) First stage applies from planting until July 1 except in California and Arizona where the first stage is from planting until the earlier of thinning or 90 days after planting. The first stage also applies to any acreage damaged in the first stage to the extent that growers in the area generally would not further care for the sugar beets.

(2) Second stage applies to all insured sugar beets after the first stage.

The production guarantee applicable to any acreage within a unit will be that established for the stage reached by the sugar beets on such acreage.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent [1-½%] simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1984 crop year under the terms of the experience table contained in the sugar beet policy in effect for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1990 crop year.

(2) The premium reduction will not increase because of favorable experience.

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the policy in effect for the 1985 crop year.

(4) Once the loss ratio exceeds .80, no further premium reduction will apply.

(5) Participation must be continuous.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you, or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches when the sugar beets are planted and ends at the earliest of:

a. Total destruction of the sugar beets;

b. Harvest of the unit;

c. Final adjustment of a loss; or

d. The following calendar date in which the sugar beets are normally harvested:

(1) July 15 for Arizona and Imperial County, California;

(2) The last day of the 12th calendar month after the date of planting on the unit in all other California counties, unless a request for extension of the insurance period is received before such date and we approved the request;

(3) November 25 in Ohio; and

(4) November 15 in all other states.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant sugar beets damaged due to any insured cause [To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit.];

(b) During the period before harvest, the sugar beets on any unit are damaged and you decide not to further care for or harvest any part of them;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the sugar beets and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested sugar beets (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the sugar beets on the unit;

(b) Harvest of the unit; or

(c) The calendar date for the end of the insurance period.

b. We must be given the opportunity to inspect within 72 hours after harvest any harvested sugar beet production on any unit for which you have given notice of probable loss, if such production is not acceptable under the contract with the processor due to insurable causes.

c. You may not destroy or replant any of the sugar beets on which a replanting payment will be claimed until we give consent.

d. You must obtain written consent from us before you destroy any of the sugar beets which are not to be harvested.

e. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the sugar beets on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of sugar beets on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of sugar beets to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (tons) to be counted for a unit will include all harvested and appraised production.

(1) The production to count for any harvested production which is not acceptable under the contract with the processor and upon which we were not given the opportunity to make an inspection within 72 hours after harvest, will be 90 percent of the appraised gross weight of such production.

(2) Any harvested production of sugar beets will be adjusted by:

(a) Dividing the average percentage of sugar in such sugar beets, by the percentage of sugar shown in the actuarial table; and

(b) Multiplying the results (round to three places) by the number of tons of such sugar beets.

The average percentage of sugar will be determined by the processor from individual tests taken at the time of delivery. If individual tests of sugar content are not made at the time of delivery, the factor will be 1.000.

(3) Any harvested sugar beets which are damaged due to insurable causes and are not acceptable under the contract with the processor will be adjusted by:

(a) Dividing the value of such sugar beets by the value of undamaged sugar beets containing the percentage of sugar shown in the actuarial table; and

(b) Multiplying the results by the number of tons of such sugar beets.

(4) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good sugar beet farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Only the appraised production in excess of the difference between the first and second stage production guarantee for acreage not covered by (a) and (b) above and which does not qualify for the second stage guarantee will be counted except as provided in (d) below; and

(d) The entire appraisal for uninsured causes.

(5) There will be no adjustment for quality on any appraisal.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of sugar beets becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(7) The amount of production of any harvested or unharvested sugar beets may be determined on the basis of field appraisals or inspections conducted after the end of the insurance period.

(8) If you elect to exclude hail and fire as insured causes of loss and the sugar beets are damaged by hail or fire, appraisals will be made in accordance with Form FCI–78, "Request to Exclude Hail and Fire."

(9) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured sugar beets replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit as determined on the final planting date.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the second stage guarantee;

(b) Initially planted prior to the date we determine reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting, but will not exceed the price election for one ton times your share.

If the information reported by you results in a lower premium than the actual premium determined to be due, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the **Federal Register** semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the sugar beets are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire

insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for preminums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be made on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party).

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and Access to Farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale, or other disposition of all sugar beets produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of Contract: Cancellaton and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish us, satisfactory records of acreage and production for:

(1) The previous crop year by the cancellation date for Imperial County California and all other states;

(2) The corp year prior to the previous crop year in all other California counties.

If you show, prior to the cancellation date, to our satisfaction, that records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the 10-year average yield computed from records for the 10 years immediately preceding the current crop year.

d. This contract will terminate as to any crop year if any amount due us on this or any contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are:

State and county	Cancellation date	Termination date
Imperial County, California and Arizona.	Aug. 31	Aug. 31.
All other California counties	July 15	Nov. 31.
All other states	Apr. 15	Apr. 15.

f. If you die or are judically declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by:

a. December 31 preceding the cancellation date for counties with an April 15 cancellation date;

b. April 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of Terms.

For the purposes of sugar beet crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding sugar beet insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county as shown by the actuarial table.

c. "Crop year" means the period within which the sugar beets are normally grown and will be designated by the calendar year in which the sugar beets are normally harvested; however, in California and Arizona, it will be the period from planting until the applicable date in the end of the insurance period and will be designated by: (1) The calendar year in which planted if planted on or before July 15, or (2) the next calendar year if planted after July 15.

d. "Harvest" means the completion of topping and lifting of sugar beets on an acreage for delivery to a processor.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Normal stand" means the number of live plants after thinning, required to produce an average yield per acre for the area.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Replanting" means performing the cultural practices necessary to replant insured acreage to sugar beets.

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the sugar beets or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of sugar beets in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the sugar beets on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descritive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on February 27, 1985.

Date: April 22, 1985.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Approved by:

Edward Hews,

Acting Manager.

[FR Doc. 85-10082 Filed 4-24-85; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 546, 552, and 563

[No. 85-289b]

Delegated Merger Approvals

Dated: April 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing revisions to the criteria delineating the authority of its Principal Supervisory Agents to approve mergers of thrift institutions whose deposits are insured by the Federal Savings and Loan Insurance Corporation and federally-chartered savings banks whose deposits are insured by the Federal Deposit Insurance Corporation. The new criteria would simplify and expand the authority delegated to the Principal Supervisory Agents to approve as well as to deny merger application. In addition, the Board proposes to amend and simplify its rules regarding the rights of shareholders to an appraisal of their shares in connection with certain types of mergers.

DATE: Comments must be received by June 24, 1985.

ADDRESS: Send comments to the Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C., 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Attorney (202-377-6453); James C. Stewart, Senior Attorney, (202-377-6457); Laura Patriarca, Deputy Director (202-377-6411); Julie L. Williams, Associate General Counsel, Director (202-377-6459); Corporate and Securities Division, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION: Mergers involving federally-chartered savings and loan associations and savings banks ("federal associations") are subject to approval by the Federal Home Loan Bank Board ("Board"). 12 CFR 546.2 (1985). Mergers that result in an increase in the insurable accounts of an institution whose deposits are insured by the Federal Savings and Loan Insurance Corporation ("Corporation") ("insured institutions") are also subject to approval by the Board, as operating head of the Corporation. 12 CFR 563.22 (1985).

Under these regulations, certain mergers are deemed approved if no objection has been raised by the Principal Supervisory Agent (*i.e.*, the president of the Federal Home Loan Bank of which the institution is a member) within 30 days after filing a completed merger application. A merger application qualifies for this treatment unless any of the following circumstances is present:

(1) The resulting association requests the granting of supervisory forbearances;

(2) The Principal Supervisory Agent recommends the imposition of nonstandard conditions prior to approving the merger;

(3) The application has been substantially protested;

(4) The Principal Supervisory Agent raises objections to the merger;

(5) The resulting association would be one of the 3 largest depository institutions competing in the relevant geographic area where before the merger there were 5 or fewer depository institutions, the resulting association would have 25 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 5 percent or more;

(6) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 6 to 11 depository institutions, the resulting association would have 30 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 10 perent or more;

(7) The resulting association would be one of the 2 largest depository institutions competing in the relevant geographic area where before the merger there were 12 or more depository institutions, the resulting association would have 35 percent or more of the total deposits held by depository institutions in the relevant geographic area, and the share of total deposits would have increased by 15 percent or more;

(8) The Herfindahl-Hirschman Index ("HHI") in the relevant geographic area is more than 1800 before the merger, and the increase in the HHI caused by the merger would be 50 or more;

(9) In a merger involving potential competition, the Principal Supervisory Agent determines that the acquiring association is one of 3 or fewer potential entrants into the relevant geographic area;

(10) Both the acquiring and an acquired association have assets of $1 billion or more;

(11) The association that will be the resulting association (other than an association that is neither insured by the Corporation nor chartered by the Board) in the merger has a composite Community Reinvestment Act rating of less than satisfactory, or is otherwise seriously deficient with respect to the Board's nondiscrimination regulations and the deficiencies have not been resolved to the satisfaction of the Principal Supervisory Agent;

(12) The resulting association's (other than an association that is neither insured by the Federal Savings and Loan Insurance Corporation nor chartered by the Board) net-worth would not at least equal the Board's regulatory net worth requirements. Where goodwill has been included in the resulting association's assets, the applicant must submit an opinion of a certified public accountant, satisfactory to the Principal Supervisory Agent, that its use and value are appropriate under, and accounted for, by generally accepted accounting principles. For purposes of this provision, in calculating whether the net worth of the resulting association will at least equal the amount required under § 563.13(b), the Principal Supervisory Agent may exclude scheduled items

which will be acquired in the merger and the amount of either: (A) The net worth deficiency or (B) the liabilities, including averaged liabilities, of the acquired association at the date of merger;

(13) The merger involves any agreement with the Federal Savings and Loan Insurance Corporation;

(14) The merger would result in the conversion of a mutual association to a stock association;

(15) The Principal Supervisory Agent determines that the financial condition of the resulting association would not satisfy minimum financial standards as determined from time to time by the Board's Office of Examinations and Supervision;

(16) The merger includes an association that has a class of voting securities registered with the Board under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj); or

(17) The merger application involves unusual circumstances or policy questions.

See 12 CFR 546.2(h); 563.22(e) (1985).

Under §§ 546.2(i) and 563.22(f), merger applications that do not meet the criteria for automatic approval may still be approved by the Principal Supervisory Agent if the reason for the ineligibility is the necessity for supervisory forbearances or the imposition of non-standard conditions. The Principal Supervisory Agent may approve mergers that do not satisfy the antitrust criteria of paragraphs (5) through (10) if the Supervisory Agent determines that, but for the merger, one of the participating associations would not satisfy minimum financial standards as determined from time to time by the Office of Examinations and Supervision.

The Board continues to seek means by which the processing of applications can be facilitated and believes that decentralized processing offers a valuable means of achieving this goal. Rather than expanding the use of automatic-approvals, however, the Board proposes to retain the current automatic approval provisions and broaden the use of delegated authority. The proposed amendments would use more inclusive standards in delegating authority to the Principal Supervisory Agents to pass upon applications not subject to automatic approval and would include the power to deny applications. By expanding the authority of the Principal Supervisory Agents, more applications could be processed in the field with resultant reductions in processing time.

The power of the Principal Supervisory Agents to approve or deny mergers would only be circumscribed when:

(1) Neither the acquiror or the insured institution to be acquired is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, and 12 CFR Part 536d to make a filing under any of the following rules or regulations in connection with the acquisition:

(a) Rule 13e–3, 17 CFR 240.e–3 (for "going private" transactions);

(b) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(c) Regulations 14A, 17 CFR 240.14a–1 through .14a–101 (for solicitation of proxies);

(d) Regulation 14C, 17 CFR 240.14c–1 through .14c–101 (for distribution of information statements); or

(e) Regulations 14D or 14E, 17 CFR 240.14d–1 through .14f–1 (for tender offers).

(2) Either institution has notified the Supervisory Agent in writing, within 10 days of the date of publication of the application under § 543.2(d), of its opposition to the proposed transaction;

(3) The merger would entail the merger of a mutual association into a stock association, with a stock association as the resulting association;

(4) The acquisition raises significant issues of law or policy on which the Board has not taken a formal position.

Under the new criteria, the Principal Supervisory Agents would be required to make determinations as to the antitrust, Community Reinvestment Act, and other supervisory ramifications of mergers not covered by the automatic-approval provisions. The Board would retain authority over applications by institutions making the specified types of filings under the Securities Exchange Act, since processing of such applications can be coordinated with review of the required securities filings. Authority over mergers resulting in the conversion of a mutual association to the stock form of organization would be retained, since such mergers involve conversion applications under 12 CFR 563b.10 (1985) which also must be processed in Washington. The criteria relating to unfriendly merger applications and major policy issues are intended to ensure full Board review of sensitive applications. The Board expects the Supervisory Agents to work closely with its Washington staff and regularly report features of transactions that may signal new or unusual issues in much the same way as accounting issues in mergers are coordinated now with the Office of Chief Accountant. In this regard, the involvement of an interim association will not in and of itself raise a policy issue requiring referral of a merger application to the Board, even though the charter for the interim association must be approved by the Board. The presence of other factors in such a merger (for example, a freezeout of minority interests) is needed to justify referral. However, it should be noted that where stockholders of an institution must vote on the merger with the interim and the institution's stock is registered under the Securities Exchange Act, a proxy statement would be required pursuant to Regulation 14A and thus approval authority for the merger would not be delegated under the proposal. The Board would be considered to have taken a formal position on an issue if it has taken final action on another merger application with the same issue on substantially similar facts.

All the above criteria except the contested-takeover limitation are currently reflected in the automatic-approval provisions of §§ 546.2(h) and 563.22(e). The Board proposes to add this criterion to §§ 546.2(h) and 563.22(e) to avoid automatic approval of applications in which these matters arise. In this regard, the Board requests comment on whether a general delegation of authority to the Principal Supervisory Agents would be preferable to the current provision for automatic approvals and whether the automatic-approval feature of the rule should be retained.

Because the proposed delegation would permit denials of applications, the Board is proposing to amend the merger regulations to provide a procedure for appeal of adverse decisions to the Board. Under the proposal, an applicant would have 20 days following notification of a decision in which to file an appeal with the Board's Office of the Secretariat. Copies of the appeal would be marked to the attention of the Director of the Office of Examinations and Supervision and the General Counsel. Appeals would be required to indicate with specificity why the Principal Supervisory Agents denial should be overturned.

In addition to the foregoing, the Board is proposing to amend its regulations governing the appraisal rights of shareholders in federal associations who dissent from a merger. Like most state corporate codes, the Board's regulations governing the internal operations of federal stock associations allow shareholders who vote against a merger to demand payment for their shares in an amount equal to their appraised value. 12 CFR 552.14(a) (1985). Under the current regulations, these appraisal rights are inapplicable when

the shares in question are listed on a national securities exchange on the date of the shareholders' meeting at which the merger proposal is considered. 12 CFR 552.14(b) (1985). Such exchange-traded shares were exempted from the appraisal remedy because dissenting shareholders in these institutions would have adequate opportunity to dispose of their shares without the necessity of an appraisal procedure. *Stock Associations; Mergers and Consolidations,* Resolution No. 79–445, 44 FR 49241, 49242 (Aug. 22, 1979). In view of the development of the National Association of Securities Dealers Automated Quotation (NASDAQ) System as an alternative to the national exchanges for marketing stock, the Board believes it appropriate to expand the appraisal exemption to reference this sytem as well. In other recent regulations, the Board has considered a NASDAQ listing as indicative of a developed trading market, *see* 12 CFR 563.18–2(b) (5) (1985), and considers this an appropriate standard for the appraisal remedy. *See also Regulation of Direct Investment by Insured Institutions,* Resolution No. 85–779–A, 50 FR 6912 (Feb. 19, 1985); Resolution No. 84–715, 49 FR 48743, 48754 (Dec. 14, 1984). NASDAQ listing also provides shareholders with a readily ascertainable standard for determining when the appraisal remedy will apply.

Initial Regulatory Flexibility Analysis

Pursuant to Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entities to which the proposed rules would apply.* The rule would apply to all insured institutions.

3. *Impact of the proposed rules on small institutions.* Proposed delegations would benefit primarily smaller institutions since it would result in expedited processing of their applications. Appraisal procedure amendments would impose no new requirements on smaller institutions.

4. *Overlapping or conflicting federal rules.* There are no federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Alternatives to the proposed rule.* No other alternatives would better simplify the application process while retaining essential supervisory safeguards.

List of Subjects in 12 CFR Parts 546, 552, and 563

Federal Savings and Loan Insurance Corporation, Mergers, Securities, Savings and Loan Associations, Savings and loan holding companies.

Accordingly, the Board hereby proposes to amend Parts 546 and 552 of Subchapter C and Part 563 of Subchapter D, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

1. Amend § 546.2 by adding new paragraph (h)(1)(xviii) and by revising paragraph (i), as follows:

§ 546.2 Procedure; effective date.

* * * * *

(h)(1) * * *

(xviii) Neither institution has informed the Supervisory Agent in writing, within 20 days of the date of publication under § 543.2(d) of this Subchapter, that it opposes the proposed transaction;

(i)(1) The authority of the Board (including recommending modification of a plan of merger, consolidation, or purchase of bulk assets or denial of an application) under paragraph (c) of this section may be exercised by the Principal Supervisory Agent (as defined in § 541.18 of this Subchapter) *Provided:*

(i) Neither the acquiror nor the insured institution to be acquired is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, and Part 563d of this Chapter to make a filing under any of the following rules or regulations in connection with the acquisition:

(*a*) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(*b*) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(*c*) Regulation 14A, 17 CFR 240.14a–1 through .14a–101 (for solicitation of proxies);

(*d*) Regulation 14C, 17 CFR 240.14c–1 through .14c–101 (for distribution of information statements); or

(*e*) Regulations 14D or 14E, 17 CFR 240.14d–1 through .14f–1 (for tender offers).

(ii) Neither institution has notified the Principal Supervisory Agent in writing, within 10 days of the date of publication under § 543.2(d) of this Subchapter, that it opposes the proposed transaction;

(iii) The merger would not entail the merger of a mutual association into a stock association with a stock association as the resulting association;

(iv) The acquisition does not raise any significant issues of law or policy on which the Corporation has not taken a formal position.

(2) Denial of an application pursuant to delegated authority under this section may be appealed to the Corporation under the following procedures: Within 20 days after notification of the Principal Supervisory Agent's decision, the applicant may notify the Office of the Secretariat of the applicant's desire to appeal the Principal Supervisory Agent's decision. Three copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with two of such copies addressed, respectively, to the attention of the Director, Office of Examinations and Supervision, and the General Counsel. The request for review must identify the party seeking review and describe with specficity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous.

PART 552—INCORPORATION, ORGANIZATION, CONVERSION, AND GOVERNANCE OF FEDERAL STOCK ASSOCIATIONS

2. Amend § 552.14 by revising paragraph (b)(1) and the second sentence of (b) as follows:

§ 552.14 Dissenter and appraisal rights.

* * * * *

(b) *Exceptions.* * * * (1) Such stock was listed on a national securities exchange or quoted on the National Association of Securities Dealers Automatic Quotation System ("NASDAQ") on the date of the meeting at which the combination was acted upon; or * * * "Qualified consideration" means cash, shares of stock of any association or corporation which at the effective date of the combination will be listed on a national securities exchange or on the NASDAQ, or any combination of shares of stock and cash described above.

* * * * *

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

3. Amend § 563.22 by adding new paragraph (e)(1)(xviii) and by revising paragraph (f), as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

* * * * *

(e)(1) * * *

(xviii) Neither institution has informed the Supervisory Agent in writing, within 20 days of the date of publication under § 543.2(d) of this Chapter that it opposes the proposed transaction;

* * * * *

(f)(1) The authority of the Corporation (including recommending modification of a plan of merger, consolidation, or purchase of bulk assets or denial of an application) under paragraph (a) of this Section may be exercised by the Principal Supervisory Agent (as defined in § 561.25 of this Chapter) *Provided:*

(i) Neither the acquiror or the insured institution to be acquired is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, and Part 563d of this Chapter to make a filing under any of the following rules or regulations in connection with the acquisition:

(*a*) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(*b*) Rule 13e–4, 17 CFR 240.13e–4 (for tender offers by an issuer for its own stock);

(*c*) Regulation 14A, 17 CFR 240.14a–1 through .14a–101 (for solicitation of proxies);

(*d*) Regulation 14C, 17 CFR 240.14c–1 through .14c–101 (for distribution of information statements); or

(*e*) Regulations 14D or 14E, 17 CFR 240.14d–1 through .14f–1 (for tender offers).

(ii) Neither institution has notified the Principal Supervisory Agent in writing, within 10 days of the date of publication under § 543.2(d) of this Chapter, that it opposes the proposed transaction;

(iii) The merger would not entail the merger of a mutual association into a stock association, with a stock association as the resulting association;

(iv) The acquisition does not raise any significant issues of law or policy on which the Corporation has not taken a formal position.

(2) Denial of an application pursuant to delegated authority under this section may be appealed to the Corporation under the following procedures: Within 20 days after notification of the Principal Supervisory Agent's decision, the applicant may notify the Office of the Secretariat of the applicant's desire to appeal the Principal Supervisory Agent's decision. Three copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, with two of such copies addressed, respectively, to the attention of the Director, Office of Examinations and Supervision, and the General Counsel. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial is contended to be erroneous.

* * * * *

(Secs 5 of the Home Owners' Loan Act, 12 U.S.C. 1464; Section 17(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1437(a); Sec. 402, 403, and 407 of the National Housing Act, 12 U.S.C. §§ 1725, 1726 and 1730; Reorg. Plan No. 3 of 1947, 3 CFR 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–9870 Filed 4–24–85; 8:45 am]

BILLING CODE 6720–01–M

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12 CFR Parts 563, 574, 584 and 589

[No. 85–289a]

Acquisitions of Control of Insured Institutions

Date: April 17, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board is proposing extensive revisions to its regulations implementing the statutory restrictions on the acquisition of control of thrift institutions chartered by the Federal Home Loan Bank Board or whose accounts are insured by the Federal Savings and Loan Insurance Corporation. These revisions would collect such regulations in one part of the Code of Federal Regulations and would better coordinate the provisions of the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) (1982), and the Savings and Loan Holding Company Act, 12 U.S.C. 1730a (1982). The proposed regulations would:

—Eliminate the overlap in the application of the Savings and Loan Holding Company Act and the Change in Savings and Loan Control Act and clarify the types of acquisitions covered by each statute;

—Clarify and provide consistent definitions under both statutes for key terms such as "control," "company," "acting in concert," "person," and "voting stock;"

—Define specifically what constitutes the acquisition of control and minimize uncertainty as to when an application or notice is required;

—State situations which will give rise to rebuttable determinations of control and how an acquiror may attempt to rebut these determinations;

—Establish specific presumptions for when persons will be considered to be acting in concert to acquire control of an insured institution, in order to enable the Board to better address acquisitions by groups acting in concert;

—Describe a type of "safe harbor" for investors not interested in control and thereby encourage investment in insured institutions;

—Require certifications regarding 10 percent ownership of insured institution stock, so the Board and its staff will be able to examine who are the ultimate owners of insured institutions;

—Clarify and streamline applications procedures;

—Provide a uniform type of public notice for holding company applications and change in control notices, including an opportunity for target institutions to register their objections, if any, to the acquisition, as part of the Board's application review process, thereby providing the Board with more information concerning potential acquirors;

—Specify "presumptive disqualifiers" that would put prospective acquirors on notice of factors the Board would consider indicative that an acquiror may not be found qualified to acquire control of an insured institution;

—Implement an enhanced system of delegations to the Supervisory Agents, including the ability to deny the applications that the Banks have delegated authority to approve; thereby speeding up the application process; and

—Provide, overall, a regulation that furnishes the specific guidance on key issues which is necessary in order to fairly and effectively implement increased use of delegations and promote efficient utilization of the Board's resources.

DATE: Comments must be received by June 24, 1985.

ADDRESS: Send comments to the Director, Public Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washingto, D.C., 20552. Comments will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: R. Penfield Starke, Attorney (202–377–6453); James C. Stewart, Senior Attorney (202–377–6457); Laura Patriarca, Deputy Director for Corporate (202–377–6411); or Julie L. Williams, Associate General Counsel, Director (202–377–6459); Corporate and Securities Division, Office of General Counsel, at the above address.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation"), is proposing extensive revisions to its regulations implementing the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) (1982) (the "Control Act"), and the Savings and Loan Holding Company Act, 12 U.S.C. 1730a (1982) (the "Holding Company Act"). The purpose of these revisions is to more efficiently coordinate the regulations implementing these statutes in order to effectuate the purposes of both Acts, to better adapt the Board's rules to the acquisition practices that have become prevalent in the industry, and to provide regulations that will coordinate the enhanced use of delegated authority and thereby eliminate unnecessary delays in the acquisition approval process.

Acquisitions of control of stock form insitutions chartered by the Board or whose deposits are insured by the Corporation are generally governed by either the Control Act or the Holding Company Act.[1] Both of these statutes specifically authorize the Board to issue rules and regulations to carry out their purposes. 12 U.S.C. 1730(q)(14); 1730a(h)(1) (1982). The Holding Company Act prohibits any "company," directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, or through one or more transactions, from acquiring control of one or more insured institutions without the prior written approval of the Corporation. 12 U.S.C. 1730a(e)(1)(B) (1982). For purposes of this restriction, the term "company" is broadly defined to include any corporation, partnership, trust, joint-stock company or similar organization, except those controlled by the United States or any State or an officer or instrumentality thereof. *Id.* at 1730a(a)(1)(c). The Control Act applies to acquisitions that are not subject to the Holding Company Act. 12 U.S.C. 1730(q)(17) (1982). It prohibits any "person," acting directly or indirectly or through or in concert with one or more persons, from acquiring control of an insured institution through a purchase, assignment, transfer, pledge, or other disposition of the voting stock of the institution unless the Corporation has been given sixty days' prior notice and has not objected. *Id.* at 1730(q)(1). Under both Acts, insured institutions include state and federally chartered thrift institutions whose accounts are insured by the Corporation and federally chartered savings banks whose accounts are insured by the Federal Deposit Insurance Corporation. 12 U.S.C. 1730(q)(13)(B); 1730a(a)(1)(A) (1982), and holding companies thereof.

Both statutes employ expansive definitions of control. In the Control Act, the term connotes the power, directly or indirectly, to direct the management or policies of an insured institution. 12 U.S.C. 1730(q)(8)(B) (1982). The Holding Company Act provides that the term includes control in any manner of the election of the majority of the directors of an insured institution. 12 U.S.C. 1730a(a)(2)(A) (1982). Control may also be found under the Holding Company Act if the Corporation determines that a person, directly or indirectly, exercises a controlling influence over the management or policies of an insured institution. *Id.* at 1730a(a)(2)(D). And under either statute, control is conclusively determined to exist upon the acquisition of the power to vote more than 25 percent of the voting shares or securities of an insured institution. 12 U.S.C. 1730(q)(8)(B); 1730a(a)(2)(A) (1982).

The Holding Company Act gave the Board comprehensive authority over savings and loan holding companies and their subsidiaries and was intended to guard against the potential conflicts of interest that can occur in the holding company structure. S. Rep. No. 354 90th Cong., 1st Sess. 1–2 (1967). The holding company regulatory system involves registration and examination of holding companies, and limitations on transactions between an insured institution and its affiliates in a holding company structure, in addition to the prior approval of acquisitions of insured institutions by companies.

The Control Act is more limited in scope, having been adopted to close a "glaring gap" in the jurisdiction of the federal agencies regulatiing financial institutions,[2] namely, the uncertain applicability of the Holding Company Act to acquisitions by individuals and groups of individuals that did not constitute a "company." H.R. Rep. No. 1382, 95th Cong. 1st Sess. 19 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 9291. Its primary purpose was to give the agencies more authority to scrutinize the qualifications of the individuals seeking to acquire control of existing financial institutions. As noted in the resolution in which the Control Act regulations were first promulgated, the Corporation's objectives in administering the Control Act "are to enhance and maintain public confidence in the savings and loan industry by preventing serious adverse effects resulting from anticompetitive combinations of interests, inadequate financial support, or unsuitable management of these institutions." *Amendments Relating to the Change in Savings and Loan Control Act of 1978*, Resolution No. 79–121, 44 FR 10500, 10500–01 (Feb. 21, 1979).

Notwithstanding their differences, both statutes reflect a congressional concern with the qualifications of acquirors of insured institutions and serve the same goal of preventing the acquisition of influence over the management and policies of insured institutions in circumstances that might result in injury to the institution. Accordingly, the statutes interact to form a comprehensive regulatory framework for acquisitions of control of insured institutions. If the acquiror is a "company," as defined, the acquisition of control is subject primarily to the Holding Company Act. All other control acquisitions would involve the Control Act.

Notwithstanding the commonality of provisions and purpose between the Acts, the Board's implementing regulations have developed along separate paths. The Regulations for Savings and Loan Holding Companies,

[1] Acquisition of control by a company of a mutual form institution also is subject to the Holding Company Act. However, the Holding Company Act prohibits a savings and loan holding company from holding, soliciting, or exercising any proxies in respect to any voting rights in an insured institution which is a mutual institution. 12 U.S.C. 1730a(i)(1) (1982). The Board's Office of General Counsel has interpreted this provision as having the effect of prohibiting any company from acquiring control of a mutual insured institution. *See* Op. G.C. July 20, 1970. Also, in this regard, the Board's other regulations prohibit the designation of "any corporation or partnership (including any person acting on behalf of a partnership)" as the holder of a proxy of a mutual insured institution. *See* 12 CFR 569.3(b) (1985). Because a company is precluded from acquiring control of a mutual institution, the provisions of the Holding Company Act and the regulations proposed herein would not be applicable to a mutual insured institution.

An individual is not prohibited from acquiring control of mutual insured institution under the Control Act. The Board has provided regulations which govern the acquisition of control of a mutual insured institution at 12 CFR 563.18–1 (1985). Thus, the regulations proposed to implement the Control Act also are not applicable to the acquisition of control of a mutual insured institution by an individual. The Board specifically requests comments as to whether it is necessary or advisable to further address acquisitions of control of insured institutions in mutual form.

[2] The Change in Savings and Loan Control Act was enacted as Title VII of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Pub. L. No. 95–630, 92 Stat. 3641, 3687, which included the substantially similar Change in Bank Control Act at Title VI, *id.* at 3683 (codified at 12 U.S.C. 1817(j) (1982)). Jurisdiction under the Change in Bank Control Act is shared by the three federal banking regulators. 12 U.S.C. 1817(j)(1); 1813(g) (1982).

12 CFR Parts 583–589 (1985), originally were promulgated in Board Resolution No. 21,400, 33 FR 3322 (Feb. 22, 1968), immediately following the adoption of the Holding Company Act in its current form in the Savings and Loan Holding Company Amendments of 1967, Pub. L. No. 90–255, 82 Stat 6 (1968) (codified as amended at 12 U.S.C. 1730a (1982)). The provisions of the holding company regulations relating to acquisitions, 12 CFR 584.4, (1985), and the supporting definitions, *id.* at Part 583, essentially codify the statutory provisions. The regulations implementing the Control Act, however, implement one aspect of the control definition of that statute, establishing a presumption of control upon the acquisition of more than 10 percent of the voting stock of an insured institution when its shares are traded on an exchnage or the NASDAQ System. 12 CFR 563.18–2(c)(2) (1985).

Recent developments in the financial services industry and the general area of acquisitions and takeovers have focused increased attention upon the Control and Holding Company Acts and their implementing regulations. The shift to the stock form of ownership in the thrift industry also has made more institutions at least theoretically available for acquisition.[3] Thrift institutions additionally have become more attractive acquisition targets since their investment powers were enhanced in the Garn-St Germain Act of 1982, Pub. L. No. 97–320, 96 Stat. 1469 (1982), and under the laws of many states. This increased attractiveness comes at the time when acquisitions in general have risen numerically and the techniques used for various types of acquisitions have become increasingly sophisticated. Moreover, the preceived attractiveness of thrifts unfortunately also has led to efforts by financially weak or unstable companies and unqualified and dishonest individuals to acquire and exploit thrift institutions. As a result, substantive as well as procedural inadequacies in the regulations implementing the Holding Company and Control Acts have been too often spotlighted and misused, in some cases ultimately leaving the FSLIC to pay the price for such shortcomings.

[3] Although the insured thrift industry remains primarily mutual (934 stock associations vs. 2201 mutuals as of December 31, 1984), nearly 52 percent of the industry's assets are in stock institutions. Conversions to stock form have taken place at an accelerated pace. There were 108 such conversions approved by the Board in 1983. In applications for federal *de novo* institutions have involved stock associations since these procedures were adopted in Board Resoultion No. 83–127, 48 FR 10612 (Mar. 14, 1983).

After extensive study, the Board is proposing to substantially revise the regulations in order to address these concerns and others. Under the proposal, the regulatory provisions implementing the Holding Company and Control Act restrictions on acquisitions would be relocated in a single new Part 574 for ease of reference and coordination and to eliminate overlapping and potentially inconsistent requirements. Regulations under the Holding Company Act relating to operations of subsidiary institutions would remain in Part 584. To the extent feasible, the implementing regulations would use common definitions of terms. The prosposed revisions would establish a coordinated procedure for providing public notice of filings under the Acts without sacrificing the confidentiality of their contents, thereby enhancing the opportunity for comment on a propective acquiror and increasing the Board's sources of information in connection with its review of acquisitions and changes in control. The new Part also would expand and clarify the use of rebuttable determinations of "control" to provide guidance to acquirors regarding the Board's interpretation of this term. Similarly, the proposal would introduce "presumptive disqualifiers" to put applicants on notice of factors that the Board would find particularly meaningful in an application or notice and that may be deemed to disqualify a potential acquiror if not adequately rebutted. Finally, the revisions are designed to coordinate with expansion of the authority delegated to Principal Supervisory Agents to approve and deny applications and notices and thus to expedite the processing of applications by eliminating unnecessary delays in the applications approval process. The Board believes that by codifying past interpretations of the regulations and statutes, compliance with their requirements will be facilitated, applications processing will be expedited, and overall investment in the thrift industry will be encouraged as a result of the existence of clear and consistent ground rules. Moreover, the Board views such a reexamination of the regulations as a necessary part of its general statutory responsibility to implement the objectives of both Acts, 12 U.S.C. 1730(g)(14), 1730a(h) (1982), and particularly its duty to prevent evasions or the Holding Company Act. *Id.* at 1730a(h)(1).

II. Section 574.2—Definitions

A. Person

"Person" is defined in the Holding Company Act to include either an individual or a company. 12 U.S.C. 1730a(a)(1)(G) (1982). The Control Act defines "person" as "an individual or a corporationt, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other from of entity not specifically listed herein."12 U.S.C. 1730(q)(8)(A) (1982). Since the Control Act regulates acquisitions by a "person," which can include a corporation, there are currently instances in which an acquisition by a corporation may be subject to the Control Act rather than the Holding Company Act. For example, if a company that is not a saving and loan holding company acquires 10 percent of the stock of an insured institution whose shares are "actively-traded," the company would be presumed to have acquired control of that institution under the Board's current Control Act regulations. *See* 12 CFR 563.18–2(c)(2) (1985). The acquisition would not now he subject to the Holding Company Act, however, since it involves less than 25 percent of the institution's outstanding stock. Accordingly, the statutory exemption from the Control Act for acquisitions subject to the Holding Company Act would not come into play. *See* 12 U.S.C. 1730(q)(17) (1982).

The cause of these inconsistencies is the differing approaches of the implementing regulations to the concept of control under the respective statutes. Where the requirements of the Holding Company Act and its implementing regulations only govern a transaction involving more than 25 percent of an insured institution's stock or voting rights unless control is found pursuant to the Act's more general provisions, control is presumed to exist under the Contol Act regulations upon the acquisition of 10 percent of certain institutions' stock. A by-product of this dichotomy is that in a multi-step acquisition, a company may be required to file *both* a Control Act notice and a Holding Company application. The current situation creates the additional paradox that a company which is deemed in control of an insured institution under the Control Act may not be subject to the safeguards on transactions with affiliates and other provisions that Congress sought to impose on companies controlling insured institutions under the Holding

Company Act. *See, e.g.*, 12 U.S.C. 1730a(d) (1982).

One of the Board's goals in these proposed revisions is to reduce or eliminate these overlaps and inconsistencies and restore the Control Act to its original interstitial role of covering transactions not governed by the Holding Company Act. Under the proposed revisions, the concept of control would be uniform for both statutes. As a consequence, the proposed definition of "person" for purposes of Part 574 has been drafted to exclude entities that would be considered "companies" under the Holding Company Act.

B. Company

As noted previously, the Holding Company Act applies only to acquisitions of control by a "company" which is defined as:

> any corporation, partnership, trust, joint-stock company, or similar organization, but does not include the Federal Savings and Loan Insurance Corporation, any Federal Home Loan Bank, or any company the majority of the shares of which is owned by the United States or any State, or by an officer of the United States or any State in his official capacity, or by an instrumentality of the United States or any State.

12 U.S.C. 1730a(a)(1)(c) (1982); 12 CFR 583.9 (1985). As explained in the House Report on the Savings and Loan Holding Company Amendments of 1967, the term "company:"

> [encompasses] the types of entities which, because of their capacity to bring together diverse stockholdings and exercise their voting power under single control for substantial periods, would be most likely to be able to raise the necessary capital to finance the acquisition of savings and loan associations and to engage in holding company operations.

H.R. Rep. No. 997, 90th Cong., 1st Sess. 6–7 (1967), *reprinted in* 1968 U.S. Code Cong. & Ad. News 1607. At various times, the Boards' staff has interpreted this definition to cover groups of individuals acting together pursuant to arrangements or understandings but not constituting a specific legal entity. The Board believes such interpretations to be consistent with the scope and purpose of the term "company," and now proposes to amend the regulatory definition of "company" to better reflect the type of entity intended to be covered by the Holding Company Act, which would include the types of groups covered by previous interpretations of the "company" definition. The basic definition would reference any "association, joint venture, pool, syndicate, or unincorporated organization" in addition to the broad "similar organization" language in order to stress that a formalized business organization is not required in order to constitute a "company." To reflect past interpretations of the term, the definition would presume that a group of persons and/or companies acting in concert would constitute a "company" if the members of the group were party to arrangements which provided for the shared economic benefits and risks of their ownership of stock in an insured institution over a period of time. Such arrangements might take the form of an agreement that allocates profits, losses, or expenses, concerns voting of the institution's stock or affects the disposition of ownership interests. Specific questions as to whether a group constitutes a "company" could be resolved by requesting an opinion from the Board's Office of General Counsel on the basis of the particular facts presented by a given situation.

In the manner, the definition of "company" would better address the issues raised when individuals or entities acting as an economic unit acquire sufficient control over an insured institution that they would be otherwise able to engage in the type of activities that the Holding Company Act was designed to regulate. The Board specifically invites comment on other factors that should be considered indicative of status as a "company."

C. Acting in Concert

Both the Holding Company Act and the Control Act employ the term "acting in concert." The Control Act regulates acquisitions of control by a "person, acting directly or indirectly or through or in concert with one or more other persons." 12 U.S.C. 1730(q)(1) (1982). The Holding Company Act provides that "a person shall be deemed to have control of . . . an insured institution if the person . . . acting in concert with one or more persons" controls more than 25 percent of the institution's voting stock. 12 U.S.C. 1730a(a)(2)(A) (1982). Taken on its face, the term "acting in concert" is susceptible to a broad interpretation, potentially taking in coordinated action without an agreement among the actors or perhaps even mutual awareness. There is no explanatory discussion of the term in the legislative history of the Control Act. The congressional reports on the Holding Company Act, however, indicates the term "presupposes an agreement or understanding, written or tacit, of the parties." S. Rep. No. 997, 90th Cong., 1st Sess. 7 (1967); S. Rep. No. 354, 90th Cong., 1st Sess. 10 (1967). In proposing its recent revisions to the Change in Bank Control provisions found in Regulation Y, 12 CFR Part 225 (1985), for example, the Federal Reserve Board indicated that it would consider persons acting in concert if they "joined together informally through parallel action or intention for the purpose of acquiring voting securities of a bank or a bank holding company." *Bank Holding Companies and Change in Bank Control, Proposed Revision of Regulation Y;* Docket No. R–0470, 48 FR 23520, 23536 (May 25, 1983).

In the Board's view, a relatively broad reading of the term is necessary to effectuate the purposes of the statutes. It has been the Board's experience that some parties intent on acquiring insured institutions may not fully disclose their arrangements until they have accomplished their purposes. Even after a group acting in concert has acquired control, there can be great difficulty in proving that a prior plan or arrangement existed. Consequently, the issues raised in proving secret acquisitions of control are similar to those raised in proving the existence of conspiracies, agreements in restraint of trade, or other clandestine arrangements. While the term should not be open-ended, the Board believes that the proper effectuation of statutory purposes argues for an interpretation of the phrase that brings in conscious concerted activity resulting in acquisition of effective joint control by the actors involved. When such joint activity is present and there is an awareness of the part of each actor that his or her efforts contribute to and are a part of a plan of acquisition of control, it should be presumed that all the actors are acting pursuant to at least a tacit agreement. The Board proposes to adopt a definition of acting in concert that better states this viewpoint by indicating that the term includes "knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or any combination or pooling of voting or other interests in the securities of an issuer for a common purpose, pursuant to any contract, understanding, relationship, agreement, or other arrangement, whether written or otherwise." The Board currently employs the same definition in a closely related context in § 563b.3(i) to regulate the activities of groups in acquiring the stock of recently-converted insured institutions. *See Conversion from Mutual to Stock Form*, Resolution No. 84–400, 49 FR 32340 (Aug. 14, 1984) (codified at 12 CFR 563b.3(i)(8)(iv) (1985)).

To provide further guidance to acquirors in this area, the Board proposes to establish several rebuttable

presumptions regarding action in concert. These presumptions are derived both from long standing precedents interpreting the term and from the Board's practical experience and would be codified with the rebuttable control determinations contained in proposed § 574.4. Particular questions have arisen in this area, for example, regarding the extent to which a company may be deemed to be acting in concert with its management officials or controlling shareholders. The Board has confronted a variety of situations in which persons owning voting stock in an insured institution also controlled companies that had invested in securities of the same institutions or had otherwise taken actions which would result in the acquisition of influence over the affairs of the institution. Consequently, the influence of the management official or controlling shareholder was enhanced by the actions of this controlled corporation. Such arrangements can also lead to the types of unfair affiliated transactions that are a major concern of the Holding Company Act.

In the Board's view, when a person acquiring shares in an insured institution is a controlling shareholder or management official of a company that has made similar investments or has otherwise facilitated his acquisition, it is reasonable to assume that investments or actions of the corporation are the result of a common design. A coordination of action may result either from the controlling influence of the shareholder over the corporation or the fiduciary duty of the controlling shareholder or management official not to act against the interests of the corporation and its other shareholders.[4] To embody this principle in the regulations, the Board proposes to establish a presumption in § 574.4 that a company is acting in concert with a controlling shareholder or management official of such company where both the person and the company have certain specified relationships with the institution or have interests in the institution's stock. Such relationships would include but not be limited to: (1) Dual ownership of the insured institution's stock; (2) provision of credit by the company to the person to purchase the insured institution's stock on other than an arm's-length basis or on terms and conditions other than those required or available in transactions in the ordinary course of business with unaffiliated parties; or (3) pledging of the company's assets to secure financing for the person's acquisition of stock of the insured institution. If these relationships exist between an institution, a company and a controlling shareholder or management official of the company, the person will be presumed to be acting in concert with the company and the acquisition would be subject to the Holding Company Act. The Board notes in this regard that, in practice, this presumption would be significant where it results in an aggregation of stock that exceeds a threshold established as a rebuttable determination of control or a statutory conclusive control level. In either case, the affected company would be permitted to attempt to rebut the presumptions of concerted action through the rebuttal process, also contained in proposed § 574.4 and described in detail, below.

The Board also proposes to establish presumptions regarding other relationships which the Board regards as indicative of action in concert. These include purchases by a company and a controlling or controlled company or another company under common control, purchases by persons who are management officials or controlling shareholders of the same company, and purchases by a person and members of the person's immediate family. In addition, action in concert would be presumed to exist where parties constitute a group for purposes of the federal securities laws under 17 CFR 240.13d–5(b)(1) or 240.14a–11(b) (excluding the issuer and directors of the issuer). These also would be contained in proposed § 574.4.

The Board wishes to note another acquisition pattern which has recently appeared and which raises concerns not dissimilar from those associated with purchases by a corporation and its management officials, namely the acquisition of shares by an employee stock ownership plan ("ESOP") for which directors or officers act as trustees, or in a similar fiduciary capacity. The Board notes that ESOPs and similar plans generally are trusts, and thus independently may become subject to the Holding Company Act as companies. 12 U.S.C. 1730a(a)(1)(C) (1982). Where a company and a plan that is administered by non-independent trustees both own stock of an institution, however, it is the Board's view that in such an arrangement the company and the plan may, under certain circumstances, be considered to be acting in concert. Moreover, the Board notes that while it would not generally consider directors a group to be acting in concert solely because of their positions on the board, management can become a group if it takes actions designed to vest control in themselves personally. The Board recognizes that retirement plans that hold a company's stock may take many forms and that issues in this area are significant and deserve more study. The Board is therefore not at this time proposing to establish presumptions in this area; however, on this issue as well as the general subject of action in concert, the Board specifically invites comments on situations and factors that shoud be considered in evaluating activities which may constitute acting in concert.

D. Acquire

Both statutes refer to acquisitions of control in their operative provisions. 12 U.S.C. 1730(q)(1); 1730a(e)(1)(B) (1982). In the majority of cases, an acquisition of control will involve the acquisition or ownership of a security of the insured institution. *See* 12 U.S.C. at 1730(q)(1); 1730a(a)(2)(A). The acquisition of securities is particularly emphasized in the Control Act which deals with acquisitions of control through "a purchase, assignment, transfer, pledge, or other disposition of voting stock". 12 U.S.C. 1730(q)(1) (1982). In administering the statutes, the Board and its staff have scrutinized a variety of arrangements which, while not characterized as outright sales, served to vest another person with the operative attributes of ownership or control of the security.

The Board proposes to clarify the applicability of the term "acquire" to specific situations in which control of securities is passed. First, the proposed definition would address an acquisition of a control percentage by a reduction in the percentage holdings of other shareholders as might occur in a selective redemption or a high-ratio reverse stock split in which fractional shares are cashed out. The implementing regulations of other banking agencies provide that such an increase in proportionate ownership will be deemed an acquisition of voting securities for purposes of the Control Act. *See, e.g.*, 12 CFR 225.41(a)(2) (1984) (Federal Reserve Board). The Board views this as an appropriate interpretation of the term acquisition and proposes to incorporate a similar

[4] The proposition that a corporation and its controlling persons should be considered to act in concert finds further support in the Holding Company Act which prohibits officers, directors, and 25 percent shareholders in a savings and loan holding company from acquiring control of other insured institutions. 12 U.S.C. 1730a(i)(2) (1982). This restriction was characterized as a complement to the Act's other curbs on holding company expansion rather than a limitation on directors, officers and 25 percent shareholders. H.R. No. 997, 90th Cong., 1st Sess. 14 (1967), *reprinted in* 1968, U.S. Code Cong. & Ad. News 1601, 1614.

provision in its regulations. *Pro rata* redemptions or stock splits in which the percentage ownership of shareholders remains substantially unchanged would not be considered the acquisition of shares by virtue of the exemption contained in proposed § 574.3(c)(1)(v) and in the current Control Act regulations at 12 CFR 563.18–2(d)(v) (1985). Consequently, a stock transaction that causes a material realignment of ownership interests would be deemed an acquisition of control for any person or company whose holdings exceed a control threshold as a result of the transaction. However, a person or company whose holdings exceeded a control threshold as a result of a stock transaction that was essentially *pro rata* in nature would not be required to make a filing. In addition, where a stock transaction that is not essentially *pro rata* caused a person or company to exceed a control threshold, and the person or company did not control the stock transaction that resulted in the increase in ownership, the person or company would have 30 days after the effective date of the stock transaction to submit the appropriate notice, application or rebuttal under proposed § 574.3(d). A rebuttal application or notice submitted under these circumstances would *not* be treated as an after-the-fact rebuttal, application or notice, as the case may be, submitted by a party holding stock in violation of the Board's rules, which would constitute a "presumptive disqualifer" under this proposal. Where the person or company had the ability to the timing of the stock transaction, or had adequate advance notice thereof, however, the Board would expect that an appropriate application, notice, or a rebuttal would be filed *prior* to the acquisition.

Issues also have arisen in respect to the formation of groups after the acquisition of shares. In a not unusual sequence of events, individuals who have previously acquired shares in an insured institution will form a group whose entire holdings exceed the notice threshold of the Control Act or the implementing regulations. It has been contended that if no additional stock is acquired, the group formation would not come within the proscriptions of the Control Act because the control percentage was not acquired through a purchase, assignment, transfer, pledge, or other disposition of voting stock. The Board is concerned about such transactions since the obvious inference to be drawn from such a sequence of events is that the participants in the group have been acting in concert from the beginning and thus became subject to the Control Act as soon as their aggregate purchases exceeded the reporting threshold. Regardless of the existence of prearrangement, however, the Board believes that formation of a group or other decision to pursue concerted action should be deemed an "acquisition" of the participants' stock—particularly the voting power represented thereby—by the group formed. The Board notes that the Securities and Exchange Commission ("SEC") uses a similar interpretation of the term acquisition in the rules promulgated under Securities Exchange Act ("Exchange Act") Section 13(d), 15 U.S.C. 78m(d) (1982); Exchange Act Rule 13d-5(b), 17 CFR 240.13d-5(b) (1984). The Board is therefore proposing to specify by regulation that when two or more persons act in concert for the purpose of influencing the management or policies or an insured institution, the group formed thereby shall be deemed to acquire the voting stock of such persons. Such and approach is already employed in the Board's regulations governing mutual-to-stock conversions. *See Conversions from Mutual to Stock Form*, Resolution No. 84–400, 49 Fr 32340 (Aug. 14, 1984) (codified at 12 CFR 563b.3(i)(8)(iv) (1985)).

E. Stock and Voting Stock

Voting stock plays a critical role in both statutes since acquisition or ownership of voting stock is the primary determinant of control. Both statutes include conclusive determinations that control exists upon the ownerships or acquisition of more than 25 percent of an insured institution's voting shares or securities.[5] *See* 12 U.S.C. 1730(q)(8)(B); 1730a(2)(A) (1982). The term "voting stock", however, is not defined in either statute. While the Control Act offers a definition of "stock" as "such stock or other equity securities or equity interests in an insured institution which is a stock company, or rights, interests, or powers with respect thereto", 12 U.S.C. 1730(q)(13) (1982), the Holding Company Act is silent.

The Board notes that a similar situation had existed under the Bank Holding Company Act of 1956, which contains no definition of the term "voting security" even though the term is used in that statute's operative provisions. *See* 12 U.S.C. 1841–50 (1982). In its recent revisions to Regulation Y, however, the Federal Reserve Board promulgated a definition of voting security as:

> shares of common or preferred stock, general or limited partnership shares or interests, or similar insterests if the shares of interests, by statute, charter, or in any manner, entitle the holder:
>
> (i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or
>
> (ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

12 CFR 225.2(*l*)(1) (1984). The Federal Reserve Board definition further provides that preferred shares will not be considered voting securities if their voting rights are limited to those necessary to protect the investment and do not otherwise provide the holder with control. *See Bank Holding Companies and Change in Bank Control: Revision of Regulation Y*, Docket No. R–0470, 49 FR 794, 796 (Jan. 5, 1984); 12 CFR 225.(*l*)(2)(1984).

The Board proposes to incorporate the Control Act definition of stock into its regulations and further to adopt a definition of the term "voting stock" similar to that of the Federal Reserve Board. "Voting stock" would be the term used in place of "voting shares" to avoid confusion with share interests in a mutual institution. In addition, the scope of the term "voting stock" would be clarified with respect to options and rights to acquire stock and securities convertible into stock. It is noted that the phrase in the Control Act definition of stock by which "rights, interests, or powers with respect to" stock are deemed to be stock is broad enough to encompass virtually all options, warrants and convertible securities. However, in the Board's view, the definition should be tailored so as only to include instruments where the holder is subject to the preponderant economic risk with respect to the underlying stock. Thus, the definition of "voting stock" would include securities that are convertible into voting stock or exercisable to acquire voting stock at the direction or option of the holder, where the preponderant economic risk of ownership of the underlying stock has shifted to the holder of the convertible security or right to acquire voting stock.

In the case of securities immediately convertible into voting stock, at the option of the holder, without payment of additional consideration, the Board regards the holder as possessing the preponderant economic risk with respect to the underlying voting stock and therefore such securities will be treated as the equivalent of the voting

[5] Although the Control Act restricts acquisitions of control through acquisitions of "voting stock" 12 U.S.C. 1730(q)(1) (1982), the control presumption in that statute references "voting securities". *Id.* at 1730(q)(8). The Holding Company Act refers to "voting shares". *Id.* at 1730a(a)(2).

stock into which they are convertible. In this regard, a security would not be treated as not immediately convertible if its conversion were subject only to regulatory approval by the Board which would be required in any event. *See* FRB Staff Op. (May 14, 1984), 1 Fed. Res. Reg. Serv. § 4–397.2. In the case of other securities convertible into voting stock in different circumstances and of rights to acquire voting stock such as options or warrants, the question of whether the holder possesses the preponderant economic risk in the underlying stock must be resolved on the basis of the particular facts of each case.

For example, a party may enter into an option agreement in which a substantial portion of the purchase price is paid prior to conversion or exercise. Arrangements may also provide additional economic interest in the shares such as a provision that if the option goes unexercised, the optionee has the right to share in profits upon sale of the security. Although record ownership has not passed, the arrangement gives the optionholder an economic interest in the shares equivalent to ownership and raises serious questions regarding actual control of the optioned shares. For such reasons, for example, an arrangement having such attributes was deemed the sale of a security to the optionee for purposes of section 16(b) of the Exchange Act, 15 U.S.C. 78p(b) (1982). *See Bershad* v. *McDonough*, 428 F.2d 693 (7th Cir. 1970), *cert. denied*, 400 U.S. 992 (1971). The Board generally would consider the holder of a security convertible into voting stock or of rights to acquire voting stock *not* to possess the preponderant economic risk of ownership of the underlying stock where the holder has paid less than 50 percent of the consideration required to directly acquire the stock and has no other economic interest in the underlying stock. In other situations where the holder's economic stake in the underlying voting stock exceeds this level, or is less than 50 percent but is coupled with another interest in the underlying stock, the Board expects that specific questions as to whether a security constitutes "voting stock" will be resolved by consulting the Board's Office of General Counsel.

The Board believes that the foregoing treatment of convertible securities and rights to acquire voting stock reflects a realistic assessment of the actual control that may be exercised by parties owning or holding such securities or rights. In particular, the Board believes that the definition of "voting stock" is appropriate in view of the various non-traditional means for achieving control that have developed in the modern financial markets, in order to enable the Board to carry out its responsibilities to scrutinize acquisitions and changes of control of insured institutions *before* effective control has changed hands. The Board notes further that the definition of "voting stock" as structured in the proposal should not include a customary stock purchase agreement and thus *bona fide* negotiated transactions should not be hampered by the application of the rule. The Board invites comments on this aspect of the definition of "voting stock" and on any other elements of the "voting stock" definition as proposed.

Finally, the definition of "voting stock" would also include securities that, upon transfer or any other event within the control of the holder, would become "voting stock," unless the securities also require that they can only be transferred in a widely dispersed sale or public offering. This provision of the definition is necessary to address arrangements in which an institution issues to a prospective acquiror a security which converts to voting stock upon transfer to a third party. Such securities have been used in stakeout agreements to give the prospective acquiror assurance that the target will not become the subject of another takeover. Since these arrangements give the prospective acquiror substantial control over a large block of stock, including the ability to transfer control to a third party, the Board is of the view that such a security is tantamount to acquisition of the block itself. The Board notes that the Federal Reserve Board has taken a similar position with respect to such arrangements under the Bank Holding Company Act. *See Policy Statement on Nonvoting Equity Investments by Bank Holding Companies*, 12 CFR 225.143(c)(6) (1984).

F. Insured Institution

For purposes of Holding Company regulations, "insured institution" is currently defined to include institutions whose accounts are insured by the Corporation, federal associations whose accounts are insured by the Federal Deposit Insurance Corporation, and institutions that retain insurance of accounts pursuant to § 563.29–1. This is also the general definition of insured institution found at 12 CFR 561.1 (1985). The current Control Act regulation expands on this definition to include savings and loan holding companies, 12 CFR 563.18–2(b)(4) (1985), implementing the last sentence of 12 U.S.C. 1730(q)(1) (1982). The Board proposes to include all these elements in the definition of "insured institution" for purposes of Part 574.

G. Savings and Loan Holding Company

The definitional provisions of Part 574 would include the same definition of "savings and loan holding company" now found in 12 CFR 583.11 (1985).

H. Actively Traded and NASDAQ

The Board proposes to retain the definition of "actively traded" now found in the Control Act regulations at 12 CFR 563.18–2(b)(5) (1985). The term is an element of the control determinations discussed below and refers to securities either traded on an exchange or traded "over the counter" and quoted on the NASDAQ system. The proposed regulations would also retain the definition of NASDAQ currently set forth in 12 CFR 563.18–2(b)(6) (1985).

I. Acquiror

For purposes of Part 574, the proposed regulations use the term "acquiror" to include either a person or a company.

J. Controlling Shareholder

For purposes of the definition of "acting in concert," discussed above, the term "controlling shareholder" of a company means a person who, directly or indirectly or acting in concert with one or more other persons or entities, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors. This definition is derived from the definition of "controlling person" already used in the Insurance Regulations, 12 CFR 561.28 (1985). For purposes of Part 574, a person's holdings would be aggregated with those of members of his or her immediate family, as defined below.

K. Immediate Family

The definition of the term "immediate family" is also taken from the Insurance Regulations and includes: a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister. *See* 12 CFR 561.30 (1985).

L. Management Official

"Management official" as used in the proposal means any executive officer, director, partner, or trustee or any other person who performs similar policy-making functions for an insured institution or company, whether incorporated or not. The term would

include executive officers of subsidiaries if they perform policy-making functions for the parent and would include any person who has a representative or nominees performing such functions. The definition combines elements of Exchange Act Rule 3b–7, 17 CFR 240.3b–7 (1984), and section 201(4) of the Depository Institution Management Interlocks Act, 12 U.S.C. 3201(4) (1982).

III. Section 574.3—Acquisitions of Control

Proposed § 574.3 would set forth the basic acquisition provisions now found at 12 CFR 563.18–2(c) and 584.4(b) (1985). Section 574.3(a) would restate the Holding Company Act acquisition limitation while paragraph (b) of the section applies the Control Act restriction. Both paragraphs, however, would be essentially the same in wording, prohibiting an acquisition of control of an insured institution by a "person" if there has not been the required period of prior notice, or by a "company" if there has not been prior written approval by the Corporation. The paragraph implementing the Control Act restriction does not restate the statutory qualification "through a purchase, assignment, transfer, pledge, or other disposition of voting stock," 12 U.S.C. 1730(q)(1) (1982), since the definitions of "acquire" and "control" would provide the voting stock disposition nexus required by the statute.

Paragraph (c) of proposed §574.3 sets forth the exemptions to the acquisition approval requirements now found in §563.18–2(d) of the Control Act regulations and §584.4(b) of the Holding Company Act regulations. 12 CFR 563.18–2(d); 584.4(b) (1985). These exemptions specify transactions that are exempt from the approval process of the Holding Company Act. Paragraph (d) lists transactions which are exempt from *prior* approval or notice under either Act, but which require subsequent filing of an application or notice and review thereof.

Exemptions from the Holding Company Act approval process under paragraph (c) include the statutory exceptions for control acquired under the terms of testamentary trusts exempt from the definition of a "savings and loan holding company" or acquired by a newly-formed holding company in a reorganization which involves solely the acquisition of control of an insured institution by a company, which is controlled by a person who has controlled, or group of persons that have controlled the institution for more than three years prior. 12 U.S.C. 1730a(e)(1)(B)(i) and (ii) (1982). It should be noted that, pursuant to the statutory language of the Holding Company Act and past interpretations of this provision, the Board would regard this reorganization exemption as applicable only where the controlling person or persons have remained unchanged for the entire three-year period and group members have acted together to exercise control of the institution. *See, e.g.*, Op. G.C. Mar. 12, 1970. In order to take advantage of this exemption, the acquirors would be required to file a Form H–(e)4 demonstrating their qualification. The Board's General Counsel would be delegated authority to consider the filing and would be obliged to indicate any disapproval of the claim of qualification for the reorganization exemption within 30 days of receipt, or the reorganization would be deemed to be approved.

The Holding Company Act approval-process exemptions also would include an exemption for certain acquirors in connection with the acquisition of "control", as defined, pursuant to a pledge or hypothecation of stock contracted in good faith to secure a loan or through liquidation of a loan contracted in good faith, and, in both cases, in the ordinary course of the lender's business. Control so acquired cannot be retained for more than one year unless the Corporation extends the period. 12 U.S.C. 1730a(e)(4) (1982). No extension, however, can allow the retention of such control beyond an additional three years. Acquisitions of control by lenders in connection with debts contracted in good faith that do not fit within the foregoing exemption would not be exempt transactions but would be exempt from the requirement of prior approval under proposed paragraph (d). In addition, it should be noted that this exemption would not relieve an insured institution or insured bank from its obligation to report a loan secured by stock of an insured institution under § 574.5(b), discussed below.

The proposal also includes an exemption for acquisitions of control through testate or interstate succession provided that the Board is advised in writing within 30 days of such acquisition of control. The exemption is currently contained in the Control Act regulations at 12 CFR 563.18–2(d)(2)(ii) (1985) as an exemption from the prior-notice requirement. The proposal also exempts acquisitions of additional voting stock after approval of an acquisition of control has been given under either paragraph (a) or (b). However, this exemption would not be available for acquisitions in violation of conditions imposed by the Board in connection with the prior approval or acquisitions made on terms materially different from those set forth in the application or notice.

Exemption from the Control Act provisions governing acquisitions of control would be separately listed in subparagraph (2) of paragraph (c) and would include by reference all the enumerated exemptions from the Holding Company Act approval requirements. In addition, subparagraph (2) would exempt transactions subject to Board approval under the regulations applicable to mergers or holding company acquisitions. This exemption covers transactions for which the Board receives applications providing information similar to that contained in Holding Company applications and Control Act notices and clarifies the exemption currently at 12 CFR 563.18–2(d)(1)(i) and (ii) (1985) by referring to § 552.13 of the Federal Regulations governing mergers involving federal stock associations. This exemption is only available, however, as long as control of an insured institution is not acquired by an acquiror not in control of an institution prior to the transaction. The Control Act exemptions also would include the regulatory exemption for acquisitions by a person who has continuously held more than twenty-five percent of an institution's voting stock since the effective date of the statute, March 9, 1979. *See* 12 CFR 568.18–2(d)(1)(iii) (1985). Proposed § 574.3(c) would provide a similar exemption for persons that would have been deemed to control an insured institution on the basis of the proposed control presumptions prior to the effective date of any final regulation resulting from this proposal. Finally, the Control Act exemptions would cover acquisitions after notice of the Corporation's intent not to disapprove provided the acquisition is made on the terms specified in the notice.

Proposed paragraph (d) specifies exemptions from the requirements of prior approval or prior notice under the Holding Company and Control Acts, respectively. Similar exemptions, for stock acquired through a *bona fide* gift or in satisfaction of a debt contracted in good faith, currently appear as exemptions from prior notice under the Control Act regulations at 12 CFR 563.18–2(d)(2)(i) and (ii) (1985). These exemptions, however, would be subject to the following conditions. First, an acquiror receiving stock under circumstances covered by an exemption from prior approval or prior notice must

file an application or notice with the Corporation within 90 days of acquisition of the stock. Second, during the pendency of the Corporation's review, the acquiror may not take any actions designed to effect a change in control of the insured institution in question. Third, if the Board disapproves the acquiror's application or notice, the acquiror will be required to divest the stock acquired within one year of the Board's action, or such shorter period as the Board may order in rendering its decision.

With respect to all of the foregoing exemptions, acquirors also should be aware that the presence of an exemption from the approval process or an exemption from the requirement of prior approval under the Holding Company Act does not necessarily mean that the acquiror is exempt from other provisions of the Holding Company Act. For example, certain trusts are specifically excluded from the definition of a savings and loan holding company and thus would be entirely exempt under the Act. However, a company that acquires control of an insured institution in connection with a foreclosure that is exempt from the approval process is exempted only from sections 408(c)(2) and 408(g) of the Holding Company Act, 12 U.S.C. 1730a(c)(2) and (g) (1982). Other types of exempt acquisitions of control, such as an exempt reorganization, also leave the acquiring company fully subject to all other provisions of the Holding Company Act.

Proposed paragraph (e) sets forth the Holding Company Act's prohibitions against certain acquisitions that would result in the formation of interstate holding companies. *See* 12 U.S.C. 1730a(e)(3) (1982). Such acquisitions may be approved, however, in accordance with the emergency thrift-acquisition provisions of 12 U.S.C. 1730a(m) (1982). In addition, the Board may arrange interestate supervisory mergers involving federally-chartered subsidiaries of holding companies pursuant to its branching policy statement for federal associations. 12 CFR 556.5(a)(3) (1984). *See Independent Bankers Association of America v. Federal Home Loan Bank Board*, 557 F. Supp. 23 (D.D.C. 1982).

IV. Section 574.4—Control

A. Control

The proposed regulation also seeks to clarify and specify the situations that the Board regards as constituting control. As noted above, both the Control Act and the Holding Company Act employ broad definitions of the term "control". The control Act describes control as the power, directly or indirectly, to direct the management or policies of an insured institution. 12 U.S.C. 1730(q)(8)(B) (1982). The Holding Company Act provides that the term includes control in any manner of the election of the majority of the directors of an insured institution. *Id.* at 1730a(a)(2)(A). Control also may be found under the Holding Company Act if the Corporation determines that a person, directly or indirectly, exercises a controlling influence over the management or policies of an insured institution. *Id.* at 1730a(2)(D). Under either statute, the acquisition of more than twenty-five percent of an insured institution's voting stock conclusively is deemed the acquisition of control. 12 U.S.C. 1730(q)(8)(B); 1730a(a)(2)(A) (1982). While the current Holding Company Act regulations simply restate the statutory indicia of control, 12 CFR 583.26 (1985), the Control Act regulations, like those of the other federal financial institutions regulatory agencies, set forth an additional presumption of control at 12 CFR 563.18–2(c)(2) (1985). This presumption arises when a person acquires the power to vote more than ten percent of any class of voting securities of an insured institution that has a class of voting securities registered under section 12 of the Exchange Act, 15 U.S.C. 781 (1982), and such shares are "actively traded."[6]

With the increase in acquisition activity in recent years, the Board and its staff have regularly been confronted with a variety of investments in securities of insured institutions which raise control concerns under the statutes but which may not be precisely covered by the control criteria set forth in the regulations. To deal with these situations, the Board has resorted to the generalized formulations of control in the statutes to compel compliance. The variety of the Board's experience in administering the Control Act and Holding Company Act has allowed it to identify certain factors that raise questions as to whether the investor has the power to control the association or is in fact exerting a controlling influence in the institution. To facilitate compliance with the Acts, and to expedite resolution of the issues, The Board is proposing to incorporate these factors in its Control and Holding Company Act Regulations as part of a more comprehensive and realistic series of control determinations. When such factors are present at the same time an investor has a certain level of securities ownership, the investor would be determined, subject to rebuttal, to have acquired control. This revised system should not only serve the Board's goal of increased compliance but should also benefit acquirors and investors by giving them advance notice of how the Board will examine their investments.

B. Conclusive Control Determinations

Control determinations for both statutes would be set forth in § 574.4. In accordance with the statutes, paragraph (a) would set forth circumstances in which control is conclusively presumed to exist. These factors would be treated as conclusive determinations of control.

Paragraph (a) would follow the statutory criteria and establish a conclusive determination of control when an acquiror, directly or indirectly, or acting in concert with others, acquires more than 25 percent of a class of voting stock of an insured institution. The provision integrates the control determinations of the two statutes. Although the Holding Company Act speaks of a person who "owns, controls, or holds with power to vote, or holds proxies representing" stock while the Control Act refers to a person who "acquires" the stock, the two statutory provisions have been interpreted in a manner that covers essentially the same transactions. As a rule, an acquisition of stock results in control of that stock. The proposed implementing regulations would also specify that control is achieved upon the acquisition of more than 25 percent of a class of voting stock, which is the language used in the Control Act. The Holding Company Act provides that control is present upon ownership or control of more than 25 percent of an institution's voting "shares" rather than a difference since insured institutions generally only have

[6] As originally promulgated, the Control Act regulations established two control presumptions deeming a person to acquire control if he or she acquired more than ten percent of an insured institution's stock and either: (1) The institution had a class of stock registered under the Exchange Act; or (2) the acquiror was the institution's largest shareholder following the acquisition. *Amendments Relating to Change in Savings and Loan Control Act*, Resolution No. 79–121, 44 FR 10500 (Feb. 21, 1979). These presumptions were the same ones that are currently found in the regulations of the other federal financial institutions regulatory agencies. *see* 12 CFR 5.50(e); 225.41(b)(2); 303.15(a) (1984). Subsequently, the control presumption with respect to institutions with a registered class of voting securities was limited to institutions that had more than 1200 shareholders and $250 million in assets *See Federal Savings and Loan Institutions, Change in Control*, resolution No. 80–491, 45 FR 55693 (Aug. 21, 1980). Finally, in 1982, the presumption regarding largest shareholders was eliminated and the presumption with respect to institutions with a registered class of voting securities was revised to require active trading in the stock, rather than 1200 shareholders and $250 million in assets. *Amendments Relating to Change in Control*, Resolution No. 82–507, 47 FR 34120 (Aug. 6, 1982).

one class of voting securities. The Board has noted, however, that there are institutions that have begun using different classes of common stock to limit or structure control of the institution. In the Board's view, the acquisition of 25 percent of such a class would raise Holding Company Act concerns and should be subject to its requirements.

Paragraph (a) lists other conclusive control determinations, including, with respect to both an insured institution and a company, holding general irrevocable proxies representing 25 percent or more of any class of voting stock of the institution or company; control in any manner of the election of a majority of the institution's or company's directors; and, with respect to determining control of a company only, control of the election of a majority of the company's trustees, a position as general partner, contribution of more than twenty-five percent of capital, or a position as trustee with respect to control of a trust.

Finally, paragraph (a) would state a general definition of actual control for both statutes. The Board proposes to use a formulation that defines control as the power, directly or indirectly, to direct the management or policies of an insured institution, as phrased in the Control Act. 12 U.S.C. 1730(q)(8)(B) (1982). Although the wording of the Control Act control definition differs slightly from that contained in the Holding Company Act at 12 U.S.C. 1730a(2)(D) (1982), the Board believes that the differences in formulation are not of substance and that both statutes were designed to address the same general type of controlling influence over the affairs of an insured institution. In the Board's view, it is appropriate that control determinations under both the Control Act and the Holding Company Act be made in advance of an actual exercise of controlling influence. Advance determinations are necessary in order to avoid consummation of transactions that would frustrate the purposes of the Acts and to save acquirors from substantial expenditures that may be ultimately deemed unlawful under the Holding Company Act's "controlling influence" standard. The Board notes that the Federal Reserve Board has adopted a similar position under the Bank Holding Company Act in its revisions of Regulation Y. *See* 12 CFR 225.2(d)(1)(iii) (1984). *Bank Holding Companies and Change in Bank Control: Revision of Regulation Y*, Docket No. R-0470, 49 FR 794, 799 (Jan. 5, 1984).

C. Rebuttable Control Determinations

Rebuttable determinations of control would be collected in § 574.4(b) and presumptions of concerted action would be set forth in § 574.4(d). The rebuttable determinations of control reflect the experience of the Board and its staff in reviewing investments in insured institutions and are intended to put acquirors on notice of the Board's position regarding control under both statutes and to expedite the process of resolving questions of control. The Board wishes to point out that these rebuttable control determinations do not operate as presumptions, as under the current Control Act regulations. Rather, they present determinations of control which are subject to rebuttal pursuant to specified requirements and procedures. If such procedures are not followed (or specifically waived by the Board), the control determination is not rebutted and the acquiror in question would be deemed to be in control.

In the context of the Holding Company Act, the rebuttable determinations of control are based on the "controlling influence" criterion which requires that the Board provide reasonable notice and an opportunity for a hearing on such a determination, 12 U.S.C. 1730a(a)(2)(D) (1982), and are derived from the Board's experience with situations where a company exerts actual control over an insured institution. The proposal provides that a prospective acquiring company whose planned acquisition would come within the scope of one or more of the rebuttable determinations of control must either seek to rebut the determination of control or file the appropriate application before proceeding with the acquisition. A failure to follow the rebuttal procedure would be a violation of the Board's rules and could form the basis of enforcement action against the acquiror. If the company proceeded with a rebuttal, it would make a rebuttal submission in the manner described in the rule. In order to avoid delays in considering rebuttals, authority to consider rebuttals would continue to be delegated jointly to the Board's Office of Examinations and Supervision and Office of General Counsel and would be considered under criteria, procedures and deadlines that are also part of this proposal and are discussed below. If the rebuttal submission did not meet the rebuttal criteria, the acquiror would be notified that its rebuttal was not accepted. If the acquiror were a company and the company were then to proceed with the acquisition, rather than file the appropriate application, the facts presented in the acquiror's rebuttal effort could be the basis upon which a notice, with opportunity for hearing, would issue.

The Control Act does not present the procedural complexity in the use of rebuttable determinations that is presented by the "controlling influence" standard of the Holding Company Act. The Control Act defines "control" as the power, directly or indirectly, to direct the management or policies of an insured institution *or* to vote 25 percent or more of any class of voting securities of the insured institution. 12 U.S.C. 1730(q)(8)(B) (1982). The proposed rebuttable determinations of control again are based upon the Board's experience in observing actual control situations and implement the first part of this definition. Application of the rebuttable determinations as a basis for a finding of control under the Control Act does *not* require a prior hearing before a violation of the acquisition restrictions may be found. The rebuttal process would be available under the Control Act and again the rule would provide that a prospective acquiring person whose acquisition would be within the scope of one of the rebuttable determinations of control would either seek to rebut the determination or file the requisite notice and obtain clearance before proceeding with the acquisition. Failure to do so would constitute both a violation of the rules requiring resort to the rebuttal process in the first instance as well as a violation of the regulations requiring prior clearance of the acquisition.

As is currently the case with presumptions of control under the Control Act regulations, distinctions would be drawn for purposes of the rebuttable control determinations under both statutes between institutions whose stock is "actively traded" and all other institutions. If the institution has voting stock that is actively traded, the acquisition of more than 10 percent of any class of that institution's voting stock will be deemed, subject to rebuttal, to constitute control if any "primary" or "secondary" control factor, as enumerated in § 574.4(d), exists. This determination is *less* sweeping than the presumption contained in the current regulation, which presumes control based upon the acquisition of more than 10 percent of an actively traded institution's voting stock in all events. For institutions whose stock is actively traded, the acquisition of 25 percent or more of any class of stock, whether voting or non-voting stock, also would be determined, subject to rebuttal, to be control if any primary factor is present.

Finally, for such institutions with actively traded stock, the acquisition of 35 percent or more of any class of voting or non-voting stock would be deemed to constitute control if any primary or secondary factor is found.

The standards for rebuttable determinations of control of institutions whose stock is not actively traded would include acquisition of 10 percent of any class of voting stock only when a primary factor is present; the acquisition of more than 20 percent of any class of voting stock when any primary or secondary control factor exists, and the acquisition of more than 25 percent of any class of stock, voting or non-voting, if any primary or secondary factor exists. The differing standards for actively traded and non-actively-traded stock reflect the fact that the widespread ownership of actively-traded stock allows an acquiror to gain working control of an institution with a much smaller block of stock than would be the case in institutions whose stock ownership is more concentrated.

Primary control factors would appear in § 574.4(c)(1) and would include circumstances that, in conjunction with a substantial investment, strongly indicate the power effectively to direct the management and policies of an insured institution. Such primary factors would include situations in which, at the time of acquisition or as a result of the acquiror's actions: (1) The acquiror would be the largest holder of voting stock in the institution; (2) the acquiror would hold 25 percent or more of the institution's total stockholders' equity or 35 percent or more of its combined debt securities and stockholders' equity; (3) the acquiror would have the power to dispose of 25 percent or more of the institution's voting stock otherwise than in a widely dispersed offering; (4) the acquiror is party to an agreement that gives the acquiror the ability to direct or control the management or policies of the institution, provided, however, that this factor does not include an agreement to which the insured institution is a party where (i) such restrictions apply only during the period where the acquiror is seeking Board approval for the acquisition, (ii) the agreement prohibits transactions between the acquiror and the insured institution and their respective affiliates without Supervisory Agent approval during the pendency of the approval process, and (iii) the agreement contains no material forfeiture provisions applicable to the insured institution in the event the acquisition is not approved by the Board or other regulatory authorities or is not approved by a specified date; (5) the acquiror has the ability to direct the vote of more than 25 percent of the institution's voting stock, or to direct the vote of more than 25 percent of the institution's voting stock upon the occurrence of a future event; or (6) the acquiror's nominees comprise 25 percent or more of the insured institution's board of directors.

It has been the Board's experience that the presence of any of the above factors coupled with ownership of a substantial block of stock is strongly indicative that the acquiror has the power to exert control over management if such influence is not already being exerted. For this reason, the first factor, status as the largest shareholder, constitutes a control presumption for a 10 percent owner under the Change in Bank Control regulations of the Federal banking agencies. *See* 12 CFR 5.50(e); 225.4(b)(2); 303.15(a) (1984).

The Board also regards substantial equity investments in the same manner. When an investor supplies an institution with a substantial portion of its equity capital or otherwise provides it with substantial funds, it is difficult to avoid the conclusion that the institution will be greatly influenced by the investor. With very sizeable investments, such influence need not depend on express contractual arrangements or legal rights. Similar concerns have prompted the Federal Reserve Board to adopt a guideline of 25 percent for non-voting equity investments in banks to avoid control issues under the Bank Holding Company Act. *See Policy Statement on Non-Voting Equity Investments by Bank Holding Companies*, 12 CFR 225.143(d)(5) (1984). The Board considers 25 percent of shareholders' equity a reasonable threshold for total equity investments in insured institutions in light of the 25 percent control criterion employed with respect to companies under the Holding Company Act. Similarly, a 35 percent investment in the combined debt securities and shareholders' equity in an institution would raise similar assumptions of control.

The ability to direct disposition of more than 25 percent of the voting stock of an insured institution was also cited as a factor indicative of control in the Federal Reserve Board's policy statement on non-voting equity investments. 12 CFR 225.143(c)(6) (1984). Such an arrangement gives the acquiror the ability to transfer control of an insured institution and clearly signals that the acquiror has the ability to effect radical changes in the operations of the institution. For these reasons, such arrangements would constitute a primary control factor unless the acquiror is also subject to a restriction that the stock may not be sold other than in a widely dispersed or public offering. Similarly, the ability to direct voting of more than 25 percent of an institution's stock upon the occurrence of a future event signals the ability to control and should be subject to a prior review.

The primary control factors also would reflect the Board's concern with the various standstill-type agreements used by potential acquirors in stake-out arrangements. In the usual case, the acquiror will make a substantial non-voting equity investment in a target institution and enter into an agreement designed to ensure that the target does not engage in activities inimical to the investor's interests. Often these agreements take the form of covenants by the target not to enter into new lines of business or otherwise vary its operations from present patterns. Other agreements are more interventionist, requiring consultation with the acquiror on policy questions or enabling the acquiror to direct the voting of certain shares. Many agreements provide that the acquiror's investment will convert to voting stock upon the occurrence of a future event such as the relaxation of current legal barriers to a business combination between the acquiror and the target.

Many of the above agreements supply the acquiror with substantial potential, if not actual, control over the affairs of the institution. This is clearly the case when a contract requires consultation and clearance on major business matters, but control can also arise from agreements requiring adherence to current business practices. The surrender of new business opportunities at the behest of the acquiror at least raises questions of control. Agreements allowing the acquiror to direct voting of stock or transforming its current investment to voting stock in the future may be regarded as endowing the acquiror with some of the benefits of that stock. If the amount of voting stock involved is equivalent to 25 percent of the institution's outstanding shares, control concerns will arise under either statute.

The Board proposes to establish as a primary control factor agreements that raise the above concerns. The Board recognizes, however, that restrictive covenants may serve legitimate ends in merger or credit agreements or in investments that infuse additional capital into an institution, and does not wish to unduly restrict these uses. The proposed regulations therefore would

provide that agreements imposing covenants, restrictions or requirements affecting the management policies or operations of the institution would not constitute a primary factor if (1) the institution is a party of the agreement, (2) the restrictions are customary under the circumstances, (3) in the case of an acquisition agreement, the restrictions apply only during the period when the acquiror is seeking regulatory approval for the acquisition, (4) the agreement prohibits transactions between the parties or between a party or its affiliates and affiliates of the other party without the approval of the Supervisory Agent, and (5) the agreement prohibits material forfeiture payments by the insured institution in the event of default if approval of the acquisition is not obtained or is not obtained by a specified date. The Board requests comments on other standards that would be appropriate to distinguish such acquisition agreements in defining control factors.

Secondary control factors include facts and circumstances which, standing alone, may not be strong indicators of control but in combination with a very substantial equity investment are indicative of the power to direct the management or policies of an insured institution. Grouped among the secondary control factors would be: (1) The acquiror or its representative seeks or accepts nomination on the institution's board of directors; (2) the acquiror, or a management official of the acquiror is a management official of the insured institution; (3) the acquiror holds more than 10 percent of the institution's outstanding debt securities; (4) the acquiror or an affiliate were participants (within the meaning of 17 CFR 240.14a-11(b) (1984)) in a proxy solicitation with respect to any class of voting securities of the institution within the preceding three years other than a solicitation on behalf of management of the institution; (5) the acquiror is one of the two largest shareholders in the institution; (6) the acquiror has assumed an economic stake in the institution in addition to that derived from the ownership of stock or debt securities, such as by being party to a profit sharing arrangement with the institution or the acquiror has established ties to the institution which indicate that the institution's activities are being sponsored by the acquiror, such as use of common facilities or personnel, use of common names, provision of advertising for or integral services to, or solicitation of business for the institution; (7) the acquiror extends credit to the institution other than on an arm's-length basis or on terms and conditions other than those would be required in transactions in the ordinary course of business with totally unaffiliated firms.

Secondary control factors would show either that the acquiror has established a substantial relationship with the institution as would be the case if it were a director or management official or that the acquiror has previously attempted to determine management policies of the institution through a proxy solicitation. When a substantial investor has established such relationships or attempted such influence and managed to assume a larger role in the institution's operations, it is resonable to presume that the investor has assumed actual influence in the institution's affairs. As the size of the acquiror's investment grows, these secondary factors assume greater importance.

In the application of the foregoing control factors, it is noted that under the Control Act, notice is only required for acquisitions of control through acquisitions of voting stock. 12 U.S.C. 1730(q)(1) (1982). When control factors are present prior to the acquisition of voting stock, it is generally the Board's view that the acquisition of stock triggers the control presumption. It is foreseeable, however, that for certain persons subject to the Control Act, control factors may come into existence *after* the acquisition of stock, and it could be asserted that the control factor only a rose because of the degree of influence gained through the investment. The Board notes that the language of the Holding Company Act does not present this timing issue. However, the Board solicits comments on whether a time limit should be established to determine whether a control factor is attributable to an investment in voting stock. For example, appearance of a factor within 60 days of an acquisition of voting stock could be viewed as a combined event. In any event, after critical control factors were present, any *additional* acquisition of stock would trigger the control determination.

Issues may also arise with respect to the use of non-voting equity investments as a measure of control. It is the Board's view, however, that when a substantial portion of an institution's capital can be attributed to a single investor, the investor acquires a substantial voice in the affairs of the institution on whether or not this is a legal attribute of the securities held. It is noted that the proposed definition of voting stock in § 574.2(a)(6) covers not only securities that confer the right to vote but also securities that in *any* manner entitle the holder to select directors or direct the operations or policies or an entity. In the Board's view, such power can be presumed to arise with a sufficiently large equity investment.

Finally, the rebuttable control determinations address a type of potential control that is prompting increasing questions with respect to the application of the Holding Company Act and the Control Act, namely, the application of the Acts to proxy contents and the shareholder proposals where parties may obtain revocable proxies, but which nevertheless may effectively result in a change in control of an insured institution or otherwise enable the proxy holder to exert a continuing controlling influence on the management and policies of an insured institution. Such circumstances would arise when a proxy solicitation could result in a change in the composition of the board of directors or a major corporate transaction. The Board has therefore included among the rebuttable determinations of control the possession of revocable proxies representing 25 percent or more of any class of voting stock of an insured institution where such proxies (1) pertain to the election of a majority of the insured institution's board of directors; (2) pertain to acquisition or corporate reorganization of the insured institution; or (3) would enable the proxy holder to exert a continuing influence on a material aspect of the business operations of the insured institution. The Board recognizes that questions may arise in connection with shareholder proposals, or in the case of proxy solicitations for less than a majority of an insured institution's board of directors, where the purpose of seeking board representation is to direct the future course of an insured institution in a specified manner, as to whether such action constitutes the acquisition of control. The Board also notes that the literal language of both the Holding Company Act and the Control Act, could cover the holding of proxies representing 25 percent or more of an insured institution's voting stock, regardless of the purpose of the proxy. *See* 12 U.S.C. 1730a(a) (2) (A) and (B), 12 U.S.C. 1730(q), (1), (8)(B) and (13). Rather than apply the statutes in that manner, however, the Board has elected to treat the holding of proxies representing 25 percent or more of a class of voting stock, not as conclusive control, but as giving rise to a rebuttable determination of control, and only so when the proxies relate to specified matters that are indicative of the proxy holder's ability to acquire or exercise effective control.

By placing this factor in the rebuttable rather than conclusive control category, and by specifying only certain matters that could be the subject of proxies, the Board intends not to unduly interfere in the corporate governance procedures of insured institutions, while at the same time protecting the Board's interest in scrutinizing changes of control before, rather than after, they occur. Moreover, it is not the Board's intention that the rebuttable control determination cover the possession of proxies cast in opposition to a proposal submitted to stockholders by management. Where proxies will be held in connection with a matter that is within the scope of the rebuttable determination, however, by placing such situations in the rebuttable category, it is the Board's intention to make use of the expedited rebuttal process in order speedily to resolve whether an application or notice would be required. The Board recognizes that market developments and innovations in the area of proxy contests for control present novel issues for the Board's administration of the Holding Company Act and the Control Act, and the Board requests comments on other factors that would be appropriate for this control element and other ways in which control through proxies could be addressed in the final regulation.

D. Presumptions of Concerted Action

In order to clarify the question of when persons or companies will be deemed to be acting in concert, the regulation also specifies several situations which, in the Board's experience, are strongly indicative of the existence of action in concert. As discussed above in Section II. C., these situations include certain relationships between a company and a controlling shareholder or management official of such company where both have certain interests in or relationships with the insured institution or its stock; a person and members of his immediate family; persons with certain business affiliations; companies under common control; and persons or companies that constitute a group under certain provisions of the rules under the Securities Exchange Act of 1934 regarding beneficial ownership reporting and proxy contents. These presumptions are not conclusive and a person or company may, as described below, seek to rebut a presumption of acting in concert.

E. Rebuttal Procedures

Section 574.4(e) would establish specific procedures for efforts to rebut the control determinations set forth in § 574.4(b) and the concerted-action presumptions set forth in § 574.4(d). In any instance in which a proposed acquisition would give rise to a rebuttable determination of control, the regulations would require that the acquiror either file the appropriate application or notice or submit a written rebuttal attempting to rebut the determination of control before proceeding with the acquisition. A rebuttal, as outlined in § 574.4(d)(1), would set forth facts and circumstances supporting the absence of control. A control rebuttal submission also would separately include an agreement entered into by the acquiror with respect to certain types of activities. This submission would be required to include specific undertaking not to:

(a) Seek or accept any additional representation on the institution's board of directors;

(b) Have or seek to have any representatives serve on an executive or similar committee of the institution's board of directors;

(c) Engage in any intercompany transactions with the institution;

(d) Influence or attempt to influence in any respect the loan and credit decisions or policies of the institution, the pricing or services, and personnel decisions, the location of any offices, branching or similar activitities of the institution;

(e) Influence or attempt to influence the institution's dividend policies and practices or any decisions or policies of the institution as to the offering or exchange of any securities;

(f) Have or seek to have any representative serve as an officer, agent or employee of the institution;

(g) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the institution's management or board of directors;

(h) Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the institution's shareholders other than in support of a solicitation on behalf of management of the institution;

(i) Seek to amend, or otherwise take action to change, the institution's bylaws, articles of incorporation, or charter,

(j) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the institution's management, policies or business operations; or

(k) Vote stock owned or controlled with power to vote other than on a *pro rata* basis in accordance with the vote of other stockholders on matters presented to the stockholders; or

(l) Seek or accept access to any non-public information concerning the institution except when the acquiror is already represented on the board of directors.

These undertakings have been contained in rebuttal agreements previously approved by the Corporation under the current Control Act regulations and are designed to ensure that the acquiror does not attempt to exert additional control over the institution or engage in practices that the Control and Holding Company Acts were designed to prevent, absent Board approval of an acquiror. Rebuttals would be required to be submitted prior to any acquisition, and the Board wishes to take this opportunity to emphasize that it is unlikely that the Board would entertain a rebuttal submission while an acquiror is in violation of either the Acts or regulations unless it could be demonstrated that the acquiror's stock holdings were the result of events beyond the acquiror's control, *e.g.*, non-pro-rata stock redemptions. In order to ensure enforceability, the rebuttal undertaking also must specifically state that it constitutes an agreement entered into with the Corporation and that violation of the terms of the undertakings shall be subject to such additional penalties, remedies and procedures as are provided under any other applicable statutes or regulations for violations, willful or otherwise, of agreements with the Corporation.

The Board recognizes that the rebuttal process would be somewhat different in connection with a determination of control that would arise as a result of holding certain types of proxies. Therefore, in the case of a rebuttal of a determination of control of such type, the prospective proxy holder would be required to furnish such information as requested by the Corporation, potentially including a rebuttal agreement that would contain some but not necessarily all of the foregoing conditions.

Similarly, a person or company could seek to rebut a presumption of acting in concert by filing a statement setting forth the facts and circumstances that support the assertion that no action in concert exists. Such a statement would be required to be accompanied by an affidavit from each person or company seeking to rebut, stating that such person or company has no agreements or understandings, written or tacit, with respect to exerting control, directly or indirectly, over the management or policies of the insured institution, including arrangements with respect to voting, acquisition or disposition of the

insured institution's stock. As with attempts to rebut a determination of control, the rebuttal would state that a violation of its terms would be subject to such additional penalties, remedies and procedures as provided under applicable statutes or regulations for violations, willful or otherwise, of agreements with the Corporation. The Board notes that execution of a false affidavit submitted to the Corporation may subject the person filing such an affidavit to criminal sanctions. *See, e.g.*, 18 U.S.C. 1001 (1982).

Rebuttal submissions would be submitted jointly to the Board's Office of Examinations and Supervision and Office of General Counsel, and those Offices jointly would have delegated authority to enter into control rebuttal undertaking agreements and to accept acting-in-concert rebuttal submissions on behalf of the Corporation. No rebuttal inconsistent with facts known to those Offices would be required to be accepted.

F. Safe Harbor

In order to provide investors with guidance on investments that do not raise control presumptions, the proposed regulation also would specify a "safe harbor," distinct from the rebuttal process, for "passive investors." By providing a regulatory endorsement of certain arrangements, the Board hopes to encourage investments in insured institutions. The safe harbor would be available where an acquiror owns less than 25 percent of an institution's voting stock, no control factors are present, and the acquiror agrees to abstain from soliciting proxies from others, although the acquiror could vote freely and dissent with respect to its own stock. In order to avail itself of the safe harbor, an acquiror would simply certify to the Board that its ownership status met the requirements of the safe harbor and that, before changing that status, the acquiror would either file a rebuttal or file the appropriate notice or application. In order to simplify this filing, the specific text of the safe harbor certification would be contained in the regulation. The Board solicits comments on the elements of a safe harbor and whether the safe harbor process should be available with respect to all insured institutions, or only a subcategory thereof, such as institutions with stock registered under the Exchange Act.

V. Section 574.5—Certifications of Ownership and Other Reports

The proposed revisions to the Control Act and Holding Company Act regulations would include provisions designed to better coordinate the reporting and filing obligations under the statutes. Some of the current differences in the regulations governing these aspects of the statutes are dictated by the differences in the statutes themselves. Where the Holding Company Act requires an application and written approval of the Corporation prior to an acquisition of control, 12 U.S.C. 1730a(e)(1)(B) (1982), the Control Act provides a notice period after which the potential acquiror is free to proceed with his or her plans. Notwithstanding these statutory differences, the Board believes that a more uniform approach to filings is feasible and desirable. Moreover, this element of the proposal would facilitate the Board's efforts to monitor compliance with both Acts by investors and avoid violations of the statutes. As a first step toward this unformity, the Board proposes to adopt a requirement that any person or company must file a brief certification upon the acquisition of 10 percent or more of any class of voting stock of any insured institution. Such a certification would be required from the beneficial, not merely the record, owner of the stock and would simply identify the insured institution and recite that the acquiror owns 10 percent or more of any class of voting stock of the institution, that the acquiror is not subject to a presumption of control and that the acquiror will not take actions that would give rise to a rebuttable determination of control under § 574.4(b) or a conclusive determination of control under § 574.4(a) without first filing and obtaining approval of a rebuttal or an application or notice, as appropriate. To make this filing as easy as possible, the specific text of the certification would be set forth in the regulation.

The certification would not be a public document. The purpose of the certification is to provide the Corporation with notice of persons and companies that have amassed substantial amounts of the stock of an insured institution and thus are capable of acquiring control under the Board's regulations. The certification additionally allows the Board to obtain a commitment from such persons or companies that in the future they will observe the requirements of the regulations. The Board would not review the qualifications or resources of a person or company upon the filing of such a report and the report would not be treated as an application or notice for purposes of commencing statutory or regulatory time periods. The Board, however, would consider the report in connection with any Control Act notice or Holding Company Act application which would be required if the acquiror proceeds to acquire more stock or takes on more indicia of control. Accordingly, failure to file the notice or the filing of an inadequate notice could be taken into consideration should the acquiror be required to file a full notice or application. *See* 12 U.S.C. 1730(q)(7)(E) (Corporation may disapprove Control Act notice for failure to file required information); 1730a(e)(1)(B) (Corporation need not render decision on application until 90 days after submission of complete record to Board) (1984).

Paragraph (b) of § 574.5 would implement the Control Act requirements of notice to the Corporation whenever an insured institution or insured bank makes a loan secured or to be secured by 25 percent or more of the stock of an insured institution.[7] 12 U.S.C. 1730(q)(9) (1982). An analogous provision appears in the current regulations at 12 CFR 563.18–3(c) (1985). Paragraph (c) would contain the statutory exceptions for loans where the borrower has been the owner of record for more than one year or where the stock is that of a newly organized institution prior to its opening. The notice required by this paragraph also would be confidential and would consist of a statement identifying the insured institution, the amount of stock involved, the date of the loan, and the name of the borrower.

VI. Section 574.6—Procedural Requirements

A. Applications and Notices

Proposed § 574.6 would set out the procedures applicable to submissions of applications or notices, rebuttals of control presumptions, safe-harbor filings, and certifications of ownership. These provisions are designed to implement the substantive revisions to the regulations previously discussed and to coordinate and facilitate the increased use of delegated authority in the application process.

Section 574.6(a) would identify the form to be used by particular acquirors for an acquisition. As is currently provided in 12 CFR 584.10 (1985), and now proposed to be contained in Part 574, the type of application filed by a company will depend on whether the acquiror is already a savings and loan holding company with respect to another insured institution and whether

[7] Although the Control Act deems a pledge of stock to be an acquisition, the legislative history of the Act indicates that pledges would only become acquisitions in the event of possession of voting control. H.R. Rep. No. 1383, 95th Cong. 2d Sess. 21 (1978), *reprinted in* 1978 U.S.C Code Cong. & Ad. News 9293.

the acquisition involves more than one institution. The proposal would entail no substantive revisions to the applications themselves at this time, although the Board intends to rearrange certain portions of the applications and notice forms in the future in order to facilitate the proposed new public-notice procedures. Companies other than current savings and loan holding companies would file Form H-(e)1 for acquisitions of single insured institutions. Acquisitions of more than one insured institution by any type of company would require use of Form H-(e)2. Acquisitions involving the merger of an institution or an existing savings and loan holding company would require Form H-(e)3, and exempt reorganizations under the Holding Company Act would be submitted for review under Form H-(e)4. Persons seeking to acquire control of an insured institution would continue to use the Change in Savings and Loan Control Act Notice Form 1173, Parts A and B. The proposed regulations also would reduce the required number of copies of three.

Section 574.6(b) (1) and (2) would describe the procedures for filing a Control Act notice or Holding Company Act application. Paragraph (3) would list the appropriate addresses for filing and the number of copies required. Control Act notices generally would be filed in the same manner as is now specified in the current regulations at 12 CFR 563.18-2(j) (1985), with appropriate modifications to account for delegated and non-delegated notices. Section 574.6(b) would also set forth procedures for amendment of applications and notices. Amendments could not be filed after notice has been published pursuant to paragraph (d) unless the amendment was required by the Corporation. This requirement ensures that acquirors do not make material changes to their notices and applications after notice has been given.

Using the procedure currently set forth in the Control Act regulations, § 574.6(c) would specify that an application or notice will not be deemed sufficient unless it includes all the information called for in the appropriate form and any additional information the Corporation or its delegate may require by specific request in connection with a particular application or notice. 12 CFR 563.18-2(e) (1985). The proposal would also require a complete description of all proposed acquisitions. In many instances, the responses to the items in the Forms raise additional issues on which the Board needs information before it can properly evaluate an application. The reservation of the power to make additional inquiries enhances the Board's ability to conduct thorough investigations of acquirors. Under the proposal, no further information could be requested with respect to a notice deemed sufficient unless the request was derived from or prompted by information already furnished or involved material information previously concealed or otherwise unavailable. Section 574.6(c) would additionally reserve the right of the Corporation to waive information requirements in supervisory or other appropriate cases. In order to expedite the application and notice review process, the Board has already implemented a new internal application tracking system which, among other things, contains deadlines for completion of certain review functions by the Board's staff. However, the Board also believes that applicants have a responsibility to respond expeditiously to requests for additional information in connection with their submissions and that undue delay in this respect unfairly burdens the Board's resources. Therefore, the regulations also specify that a failure to respond to a request for additional information will, after 30 days, be deemed to constitute withdrawal of the application or notice.

Section 574.6(d) would provide for public notice and public availability of portions of Holding Company Act applications and Control Act notices. The proposed regulation seeks to reconcile the substantially different approaches to confidentiality in the current implementing regulations. The Holding Company Act regulations now require applicants to publish notice of their filing within 10 days after being notified by the Supervisory Agent that the application is complete. 12 CFR 584.4(e) (1985) (incorporating by reference procedures of 12 CFR 543.2(d)). Upon publication, the application and related communications become publicly available except to the extent disclosure is exempted by the Freedom of Information Act, 5 U.S.C. 552 (1982). *See* 12 CFR 543.2(d)(4) (1985). On the other hand, the Control Act regulations specify that notices are for the use of the Corporation and appropriate state supervisors and cannot otherwise be disclosed except in accordance with the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552 (1982), and the Privacy Act, 5 U.S.C. 553a (1982). *See* 12 CFR 563.18-2(f) (1985).

As originally promulgated, the Control Act regulations were silent as to the public availability of notices. *See Amendments Relating to the Change in Savings and Loan Control Act of 1978*, Resolution No. 79-121, 44 FR 10500 (Feb. 21, 1979). In 1980, the Board amended the regulations to provide that, except for confidential portions, notices would be available for public viewing. *Federal Savings and Loan Institutions; Change in Control*, Resolution No. 84-491, 45 FR 55693, 55696 (Aug. 21, 1980) (*See* former § 563.18-2(e)(4)). In addition, the target institution was given special notice on the filing of a Control Act notice or a rebuttal of a control presumption and a period of 10 or 20 days (depending on the type of filing) in which to submit its views regarding the acquiror. 45 FR at 55695-96 (former § 563.18-2 (c)(3) and (f)).

In Resolution No. 82-507, dated July 29, 1982, however, the Board determined to delete the provisions for special notice to the target institution and to further specify that notices would be kept confidential. *Amendments Relating to Change in Control*, Resolution No. 82-507, 47 FR 34120 (Aug. 6, 1982). This change in approach was prompted by concerns that disclosure of notices could prematurely and materially affect the public trading price of the institution's securities and thus complicate acquisitions of insured institutions. 47 FR at 34122. It was also noted that in the case of a proposed tender offer, public disclosure of certain terms of the offer may subject the potential acquiror to extensive SEC disclosure requirements. *Id. See* Exchange Act Rule 14d-2, 17 CFR 240.14d-2 (1984) (Public disclosure of identity of bidder and target, amount of securities sought, and price to be paid deemed commencement of tender offer); *Interpretative Release Relating to Tender Offer Rules*, Release No. 34-16623, 45 FR 15521 (Mar. 11, 1980); 3 Fed. Sec. L. Rep. (CCH) ¶ 24,2184I (Mar. 5, 1980) (Public disclosure of critical terms in public filing with federal agency can trigger tender offer).

Although the Board continues to acknowledge these concerns, it is also of the view that a better balance can be struck between the needs of acquirors for confidentiality and the Board's interest in obtaining all information that may be of value in its review process. The Board finds that public participation in the applications process can be helpful in the execution of its duties, particularly in bringing to its attention information that would prevent acquisitions of control of insured institutions by unqualified or dishonest acquirors. Moreover, the Board notes that in adopting the Change in Control Act, Congress compared control acquisitions review to that exercised over charter applications, mergers,

branching and other tansactions in which public notice has long been a feature. *See* H.R. Rep. No. 1383, 85th Cong. 2d. Sess. 19 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 9291.

The proposal seeks to reconcile these concerns by instituting a uniform, modified public notice and availability procedure for both Holding Company Act applications and Control Act notices. Under proposed § 574.6(d)(1), acquirors would be directed to follow public notice and comment procedures similar to those of 12 CFR 543.2(d). Upon filing an application or notice, the acquiror would be required to publish a prescribed form of notice in the business section of a newspaper having general circulation in the community in which the institution's home office is located. The notice would contain only the basic information on the name of the prospective acquiror, the institution whose stock is sought to be acquired, and the date of filing of the acquiror's application or notice. The notice also would inform the public of the procedures and deadlines for commenting upon the filing and where the application may be reviewed. Applicants also would be required to mail a copy of the notice to the institution whose stock is sought to be acquired. Copies of the notice and the publisher's affidavit of publication would be filed promptly after publication. Upon publication, non-confidential portions of an application or notice would become publicly available. An acquiror also could claim confidentiality for portions of an application or notice that the acquiror asserts would trigger the commencement of a tender offer under Exchange Act Rule 14d-2. In order the ensure that the application review process was not unduly delayed, comments on the acquisition would have to be submitted within 20 days of publication in order to be considered as part of the review of the application for notice. The other protest and oral argument procedures of 12 CFR 543.2(e)(1) (1985) would not be applicable.

In the Board's view, the disclosure required by the proposal should not upset trading or disadvantage acquirors and should not, of itself, be deemed to trigger the commencement of a tender offer under Exchange Act Rule 14d-2. Price and other terms of a proposed acquisition can and would be accorded confidential treatment if requested by an acquiror in accordance with the procedures described in the rule. Personal financial information could also be exempt from disclosure. In any event, however, the proposal would require disclosure of information that may now be obtained by any party through requests under the Freedom of Information Act, namely, the identity of the applicant, date of filing and name of the institution sought to be acquired. Comments submitted in connection with an application or notice would be considered part of the filing and release of information contained in comments would be subject to the same procedures and standards as would be applied to release of information contained in the application or notice. The Board specifically requests comments on these and other measures that would be appropriate to facilitate public notice and input regarding acquisition applications, without producing undue delay or conflicts with securities law requirements.

The Board sees no threat to its administration of the statutes in this type of increased public involvement. It is noted that in evaluating the availability of implied rights of action under the Holding Company and Control Acts and the substantially similar Change in Bank Control and Bank Holding Company Acts, courts have rejected suits by targets because it was felt that the statutes looked solely to the relevant federal agency to make the determinations of whether acquirors were qualified to obtain control under the applicable statutory criteria. *See Financial Corporation* v. *Dayco Corp.*, No. CV 80-2918-RVK, slip op. at 10, 12 (C.D. Cal. Sept. 26, 1980); *see also Quaker City National Bank* v. *Hartley*, 533 F. Supp. 126 (S.D. Ohio 1981) (interpreting Change in Bank Control and Bank Holding Company Acts). Under the proposal, the suitability of acquirors would remain, as the Board strongly believes appropriate, the sole judgment of the Corporation, subject to such judicial review as is available after the fact.[8] The public notice and public participation procedures are designed to provide the Board with more information regarding potential acquirors. Moreover, the speed of consideration of applications under either statute should be enhanced since the proposed regulatory procedures would place time limits on public comment.

In addition, by generally setting forth more precise standards in the areas of acquisitions, the proposed rules may create further opportunities for private participation in the enforcement of statutes. For example, an institution might bring suit to force a company, person or group to file the appropriate application or notice. The Board believes that limited private actions of this type to compel compliance with the Acts would not be inappropriate. Although the Board intends to continue vigorous enforcement of the statutes, it must also recognize the limitations on its own resources. Moreover, insured institutions may be in the best position to detect concerted activity in the acquisition of their stock, or the existence of other holders of substantial amounts of its stock who may be subject to one of the Acts. Finally, private actions to cause an application or notice to be filed, as distinct from an effort to second-guess the Board's judgment on the merits of the application, would appear consistent with the congressional purpose of bringing a broad range of control acquisitions under the Board's scrutiny.

[8] *See* 12 U.S.C. 1730(q)(5); 1730a(k) (1982). *See also* 5 U.S.C. 702 (1982).

VII. Section 574.7—Determination by the Corporation

Proposed § 574.7 would provide additional details regarding the criteria to be used in evaluating applications and notices submitted under this Part. These provisions are designed to facilitate expanded use of delegated authority and to expedite the overall application process by clarifying standards that will be applicable in review of applications and notices. The proposed regulation would restate the statutory criteria for individuals applying under the Control Act and companies applying under the Holding Company Act. As outlined in paragraphs (a), (b), and (c), applications of companies to acquire control of an insured institution would be judged by the criteria listed in the Holding Company Act at 12 U.S.C. 1730a(e)(2) (1982) and in the current Holding Company Act regulations at 12 CFR 584.4(c) (1985). The focus of the Board's inquiry regarding company acquisitions would continue to be whether the financial and managerial resources and future prospects of the company and institution involved are detrimental to the institution or the insurance risk of the Corporation, and in an H-(e)2 or H-(e)3 application, the convenience and needs of the community to be served. As provided in the Holding Company Act, however, the Board's discretion would be limited to the extent that it could not approve control acquisitions with monopolistic tendencies. 12 U.S.C. 1730a(e)(2)(A) (1982). Nor could the Board approve a proposed holding company acquisition which served to substantially lessen competition unless

the anticompetitive effects of the transaction are clearly outweighed by a greater service to the convenience and needs of the community. *Id.* at 1730a(e)(2)(B). The Board's discretion would continue to be limited by the statutory prohibition against the creation of new multi-state savings and loan holding company networks and the expansion of existing multi-state holding companies into new states, except, in both cases, in accordance with the conditions set forth in 12 U.S.C. 1730a(m) (1982). *Id.* at 1730a(e)(3). Section 574.7(b), pretaining to applications for acquisitions of control of insured institutions by existing savings and loan holding companies or acquisitions of more than one institution by any company, also would codify the statutory requirement to seek the views of the Attorney General on the competitive factors in such combinations and to consider any report rendered within thirty days. 12 U.S.C. 1730a(e)(2) (1982).

Paragraphs (d) through (f) of § 574.7 would set forth the procedures for consideration of notices submitted under the Control Act now found in 12 CFR 563.18–2 (e)(3), (g), (h), and (i) (1985). These provisions, however, have been rephrased for consistency with the format of proposed Part 574. The proposal specifies the effect of both a failure to disapprove transaction within the 60-day review period or a notice of disapproval. A notice of disapproval would be issued within three days of the decision by the Board or its delegate and would apprise the acquiring person of its right to request an administrative hearing on the proposed acquisition. Any notice of an intent not to disapprove would be contingent on consummation of the transaction within a year in accordance with the terms and representations in the notice and assuming no material change in circumstances of the acquiror prior to the acquisition. *See* 12 CFR 563.18–2(g) (1985). Any deviation from the terms of the notice would require a post-approval amendment to the notice.

The Corporation may either extend the review period for another thirty days as permitted by the Control Act, 12 U.S.C. 1730(q)(1) (1982), or it may fail to disapprove the acquisition during the sixty-day review period or any extension thereof. *See* 12 CFR 563.18–2(h) (1985). If the Corporation fails to disapprove, the acquisition may proceed if it takes place within one year in accordance with the terms and representations in the notice and again involves no material change in circumstances. *See* 12 CFR 563.18–2(h) (1985).

Section 574.7(d) would set forth the Control Act criteria for considering acquisitions. These would allow the Corporation to disapprove any proposed acquisition if the proposed acquisition: (1) Would result in a monopoly or promote a conspiracy to cause such a result; (2) would tend to lessen competition in any area of the country with no countervailing benefit to the public in better service to community needs and convenience; (3) might jeopardize the financial stability of the institution or prejudice the interests of depositors because of the acquiror's financial condition; (4) would not be in the interest of the public or depositors because of the competence, integrity, or experience of the acquiror; or (5) involves an acquiring person who fails or refuses to furnish the information required by the Corporation. *See* 12 U.S.C. 1730(q)(7) (1982).

To provide more guidance to prospective acquirors, the proposed regulation would set forth a list of "presumptive disqualifiers" which would indicate factors that in the past have led the Board to object to the financial and managerial resources of a proposed acquiror under the Holding Company Act [9] or the financial status or integrity of an acquiror under the Control Act. With respect to the managerial resources/integrity standard, these events would include convictions, civil judgments, administrative sanctions, consents to sanctions, and investigations conducted by a federal or state agency or self-regulatory trade or professional organization against an acquiror or affiliates of an acquiror involving: (1) Fraud, moral turpitude, dishonesty, breach of trust or of fiduciary duties, or organized crime or racketeering; (2) violations of securities or commodities laws or regulations; (3) violations of depository institutions laws or regulations; (4) violations of housing authority laws or regulations; or (5) violations of the ethical codes of a self-regulatory trade or professional organization. Such events would be relevant for an acquiror that is a company if the events in question occurred during the preceding 10 years or during any period while a person currently a controlling shareholder or management official of the company was either a controlling shareholder or management official. For acquirors who are natural persons, such an occurrence would be relevant if it took place after he or she reached majority.

Other presumptive disqualifiers would include denial of an application or withdrawal of an application after notice of intent to deny an application relating to the organization or acquisition of control of a financial institution, the liquidation, conservatorship, or receivership of any depository institution of which the acquiror was a controlling shareholder or management official, or conviction of a felony by the acquiror or any affiliated person or affiliate. Finally, applicants would be subject to presumptive disqualification if they submit applications while they are in violation of either Act or the Board's regulations thereunder, unless the violation arises as a result of acquisition of an amount of stock in the insured institution where the acquisition of such amount of stock was beyond the control of the applicant.

With respect to financial resources factors, presumptive disqualifiers would include (1) with respect to a company, failure to agree in writing that the company will insure that its subsidiary insured institution shall have at the end of each calendar quarter, net worth at least equal to three percent of liabilities, plus the growth and contingency factors as determined in § 563.13 or such greater amount that may be required pursuant to § 563.13, and that, where necessary, the company will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with its net worth maintenance undertaking; (2) liability for amounts of debt which, in the opinion of the Corporation, create excessive risks of default and pressure on the insured institution; or (3) a business plan projecting activities that are inconsistent with economical home financing. In particular, in the case of an acquisition by a company, the Board believes that a holding company should serve as a source of financial and managerial strength to its subsidiary insured institution. *See Kaneb Services, Inc.* v. *Federal Savings and Loan Insurance Corporation*, 650 F.2d 78 (5th Cir. 1981). The Board intends that the condition of applicants be closely examined with this objective in mind. For example, the Board has concerns regarding the assumption of substantial amounts of debt by a holding company because of the risk that the holding company may not have the financial flexibility needed to meet problems that

[9] As used in the Holding Company Act, the term "management resources" would relate not only to management's competence but its integrity as well. *See* H.R. Rep. No. 997, 90th Cong., 1st Sess. 6 (1967), *reprinted in* 1968 U.S. Code Cong. & Ad. News 1601, 1606 ("Companies with management of doubtful . . . integrity would be barred from gaining control of an insured institution".)

may arise with its subsidiary institution, including maintenance of the insured institution's net worth are regulatorily required levels, and the danger that the holding company could be forced to place substantial demands on the insured institution to meet debt service requirements, leading to transactions that may be detrimental to the interests of the institution and the Corporation. For these reasons, standard conditions in approvals of holding company applications have included requirements for a holding company to maintain the net worth of the holding company's insured institution subsidiary at regulatorily required levels and limits on the amount of dividends payable by the insured institution to its holding company parent.[10] The regulation reflects this concern by providing that failure to agree to a specified commitment to maintain an insured institution's net worth would constitute a presumptive disqualifier. Because the Board would have serious concerns with any acquiror that refused to agree to conditions designed to safeguard the financial well-being of an insured institution, the Board wishes to note that it would regard such an application as presenting a policy issue that should be referred to the Board for decision.

The Board believes all of the foregoing are fully consistent with the congressional intent that "[c]orporations that are under-capitalized or financially strained or in the hands of management of doubtful competence or integrity would be barred from gaining control of an insured institution." H.R. Rep. No. 997, 90th Cong., 1st Sess. 6 (1967), *reprinted in* 1968 U.S. Code Cong. & Ad. News 1601, 1606. Obviously, many of these concerns are equally pertinent in the case of prospective acquirors that are "persons" rather than "companies." *See* H.R. Rep. 1383, 95th Cong., 2nd Sess. 19 (1978), *reprinted in* 1978 U.S. Code Cong. & Ad. News 9291.

The existence of any of the above considerations in the case of any acquiror or affiliate of the acquiror may constitute grounds for denying a proposed acquisition if not adequately addressed by an applicant. The Board intends that the burden be on the applicant when a presumptive disqualifier is present, and a potential acquiror must specifically address these factors by submitting materials that indicate that, in the case of integrity-related factors, the conduct has ceased or has become irrelevant or should otherwise not be taken into consideration. A rebuttal in such situations should indicate, if appropriate, that the conduct has ceased, that steps have been taken to prevent a reoccurrence, and that there is a reliable indication that those steps have been effective, such as, for example, the passage of a meaningful period of time without repetition of the conduct. With respect to financial resource-related factors, the submission of a viable business plan and conditions providing for net-worth maintenance and dividend limitations, among others, would assist in making the requisite showing to overcome a presumption of disqualification.

VIII. Section 574.8—Delegations

Section 574.8 of the proposal would seek to implement the Board's desire to increase the speed of applications processing by providing uniform delegations of authority for approving as well as denying acquisitions under both statutes. The current implementing regulations delegate certain approvals by the Principal Supervisory Agent but the standards for delegations under the two Acts are not coordinated. The Control Act regulations break the notice consideration process into several functional components, delegating some but not others. Only the Corporation can disapprove a proposed acquisition under the Control Act or approve an acquisition after a state supervisory agency recommends disapproval. 12 CFR 563.18–2(k) (1) and (2) (1985). In addition, only the Corporation can assess a monetary penalty under the Act. *Id.* at 563.18–2(k)(3). The level at which other functions are performed depends on whether the institution has a class of voting securities registered under § 12 of the Exchange Act. For non-registered instutitions, the Principal Supervisory Agent[11] in the district in which the insured institution is located may generally act on behalf of the Corporation with respect to the exercise of any authority not specifically reserved to the Corporation itself. 12 CFR 563.18–2(*l*)(2) (1985). If the subject institution has a class of voting securities registered under the Exchange Act, however, these functions are delegated to the Director of the Office of Examinations and Supervision with the concurrence of the Board's General Counsel. 12 CFR 563.18–2(*l*)(1) (1985).

The regulations implementing the Holding Company Act currently delegate to the Supervisory Agent[12] the authority to approve proposed acquisition by a company if certain detailed conditions are satisfied. 12 CFR 584.4(g) (1985). Generally, these conditions require that: (1) The acquiring company is solvent and its debt-to-equity ratio compares favorably with those of similar companies; (2) any acquisition debt can be serviced without relying on more than half of the institution's net income; (3) the acquiror agrees to maintain the net worth of the institution at regulatorily required levels; (4) the acquisition would not be detrimental to the institution or the Insurance Fund because of the managerial and financial resources of either the institution or the acquiror; (5) other insured institution subsidiaries of the acquiror have received favorable Community Reinvestment Act ratings; and (6) the acquisition is not substantially protested and does not raise significant questions of law or policy. *Id.* at 584.4(g)(1). The debt-service and net-worth maintenance conditions may be waived in supervisory cases or when the proposed acquisition represents less than five percent of the acquiring company's holdings in insured institutions. *Id.* at 584.4(g)(1) (iii) and (iv).

In addition to the criteria applicable to a control acquisition by any company, the Supervisory Agent's ability to act on behalf of the Corporation is further circumscribed when the acquiring company is already a savings and loan holding company. *Id.* at 584.4(g)(2). These additional considerations include the competitive criteria governing automatic approvals of mergers of federal associations or increases in the insurable accounts of state-chartered insured institutions. *See* 12 546.2(h); 563.22(e) 1985).

The Board proposes to adopt a uniform system of delegations for determinations under both statutes. This uniformity should make the internal procedures more understandable to the public and are further intended to

[10] In *Kaneb Services, Inc.* v. *Federal Savings and Loan Insurance Co.*, 650 F.2d 78 (5th Cir. 1981), the court of appeals recognized that the approval standards under the Holding Company Act permitted the Board to require that a company be a "source of strength" to its insured institution subsidiary. The court also recognized the intent of Congress that the Board have the authority to impose conditions upon holding company acquisitions, noting that this would be "a proper course of action in lieu of the FSLIC's express authority to deny an application and is consistent with the overall authority to regulate holding companies as codified in 12 U.S.C. § 1730a." *Id.* at 83.

[11] The Principal Supervisory Agent is the President of the Federal Home Loan Bank of the district in which the principal office of an insured institution is located or any other person so designated by the Board. 12 CFR 561.35 (1985).

[12] Under 12 CFR 583.5 (1985), the term "Supervisory Agent" is defined in approximately the same manner as "Principal Supervisory Agent" in 12 CFR 561.35 (1985). *See* Note 11, *supra*.

facilitate decentralized processing of applications and notices. The proposal would delegate to the Principal Supervisory Agents the authority to deny as well as approve Holding Company Act applications and to issue notices of intent not to disapprove as well as denials of proposed acquisitions under the Control Act. All such applications and notices could be handled under delegated authority, *except* applications and notices (1) with respect to insured institutions with securities registered under the Securities Exchange Act of 1934 where certain filings under section 13 or section 14 of that statute are requred in a transaction by or in connection with which the acquisition is to be accomplished; (2) with respect to an acquisition in which the target insured institution has timely notified the Principal Supervisory Agent of its opposition, and (3) acquisitions raising a significant inssue of law or policy upon which the Board has not expressed a view. The Board wishes to emphasize, however, the use of the new delegation standards is not intended to indicate that Principal Supervisory Agents may not impose conditions that they deem necessary and appropriate in connection with approvals under delegated authority. In addition, although the Principal Supervisory Agents' discretion would not be limited by guidelines similar to those currently used in § 584.4(g), the Board expects that the Principal Supervisory Agents would carefully consider applications that do not meet the current regulatory approval profile.

Matters currently delegated to the Office of Examinations and Suppervision with the concurrence of the Office of General Counsel would continue to be so delegated. In addition, the authority of the two Offices to act under delegated authority would be expanded to include authority to approve holding company applications, except applications raising a significant issue of law or policy upon which the Board has not expresased a view. This proposed new revised delegation formula should increase the number of applications processed in the filed and would be intended by the Board to operate in conjunction with the other proposed substantive revisions to increase the overall efficiency of the acquisition processing system. The Board has already implemented internal processing deadlines to aid in achieving this result. Further, the Board would expect to actively review the functioning of the expanded delegation process through the use of post-audits to ensure that delegation accomplishes the Board's goal of expediting the acquisition process without sacrificing the quality of review that must remain crucial to fulfillment of the Board's statutory responsibilities under the two Acts.

The proposed reservation of authority regarding notices and applications where the acquisition is proposed to be accomplished in connection with a transaction where certain disclosure documents are required to be filed under section 13 or section 14 of the Exchange Act reflects the fact that a disclosure document requiring review will be filed in connection with the transaction and that many such institutions are likely to present special concerns because they are recently converted. Under such circumstances, an acquisition may raise particular concerns that should be addressed by the Board and its Washington staff. In addition, review of such acquisistions can be done more efficiently in the same office where the Exchange Act filings of such institutions are reviewed.

The reservation of authority over hostile acquisitions is proposed because of the potential complexity of such transactions and to allow better coordination of any enforcement or litigation issues that could arise during the course of the review. The last area reserved from delegated authority represents situations and issues that the Board should have an opportunity to consider. The Board wishes to emphasize that it expects that staff of the Federal Home Loan Banks would be in close contact with the Board's Washington, D.C. staff to assess whether an application or notice presents a legal or policy issue upon which the Board has not expressed a view.

Denials of applications and notices delegated to the Principal Supervisory Agent could be appealed to the Corporation. A request for Corporation review of a denial would be required to be submitted to the Secretariat to the Board, with copies addressed to the attention of the Director, Office of Examinations and Supervision and to the General Counsel. The request for review would be required to identify the party seeking review and specifically describe the action taken of which review is sought and the reasons why the denial by the Principal Supervisory Agent is believed to be erroneous, and would be required to be submitted within 20 days of the date of the action taken for which review is sought.

Finally, as an additional step to expedite the approval process, the proposal would delegate to the Principal Supervisory Agents the authority to waive the requirement for audited financial statements in connection with filings under the Control Act, provided that specified substitute information were provided instead. If such information were not furnished, the Principal Supervisory Agent would not have delegated authority to waive the requirement. In this regard, difficulties have often arisen with respect to financial statements for sole proprietors and closely held companies. Generally, certain substitute information has been considered acceptable. This information has included, with respect to each acquiring person or company, a statement as to the percentage of his or her net worth that the acquisition represents, the percentage of net worth, assets and income attributable to proprietary interests, and such alternative financial statements regarding proprietary interests as are available. In the past, the Board has allowed the submission of tax returns and unaudited financial statements when the preparation of audited financials would prove a hardship.

Comment Period and Effective Dates

The Board is soliciting comments on the proposal for a period of 60 days. The Board is further notifying the public that if the proposal is adopted substantially as proposed, persons or companies who might be deemed to have control or be determined subject to rebuttal to be in control of an insured institutions would not be required to file applications or notices if the factors that create the control determinations existed prior to the effective date of final rules adopted by the Board. This exemption, however, would not insulate future acquisitions. It is the Board's view that where a person or company in such a position proposes to acquire additional stock or an additional control factor, such company or person would be subject to the rule and would be required to file the appropriate application or notice beforehand.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603 (1982), the Board is providing the following initial regulatory flexibility analysis:

1. *Reasons, objectives, and legal bases underlying the proposed rules.* These elements have been discussed elsewhere in the supplementary information regarding the proposal.

2. *Small entitles to which the proposed rules would apply.* The rule would apply to all acquirors of insured institutions.

3. *Impact of the proposed rules on small institutions.* To the extent that rules would affect small institutions, this has been discussed elsewhere in the proposal.

4. *Overlapping or conflicting federal rules.* There are not federal rules which duplicate, overlap, or conflict with the proposed rules.

5. *Description of reporting and recordkeeping requirements.* Discussed elsewhere.

List of Subjects 12 CFR Parts 563, 574, 584 and 589

Securities, Savings and loan associations, Savings and loan holding companies.

Accordingly, the Board hereby proposes to amend Part 563 and to add Part 574 to Subchapter D and amend Parts 584 and 589 of Subchapter F, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

§ 563.18-2 [Removed]

1. Remove § 563.18-2.

§ 563.18-3 [Amended]

2. Amend § 563.18-3 by removing paragraph (c) and redesignating paragraphs (d), (e) and (f) as paragraphs (c), (d) and (e), respectively; and by amending paragraph (d)(1) by substituting the phrase "this § 563.18-3" for the phrase "paragraphs (b) or (c) of this section".

3. Add a new Part 574 as follows:

PART 574—ACQUISITIONS OF CONTROL OF INSURED INSTITUTIONS

Sec.

§ 574.1 Scope of part.

The purpose of this part is to implement the provisions of the Change in Savings and Loan Control Act, 12 U.S.C. 1730(q) ("Control Act") and the Savings and Loan Holding Company Act, 12 U.S.C. 1730a ("Holding Company Act"), relating to acquisitions and changes in control of insured institutions that are organized in stock form and holding companies thereof.

§ 574.2 Definitions.

As used in this Part and in the forms under this Part, the following definitions apply, unless the context otherwise requires:

(a) *Acquire* when used in connection with the acquisition of stock of an insured institution means obtaining ownership, control, power to vote, or sole power of disposal of stock, directly or indirectly or through one or more transactions or subsidiaries, through purchase, assignment, transfer, or other means, including an increase in percentage ownership resulting from a redemption, repurchase, reverse stock split or a similar transaction involving other securities of the same class. When persons and/or companies act in concert, the group formed thereby shall be deemed to have acquired the securities held by its members upon formation of such group.

(b) *Acquiror* means a person or company.

(c) *Acting in concert* means (1) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (2) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangement, whether written or otherwise.

(d) *Actively traded* means securities that are traded either on a securities exchange or over the counter and quoted on NASDAQ.

(e) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, insured institution or company.

(f) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, and includes a group acting in concert where arrangements exist among the participants that provide for allocation of profits, losses or expenses arising in connection with their ownership of stock of an insured institution and for the disposition of their ownership interests, or which provide for either of the foregoing and also provide for the manner of voting of the stock of the insured institution held by the participants; but a company does not include (1) the Corporation, or (2) any company the majority of shares of which is owned by (i) the United States or any State, (ii) an officer of the United States or any State in his official capacity, or (iii) an instrumentality of the United States or any State.

(g) *Controlling shareholder* means any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his immediate family owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors.

(h) *Immediate family* means a person's spouse, father, mother, children, brothers, sisters and grandchildren; the father, mother, brothers, and sisters of the person's spouse; and the spouse of the person's child, brother or sister.

(i) *Insured institution* means a Federal association, or interim Federal association, a building and loan, savings and loan, or homestead association or a cooperative bank, or an interim state savings and loan association the accounts of which are insured by the Corporation; any Federal association the deposits of which are insured by the Federal Deposit Insurance Corporation; an institution that retains insurance of accounts by the Corporation pursuant to § 563.29-1 of this chapter; and any savings and loan holding company as defined in paragraph (m).

(j) *Management official* means any executive officer, director, partner, or a trustee, or any other person who performs or has a representative or nominee performing similar policy-making functions, including executive officers of principal business units or divisions or subsidiaries who perform policy-making functions, for an insured institution or a company, whether incorporated or not.

(k) *NASDAQ* means the electronic inter-dealer quotation system owned and operated by NASDAQ, Inc., a subsidiary of the National Association of Securities Dealers, Inc.

(l) *Person* means an individual or a group of individuals acting in concert that do not constitute a "company" as defined in paragraph (b) of this section.

(m) *Savings and loan holding company* means any company which directly or indirectly controls an insured institution, but does not include: (1) Any company by virtue of its ownership or control of voting shares of an insured institution acquired in connection with the underwriting of securities if such shares are held only for such period of time (not exceeding 120 days unless extended by the Corporation) as will permit the sale thereof on a reasonable basis; and (2) Any trust (other than a pension, profit-sharing, shareholders', voting, or business trust) which controls an insured institution if such trust by its

terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and (i) was in existence and in control of an insured institution on June 26, 1967, or (ii) is a testamentary trust.

(n) *Stock* means common or preferred stock.

(o) *Voting stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interests, by statute, charter or in any manner, entitle the holder:

(1) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing insured institution or company);

(2) To vote or to direct the conduct of the operations or other significant policies of the issuer: *Provided* that preferred stock, limited partnership shares or interests, or similar interests are not "voting stock" if: (i) Voting rights associated with the stock, shares or interests are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the stock, security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the stock, security or interest, the dissolution of the issuer, or the payment of dividends by the issuer when preferred dividends are in arrears; (ii) the stock, shares or interests represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuer; and (iii) the stock, shares or interests do not entitle the holder, by statute, charter, or otherwise, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuer: *Provided* further, that notwithstanding the foregoing, "voting stock" shall include stock and other securities that, upon transfer or otherwise, are convertible into voting stock or exercisable to acquire voting stock where the holder of the stock, convertible security or right to acquire voting stock has the preponderant economic risk in the underlying voting stock. Securities immediately convertible into voting stock at the option of the holder without payment of additional consideration shall be deemed to constitute the voting stock into which they are convertible; other convertible securities and rights to acquire stock shall not be deemed to vest the holder with the preponderant economic risk in the underlying voting stock if the holder has paid less than 50 percent of the consideration required to directly acquire the voting stock and has no other economic interest in the underlying voting stock.

§ 574.3 Acquisition of control of insured institutions.

(a) *Acquisition by a company.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior approval under paragraph (d) of this section, no company shall acquire control, as defined in § 574.4 (a) and (b), of an insured institution except upon receipt of the written approval of the Corporation or its designee.

(b) *Acquisition by a person.* Unless a transaction is exempt under paragraph (c) of this section, or exempt from prior notice under paragraph (d) of this section, no person shall acquire control, as defined in § 574.4 (a) and (b), of an insured institution until written notice has been provided to the Corporation and (1) the Corporation or its designee indicates in writing its intent not to disapprove the proposed acquisition or (2) 60 days (or such period of time as the Corporation or its delegate may specify if the review period has been extended under § 574.6(c)(2)) have passed since receipt of a notice deemed sufficient under 574.6(c)(3).

(c) *Exempt transactions.* (1) The following transactions are exempt from the application requirements of paragraph (a) of this section:

(i) Control of an insured institution acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company under § 574.2(m) of this part;

(ii) Control of an insured institution acquired in connection with a reorganization which involves solely the acquisition of control of that institution by a newly formed company which is controlled by the same person who controlled, or group of persons who have controlled the insured institution for the immediately preceding three years: *Provided* that such persons have filed an H-(e) 4 notification as provided in § 574.6 of this Part and the General Counsel or his delegate does not object to the acquisition within 30 days of the filing date;

(iii) Control of an insured institution acquired pursuant to (A) pledge or hypothecation of stock to secure a loan contracted for in good faith or (B) the liquidation of a loan contracted for in good faith, made in the ordinary course of the business of the lender, *Provided* that acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Corporation within 30 days and *Provided*, further, that the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Corporation may, upon application by an acquiror, extend such one year period from year to year, for an additional period of time not exceeding three years, if the Corporation finds such extension is warranted and would not be detrimental to the public interest;

(iv) Control of an insured institution acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(iv) Acquisition of additional stock after approval under § 574.7, or any predecessor provision, has been received, *Provided* such acquisition is consistent with any conditions imposed in connection with such approval and with the representations made by the acquiror in its application;

(2) The following transactions are exempt from the notice requirements of paragraph (b) of this section:

(i) Transactions which are exempt by paragraph (c)(1) of this section;

(ii) Transactions for which approval is required under paragraph (a) of this section;

(iii) Transactions for which approval is required under §§ 546, 552.13 or 563.22 of this Chapter: *Provided* that no acquiror who currently does not control an insured institution, would acquire control of any insured institution as a result of such transaction;

(iv) Acquisition of additional stock of an insured institution by any person who:

(A) Has held power to vote 25 percent or more of any class of voting stock in such institution continuously since March 9, 1979;

(B) Has maintained control of the insured institution continuously since acquiring control in compliance with the Control Act and the Corporation's regulations thereunder them in effect, provided such acquisition of control stock is consistent with any conditions imposed in connection with such acquisition of control and with any representations made in any notice, or

(C) Has filed a notice under the Control Act and regulations thereunder, if such person receives written notice of the Corporation's intent not to disapproved or 60 days have passed since the filing of a substantially complete notice (or such period of time specified by the Corporation or its delegate if the review period has been extended under § 574.6(c)(2)). *Provided* such acquisition of voting stock is

consistent with any conditions imposed in connection with such acquisition of control and with any representations made in the notice.

(3) No acquiror will be deemed to have acquired control of an insured institution solely on the basis of actions taken prior to [effectve date of regulation], if such acquisition was made in compliance with the Holding Company Act and the Control Act and the regulations thereunder in effect as of that date.

(d) *Transactions exempt from prior approval or notice.*—(1) Subject to the conditions set forth in paragraph (d)(2) of this section, the following transactions are exempt from prior approval and prior notice under § 574.3.

(i) Control of an insured institution acquired through *bona fide* gift;

(ii) Control of an insured institution acquired through liquidation of a loan contracted in good faith;

(iii) Control of an insured institution acquired through a percentage increase in ownership following a stock split redemption that was not *pro rata: Provided,* that the timing of the transaction that created the increase was not within the control of the acquiror;

(iv) Control of an insured institution acquired through testate or intestate sucession, *Provided,* that the acquiror transmits written notification of the acquisition of the Corporation within 30 days of the acquisition and provides such additional information as the Corporation may specifically request.

(2) The exemptions provided by paragraphs (1)(i) through (1)(iii) of this section are subject to the following conditions:

(i) The acquiror shall file an application of notice with the Corporation within 90 days of acquisition of control;

(ii) The acquiror shall not take any action designed to effect a change in the business plan of the insured institution other than voting on matters presented to stockholders by the insured institution until the Corporation has acted upon the acquiror's application or notice; and

(iii) If the Corporation disapproves the acquiror's application or notice, the acquiror shall divest such portion of the stock held by the acquiror so as to cause the acquiror not to be determined to be in control of the insured institution under § 574.4 of this Part, within one year or such shorter period as the Corporation may order.

(e) *Prohibited acquisitions.* No acquisition shall be approved by the Corporation, other than an acquisiton authorized pursuant to 12 U.S.C. 1730a(m) or specific order of the Board in a supervisory case, which would:

(1) Result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a new multiple savings and loan holding company network controlling insured institutions in more than one State; or

(2) Enable an existing multiple savings and loan holding company to acquire an insured institution the principal office of which is located in a State other than the State which such savings and loan holding company has designated pursuant to paragraph (e) of § 584.1 of this chapter.

§ 574.4 Control.

(a) *Conclusive control.* (1) An acquiror shall be deemed to have acquired control of an insured institution if the acquiror directly or indirectly, or through one or more subsidiaries or through one or more transactions or acting in concert with one or more persons or companies:

(i) Owns, controls or holds with power to vote, 25 percent or more of any class of voting stock of the insured institution;

(ii) Holds general, irrevocable proxies representing 25 percent or more of any class of voting stock of the insured institution; or

(iii) Controls in any manner the election of a majority of the directors of the insured institution.

(2) An acquiror shall be deemed to have acquired control of a company, including a savings and loan holding company, if the acquiror directly or indirectly, or through one or more subsidiaries or through one or more transactions or acting in concert with one or more persons or companies:

(i) Owns, controls or holds with power to vote 25 percent or more of any class of voting stock of the company;

(ii) Holds general, irrevocable proxies representing 25 percent or more of any class of voting stock of the company;

(iii) Controls in any manner the election of a majority of the directors or trustees of a company;

(iv) Is a general partner in a company;

(v) Has contributed more than 25 percent of the capital of the company; or

(vi) Is a trustee of a trust.

(3) A company shall be deemed to control an insured institution if the Corporation finds, after notice and opportunity for hearing, that the acquiror has the power directly or indirectly, to exercise a controlling influence over the management or policies of the insured institution.

(4) A person shall be deemed to control an insured institution if the Corporation determines that such person has the power to direct the management or policies of the insured institution.

(b) *Rebuttable control determinations.* An acquiror shall be determined, subject to rebuttal, to have acquired control of an insured institution, in the following circumstances:

(1) An acquiror shall be determined, subject to rebuttal, to have acquired control of an insured institution which has a class of voting stock registered under section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 781, which is actively traded, if the acquiror directly or indirectly, or through one or more subsidiaries or acting in concert with one or more persons or companies, acquires:

(i) 10 percent or more of any class of voting stock of the insured institution and any primary or secondary control factor, as defined in paragraph (c) of this section is present;

(ii) 25 percent or more of any class of stock of the insured institution and any primary control factor, as defined in paragraph (c) of this section in present; or

(iii) 35 percent of more of any class of stock of the insured institution and any primary or secondary control factor, as defined in paragraph (c) of this section is present.

(2) An acquiror shall be determined, subject to rebuttal, to have acquired control of an insured institution which does not have a class of voting stock registered under section 12 of the Securities Exchange Act of 1934, which is actively traded, if the acquiror directly or indirectly, through one or more subsidiaries or acting in concert with one or more persons or companies acquires:

(i) 10 percent or more of any class of voting stock of the insured institution and any primary control factor, as defined in paragraph (c) of this section is present;

(ii) 20 percent or more of any class of voting stock of the insured institution and any primary or secondary control factor, as defined in paragraph (c) of this section is present;

(iii) 35 percent or more of any class of stock of the insured institution and any primary or secondary control factor, as defined in paragraph (c) of this section is present.

(3) An acquiror shall be determined, subject to rebuttal, to have acquired control of an insured institution if the acquiror directly or indirectly, or through one or more subsidiaries or through one or more transactions or acting in concert with one or more persons or companies, holds revocable

proxies representing 25 percent or more of any class of voting stock of an insured institution and such proxies:

(i) Pertain to the election of a majority of the insured institution's board of directors;

(ii) Pertain to the acquisition or corporate reorganization of the insured institution; or

(iii) Would enable the acquiror to exert a continuing influence on a material aspect of the business operations of the insured institution.

(c) *Control factors.*—(1) *Primary factors.* For purposes of paragraph (b) of this section, the following constitute primary control factors:

(i) The acquiror would be the largest holder of any class of voting stock of the insured institution;

(ii) The acquiror would hold 25 percent or more of the total shareholders' equity of the insured institution;

(iii) The acquiror would hold 35 percent or more of the combined debt securities and shareholders' equity of the insured institution;

(iv) The acquiror is party to any agreement which enables the acquiror to influence the management or policies of the insured institution, other than agreements to which the insured institution is a party where the restrictions are customary under the circumstances, the restrictions apply only during the period when the acquiror is seeking Corporation approval to acquire the insured institution, the agreement prohibits transactions between the acquiror and the insured institution and their respective affiliates without Supervisory Agent approval during the pendency of the application process, and the agreement contains no material forfeiture provisions applicable to the insured institution in the event the acquisition is not approved or not approved by a specified date;

(v) The acquiror would have the ability to direct the votes of 25 percent or more of the insured institution's voting stock or to vote 25 percent or more of an insured institution's voting stock in the future upon the occurrence of a future event;

(vi) The acquiror has the power to direct the disposition of 25 percent or more of the insured institution's voting stock in a manner other than a widely dispersed or public offering;

(vii) The acquiror and/or the acquiror's nominees comprise 25 percent or more of the insured institution's board of directors;

(2) *Secondary factors.* For purposes of paragraph (b) of this section, the following constitute secondary control factors:

(i) The acquiror or a nominee thereof currently seeks or has representation on the insured institution's board of directors, including proposing a director or slate of directors in opposition to the slate of nominees for director proposed by management of the insured institution;

(ii) The acquiror or a nominee or management official of the acquiror is a management official of the insured institution;

(iii) The acquiror holds 10 percent or more of the insured institution's outstanding debt securities;

(iv) The acquiror or an affiliate were, during any of the preceding three years, "participants" in a solicitation of proxies within the meaning of 17 CFR 240.14a–11(b) other than a solicitation on behalf of management of the insured institution, with respect to any class of voting stock of the insured institution;

(v) The acquiror would be one of the two largest holders of any class of voting stock of the insured institution;

(vi) The acquiror possesses an economic stake in the insured institution derived other than from the ownership of the insured institution's stock resulting from:

(A) A profit-sharing arrangement,

(B) The use of common names, facilities, personnel or advertising, or

(C) The provision of integral services including solicitation of business;

(vii) The acquiror has received an extension of credit or investment from the insured institution on terms and conditions other than those that would be required by the insured institution in transactions in the ordinary course of business with unaffiliated firms.

(d) *Rebuttable determinations of concerted action.* An acquiror will be presumed to be acting in concert with the following persons and companies:

(1) A company will be presumed to be acting in concert with a controlling shareholder or management official of such company with respect to the acquisition of stock of an insured institution if:

(i) Both the company and the person own stock in the insured institution,

(ii) The company provides credit to the person to purchase the insured institution's stock on other than an arm's length basis or on terms and conditions other than those required or available in transactions in the ordinary course of business with unaffiliated parties, or

(iii) The company pledges its assets or otherwise is instrumental in obtaining financing for the person to acquire stock of an insured institution;

(2) A person will be presumed to be acting in concert with members of the person's immediate family;

(3) Persons will be presumed to be acting in concert with each other where both own stock in an insured institution and both are also management officials, controlling shareholders, partners, or trustees of another company;

(4) A company controlling or controlled by another company and companies under common control will be presumed to be acting in concert;

(5) Persons or companies will be presumed to be acting in concert where they constitute a group under 17 CFR 240.13d–5(b)(1) or 240.14a–11(b) (excluding the issuer or directors of the issuer).

(e) *Procedures for rebuttal.*—(1) *Rebuttal of control.* An acquiror attempting to rebut a determination of control shall file a submission with the Corporation setting forth the facts and circumstances which support the acquiror's contention that no control relationship exists. An acquiror shall also submit to the Corporation an agreement setting forth the undertakings specified in paragraphs (e)(1) (i) through (vii) of this section. Unless agreed to by the Corporation or its delegate in writing, no undertaking shall be deemed to rebut the determination of control arising under paragraph (b) of this section. In the case of a rebuttal of a presumption of control arising under paragraph (b) (1) or (2) of this section, such agreement shall be in form and content satisfactory to the Corporation, executed by the acquiror and to be executed on behalf of the Corporation, and shall specifically state that violation of the terms of the agreement shall be subject to such penalties, remedies and procedures as are provided for violations, willful or otherwise, of agreements with the Corporation, and undertake that the acquiror and its nominees and affiliates will not:

(i) Seek or accept any additional representation on the insured institution's board of directors;

(ii) Have or seek to have any representative serve on an executive or similar committee of the insured institution's board of directors;

(iii) Engage in any inter-company transactions with the insured institution and its affiliates;

(iv) Have or seek to have any representative serve as an officer, agent or employee of the insured institution;

(v) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by management for the insured institution's board of directors;

(vi) Vote stock owned or held with power to vote other than on a *pro rata* basis in accordance with the vote of other stockholders on matters presented to the stockholders for a vote;

(vii) Do any of the following, except as is necessary solely in connection with performance of duties as a current member of the insured institution's board of directors:

(A) Influence or attempt to influence in any respect the loan and credit decisions or policies of the insured institution, the pricing of services, any personnel decisions, the location of any offices, branching, or similar activities of the insured institution;

(B) Influence or attempt to influence the insured institution's dividend policies and practices or any decisions or policies of the insured institution as to the offering or exchange of any securities;

(C) Propose a director or slate of directors in opposition to a nominee or slate of nominees proposed by the management for the insured institution's board of directors;

(D) Solicit proxies or participate in any solicitation of proxies with respect to any matter presented to the insured institution's shareholders other than in support of a solicitation on behalf of management of the institution;

(E) Seek to amend, or otherwise take action to change, the insured institution's bylaws, articles of incorporation, or charter;

(F) Exercise, or attempt to exercise, directly or indirectly, control or a controlling influence over the insured institution's management policies or business operations; or

(G) Seek or accept access to any non-public information concerning the insured institution except when the acquiror is already represented on the board of directors.

In the case of a rebuttal of the presumption of control arising under paragraph (b)(3) of this section, the Corporation may require the acquiror to furnish information in response to a specific request for information and to provide a rebuttal agreement which may contain some, but not necessarily all of, the foregoing undertakings.

(2) *Presumptions of concerted action.* An acquiror attempting to rebut the presumption of concerted action shall file a submission with the Corporation setting forth the facts and circumstances which support the acquiror's contention that no action in concert exists. Such a statement must be accompanied by an affidavit, in form and content satisfactory to the Corporation, executed by each person or company presumed to be acting in concert, stating that such person or company does not and shall not have any agreements or understandings, written or tacit, with respect to the exercise of control, directly or indirectly, over the management or policies of the insured institution, including agreements relating to voting, acquisition or disposition of the insured institution's stock.

(3) *Determination.* The Office of Examinations and Supervision, with the concurrence of the Office of General Counsel, will provide notification of its determination within 20 days of the date of filing of a complete rebuttal submission: *Provided*, that the acquiror attempts to rebut the determination of control through undertakings specified herein. The Corporation and its delegates are not required to accept any rebuttal which is inconsistent with facts known to them.

(f) *Safe harbor.* Notwithstanding any other provision of this section, any acquiror may claim to qualify for a safe harbor with respect to its ownership of stock of an insured institution. In order to quality for the safe harbor, an acquiror must submit a certification stating that (1) it owns less than 25 percent of any class of the institution's voting stock, (2) no control factors enumerated in paragraph (b) of this section exists, (3) the acquiror will abstain from soliciting proxies from others, and (4) before any change in status occurs that would bring the acquiror within the scope of the control determinations or rebuttable control determinations, the acquiror will file a rebuttal, notice or application, as appropriate. An acquiror claiming safe-harbor status may vote freely and dissent with respect to its own stock. Certifications provided for in this paragraph shall be submitted to the Corporation in accordance with § 574.6(b)(5).

§ 574.5 Certifications of ownership and other reports.

(a) *Acquisition of stock.* (1) Upon the acquisition of beneficial ownership or more than 10 percent or additional stock in excess of 10 percent of the voting stock of an insured institution occurring after [effective date of Part 574], an acquiror shall file in accordance with § 574.6(b)(6) a certification with the Corporation as described below.

(2) The certification filed pursuant to this section shall be signed by the acquiror or an authorized representative thereof and shall read as follows:

The undersigned is the owner of 10 percent or more of the outstanding voting stock of [*name of insured institution or holding company*]. The undersigned is not in control of such institution, as defined in 12 CFR 574.4(a), and is not subject to a rebuttable determination of control under § 574.4(b), and will take no action that would result in a determination of control or a rebuttable determination of control without first filing and obtaining approval of an application under the Savings and Loan Holding Company Act or notice under the Change in Savings and Loan Control Act or filing and obtaining acceptance by the Corporation of a rebuttal of the rebuttable determination of control.

(3) Notwithstanding anything contained in this paragraph (a), an acquiror is not required to file a certification if (i) the Board has approved the acquisition of the insured institution or (ii) the acquiror has filed a materially complete application or notice pursuant to § 574.3 of this Part.

(b) *Reports of loan secured by voting stock.* (1) Whenever an insured institution or a bank which has accounts insured by the FDIC makes a loan, or loans, secured (or to be secured) by 25 percent or more of the voting stock of an insured institution, unless the borrower has been the owner of record of such stock for a period of one year or more, or the stock is of a newly organized institution prior to its opening, a report shall be filed with the Corporation containing the following information:

(i) The name of the borrower;

(ii) The date and amount of the loan;

(iii) The name of the insured institution which has issued or is to issue the stock securing the loan; and

(iv) The number of shares securing the loan.

(c) *Privacy.* Reports and certifications filed under this section shall be for the information of the Corporation in connection with its examination functions and shall be provided confidential treatment by the Corporation.

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application or notice required by § 574.3 shall be filed in the form prescribed by the Corporation as follows: *Provided* that an acquiror may request confidential treatment of portions of an application or notice by complying with the requirements of paragraph (f) of this section.

(1) *H–(e)1.* This application shall be used for all applications filed under § 574.3(a) by a company, other than a savings and loan holding company, for approval of acquisitions of one insured institution, directly or indirectly, or through one or more subsidiaries or through one or more transactions.

(2) *H–(e)2.* This application shall be used for all applications filed under § 574.3(a) for approval of acquisitions, directly or indirectly, or through one or more subsidiaries or through one or more transactions of: (i) One or more insured institutions by a savings and loan holding company or (ii) more than one insured institution by any other company.

(3) *H–(e)3.* This application shall be used for all applications filed under § 574.3(a): (i) By a savings and loan holding company for approval of acquisitions by a merger, consolidation, or purchase of assets of an insured or uninsured institution or a savings and loan holding company, or (ii) by any company for approval of acquisitions by a merger, consolidation, or purchase of assets of two or more insured institutions, and shall be used also for approval under §§ 563.22 and 571.5 of this Chapter.

(4) *H–(e)4.* This information filing shall be used to claim that a reorganization is exempt from prior written approval of the Corporation under § 574.3(c)(1)(ii).

(5) *Notice Form 1173, Parts A and B.* This form shall be used for all notices filed under § 574.3(b) regarding the acquisition of control of an insured institution by any person or persons not constituting a company.

(b) *Filing requirements.*—(1) *Applications.* Any application required or provided for by a company shall be filed with the Corporation by transmitting one complete copy including exhibits and other pertinent papers and documents to the Office of the Secretariat, Fedeal Home Loan Bank Board, Washington, D.C. 20552, Attention: Office of Examinations and Supervision, and two complete copies including exhibits and other pertinent papers and documents to the Principal Supervisory Agent of the district in which the insured institutions involved in the acquisitions have their home offices. At least one copy of the application filed with each noted office shall be manually signed. Unsigned copies shall be conformed. A company shall also transmit, together with its application, a brief statement as to whether, to the best knowledge of such company, the application is eligible for processing pursuant to delegated authority under § 574.8(a), and the reasons therefor. An applicant shall also comply with sections 7A of the Clayton Act (15 U.S.C. 18A) and regulations issued thereunder (16 CFR Parts 801, 802, and 803).

(2) *Notice.* One complete copy of the notice, including exhibits and other pertinent papers and documents, shall be filed with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, Attention: Office of Examination and Supervision, and two complete copies of the application and exhibits filed with the appropriate Principal Supervisory Agent. At least one copy of the notice filed with each noted office shall be manually signed. A person shall also transmit, together with the notice, a brief statement as to whether, to the best knowledge of such person, the notice is eligible for processing pursuant to delegated authority under § 574.8(a), and the reasons therefor.

(3) *Amendment.* Any acquiror may amend an application or notice or file additional supporting information until publication under paragraph (d) of this section, unless otherwise requested to do so by the Supervisory Agent or the Corporation.

(4) *Rebuttal filing.* In order to apply to rebut a presumption pursuant to § 574.4(d)(3), two copies, one of which shall be manually signed, shall be submitted to the Office of the Secretariat; Federal Home Loan Bank Board, Washington, D.C. 20552, addressed respectively, to the attention of the Office of Examination and Supervision and the Office of General Counsel, with one copy to the appropriate Principal Supervisory Agent.

(5) *Safe-harbor filing.* In order to qualify for the safe harbor under § 574.4(f), a certification must be filed setting forth the information required by § 574.4(d)(3). Two copies, one of which shall be manually signed, shall be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, addressed, respectively, to the Office of General Counsel and the Office of Examinations and Supervision, with one copy to the appropriate Principal Supervisory Agent.

(6) *Certification.* Certifications required by § 574.5(a)(2) shall be filed in the same manner as a safe-harbor filing under paragraph (c)(5) of this section.

(c) *Sufficiency and waiver.* (1) An application or notice filed pursuant to §§ 574.3(a) or 574.3(b) shall not be deemed sufficient unless it includes all of the information required by the form prescribed by the Corporation, including a complete description of the acquiror's proposed plan for acquisition of control whether pursuant to one or more transactions, and any additional relevant information as the Corporation may require by written request to the applicant. Failure by an applicant to respond completely to a written request for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application or notice, or may constitute ground for denial of an application or issuance of a notice of disapproval of a notice.

(2) The period for Corporation review of any proposed acquisition will commence upon receipt by the Corporation of a notice or application deemed sufficent under paragraph (c)(1) of this section. The Corporation shall notify an acquiror within 10 business days of the publication of the acquiror's notification pursuant to paragraph (d) of this section, of whether an application or notice is deemed sufficient. After the Corporation notifies an acquiror that an application or notice is sufficient, the Corporation may request additional information only with respect to matters derived from or prompted by information already furnished by an acquiror, or where the request for additional information is based upon information of a material nature that was not available to the Corporation or was concealed, at the time an application or notice was deemed to be sufficient.

(i) In the case of a request for additional information after a notice has been deemed sufficient, the period for Corporation review pursuant to § 574.3(b) shall be suspended and shall not resume until the acquiror has responded completely to the request for information.

(ii) The 60-day period for Corporation review also may be extended by the Corporation for up to 30 days for any reason.

(3) With respect to an H–(e)4 information filing, the General Counsel shall have 30 days after receipt of a filing deemed sufficient, to disapprove the assertion that the company qualifies for the exemption provided in § 574.3(c)(1)(ii). After the expiration of such 30-day period without response from the General Counsel, the filing shall be deemed to be approved.

(4) The Corporation may waive any requirements of this section or any required information: (i) Determined to be unnecessary by the Corporation, upon the written request of an acquiring person; or (ii) in a supervisory case.

(d) *Publication.* (1) An acquiror shall publish a notification as provided in this section within 10 days after filing an application under § 574.3(a) or notice under § 574.3(b). Publication shall be made in the business section of a newspaper printed in the English language in: (i) the community in which the home office of the insured institution is located; and (ii) if applicable, the

community in which the home office of the largest subsidiary insured institution of the acquiror is located. If it is determined that the primary language of a significant number of adult residents of either community is a language other than English, the acquiror may be required to publish the notification simultaneously in the appropriate language(s).

(2) Notice published pursuant to this paragraph shall be published in a manner that is conspicuous to the average reader and shall be made substantially in the following form:

Notice of Filing of Application or Notice for Acquisition of an Insured Institution

"This is to inform the public that under section 574.3 of the Federal Home Loan Bank Board Regulations for Acquisitions of Insured Institutions [*Acquiror*] has filed an [application/notice] with the Federal Savings and Loan Insurance Corporation for permission to acquire [insured institution], located in [*location*], on [*date of filing*].

"Anyone may write in favor of or protest against the application. Three copies of all submissions must be sent to the Supervisory Agent, Federal Home Loan Bank of ———, ———, ———, within 20 day of the publication of this notification. An additional 10 days to submit comments may be obtained upon a showing of good cause if a written request is received by the Supervisory Agent within the 20-day period."

"You may inspect the non-confidential portion of the application/notice and non-confidential portions of all comments filed at the Federal Home Loan Bank of ———. If you have any questions concerning these procedures, contact the Federal Home Loan Bank of ———, at ( ) ———."

(3) Promptly after publication, the acquiror shall transmit copies of each notice and a publisher's affidavit of publication to the Office of Examinations and Supervision and to the Principal Supervisory Agent of the district in which the insured institutions involved in the acquisition have their home offices. In addition, where an insured institution to be acquired has securities registered under the Securities Exchange Act of 1934, one copy of the notice shall also be transmitted to the Office of General Counsel, Corporate and Securities Division.

(4) Notice shall be provided to the appropriate state supervisor and to persons whose request for announcements under § 563e.6 of this subchapter have been received in time for such notification; these notices shall be in addition to legal notification as set forth in paragraph (d)(1) of this section. Any other persons who might have an interest in the application or notice may also be notified.

(5) Disclosure of any part of an application of notice shall be made only in compliance with paragraph (f) of this section.

(e) *Public comment.* Comments by the public shall be submitted only as provided in this paragraph or as requested by the Corporation. Within 20 days of the date of publication (or 30 days after such date if an extension is requested in writing within the 20-day period), anyone may file comments in favor or in protest of the application or notice. Comments received after the comment period need not be considered by the Corporation.

(f) *Disclosure.* (1) Public disclosure shall be made of any non-confidential portion of an application or notice, other filing or public comment made under this section and shall be made of other portions of an application, notice, other filing or public comment in accordance with paragraph (f)(2) of this section, the provisions of the Freedom of Information Act (5 U.S.C. 552a) and Parts 505 and 505a of this Chapter.

(2) Any person who submits any information or causes or permits any information to be submitted to the Corporation, pursuant to this Part may request that the Corporation afford confidential treatment under the Freedom of Information Act to such information for reasons of personal privacy or business confidentiality, (which shall be deemed to include such information that would be deemed to result in the commencement of a tender offer under 17 CFR 240.14d–2), or for any other reason permitted by federal law, and should take all steps reasonably necessary to ensure, as nearly as practicable, that at the time the information is first received by the Corporation (i) it is supplied segregated from information for which confidential treatment is not being requested, (ii) it is appropriately marked as confidential, and (iii) it is accompanied by a written request for confidential treatment which specifies the information as to which confidential treatment is requested.

(3) All documents which contain information for which a request for confidential treatment is made or the appropriate segregable portions thereof should be marked by the person submitting the records with a prominent stamp, typed legend, or other suitable form of notice on each page or segregable portion of each page, stating "Confidential Treatment Requested by [name]." If such marking is impractical under the circumstances, a cover sheet prominently marked "Confidential Treatment Requested by [name]" should be securely attached to each group of records submitted for which confidential treatment is requested. Each of the records transmitted in this manner should be individually marked with an identifying number and code so that they are separately identifiable.

(4) No determination as to the validity of any request for confidential treatment will be made until a request for disclosure of the information under the Freedom of Information Act is received.

(5) If it is determined that records which are the subject of a request for access under the Freedom of Information Act are also the subject of a request for confidential treatment under this rule and no other grounds appear to exist which would justify the withholding of the records of Office of the Secretariat promptly shall so inform the person requesting confidential treatment or, in the case of a request made on behalf of a person other than the submitter, the person identified as able to provide substantiation, by telephone, telegram or express mail and require that substantiation of the request for confidential treatment be submitted in ten days.

(6) Substantiation of a request for confidential treatment shall consist of a statement setting forth, to the extent appropriate or necessary for the determination of the request for confidential treatment, the following information regarding the request:

(i) The reasons, concisely stated and referring to specific exemptive provisions of the Freedom of Information Act, why the information should be withheld from access under the Freedom of Information Act;

(ii) The applicability of any specific statutory or regulatory provisions which govern or may govern the treatment of the information;

(iii) The existence and applicability of any prior determination by the Corporation, other federal agencies, or a court, concerning confidential treatment of the information;

(iv) The adverse consequences to a business enterprise, financial or otherwise, that would result from disclosure of confidential commercial or financial information, including any adverse effect on the business' competitive position;

(v) The measures taken by the business to protect the confidentiality of the commercial or financial information in question and of similar information, prior to, and after, its submission to the Corporation;

(vi) The ease of difficulty of a competitor's obtaining or compiling the commercial or financial information;

(vii) Whether the commercial or financial information was voluntarily submitted to the Corporation, and, if so, whether and how disclosure of the

information would tend to impede the availability of similar information to the Corporation;

(viii) The extent, if any, to which portion of the substantiation of the request for confidential treatment should be afforded confidential treatment; and

(ix) Such additional facts and such legal and other authorities as the requesting person may consider appropriate.

(g) *Supervisory cases.* The provisions of paragraphs (d), (e) and (f) of this section may be waived in acquisitions in supervisory cases.

§ 574.7 Determination by the Corporation.

(a) *Acquisition by a company.* The Corporation shall approve an application by any company other than a savings and loan holding company to acquire control of one insured institution unless it determines that the criteria set forth in paragraph (c) of this section are not met.

(b) *Acquisition by a savings and loan holding company.* The Corporation shall not approve an acquisition by a savings and loan holding company to acquire control of an insured institution, or by any other company to acquire control of more that one insure institution, except in accordance with paragraph (c) of this section. Before approving any such acquisition, the Corporation or its delegate shall request from the Attorney General and consider any report rendered within 30 days of such request on the competitive factors involved.

(c) *Application criteria.* The Corporation may deny an application by a company to acquire an insured institution if the Corporation finds that the financial and managerial resources and future prospects of the company and institution involved would be detrimental to the institution or the insurance risk of the Corporation, or if the acquiror fails or refuses to furnish information requested by the Corporation or its delegate. In connection with applications filed pursuant to § 574.6(a) (2) and (3) the Corporation will also consider the convenience and needs of the community to be served. Moreover, the Corporation shall not approve any proposed acquisition:

(1) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States, or

(2) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the Corporation finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be serve.

(d) *Notice criteria.* In making its determination whether to disapprove a notice, the Corporation shall disapprove any proposed acquisition, if:

(1) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(2) The effect of proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(3) The financial condition of the acquiring person is such as might jeopardize the financial stability of the institution or prejudice the interests of the depositors of the institutions;

(4) The competence, experience, or integrity of the acquiring person or any of the proposed management personnel indicates that it would not be in the interests of the depositors of the institution, the Corporation, or the public to permit such person to control the institution; or

(5) The acquiring person fails or refuses to furnish information requested by the Corporation or its delegate.

(e) *Failure to disapprove a notice.* If, upon expiration of the 60-day review period of any notice deemed to be sufficient filed pursuant to § 574.6(c), or extension thereof, the Corporation has failed to disapprove a proposed acquisition, such acquisition may take place, provided that it is consummated within one year in accordance with the terms and representations in the notice and that there is no material change in circumstances prior to the acquisition.

(f) *Disapproval of a notice.* Within three days after its decision to disapprove a notice, the Corporation or its delegate shall notify the acquiror in writing of the disapproval. Such notification shall include a statement of the grounds therefor and a statement that the acquiror within 20 days of the receipt of such notice of disapproval may, if the disapproval was issued by the Principal Supervisory Agent pursuant to delegated authority, request review of such disapproval by the Corporation pursuant to § 574.8(a)(4), or, if such review is denied, or the disapproval issued by the Corporation, may within 10 days of receipt of the notice of disapproval, notice of the Corporation's decision not to review the denial, request an administration hearing under paragraph (4) of the Control Act.

(g) *Presumptive disqualifiers.*—(1) *Integrity factors.* An acquiror shall be presumed, subject to rebuttal, to have failed to satisfy the managerial resources test of paragraph (c) of this section or the integrity test of paragraph (d)(4) of this section based on the following:

(i) Criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations.

(D) Violation of housing authority laws or regulations;

(E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization.

Provided, that with respect to an acquiror that is a company, the relevant time period shall be the period during which any person currently controlling person of the acquiror, if any, was a controlling person, and during which any person currently a management official of the acquiror was a management official of the acquiror. With respect to an acquiror that is a natural person, the relevant time period shall be the period beginning with such person's majority;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, or (A) any application

relating to the organization of a financial institution (B) an application to acquire any financial institution or holding company thereof under the Savings and Loan Holding Company Act or the Bank Holding Company Act or otherwise, or (C) a notice relating to a change in control of any of the foregoing under the Change in Savings and Loan Control Act or the Change in Bank Control Act;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years or any management official of the acquiror was an officer or director of a company which entered receivership or conservatorship during his tenure or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror.

(v) Acquisition and retention at the time of submission of an application or notice, of stock in the insured institution by the acquiror in violation of § 574.3 or its predecessors.

(2) *Financial factors.* An acquiror shall be presumed, subject to rebuttal, to have failed to satisfy the financial resources test of paragraph (c) of this section, or the financial condition test of paragraph (e)(3) of this section, based upon the following:

(i) Where the acquiror is a company, failure to agree in writing that the company will ensure that its subsidiary insured institution shall have at the end of each calendar quarter, either net worth at least equal to three percent of all liabilities, plus the growth and contingency factors as determined in § 563.13 of this Chapter, or such greater amount that may be required pursuant to § 563.13 of this Chapter, and that where necessary, the company will infuse additional equity capital in a form satisfactory to the Supervisory Agent and sufficient to effect compliance with such undertaking.

(ii) Liability for amounts of debt which in the opinion of the Corporation, create excessive risks of default and pressure on the insured institution to be acquired.

(iii) A business plan projecting activities which are inconsistent with economical home financing.

§ 574.8 Delegations of authority.

(a) *Actions by the Principal Supervisory Agent.*—(1) *Approval.* The Principal Supervisory Agent is authorized to grant approval of any application filed under § 574.3 (a) or issue a statement of intent not to disapprove a notice filed under § 574.3(b): *Provided,* that the following conditions are met:

(i) Neither the acquiror or the insured institution to be acquired is required under the Securities Exchange Act of 1934, 15 U.S.C. 78a–78jj, and Part 563d of this Subchapter, to make a filing under any of the following regulations in connection with the acquisition:

(A) Rule 13e–3, 17 CFR 240.13e–3 (for "going private" transactions);

(B) Rule 13e–4, 17 CFR 240.133e–4 (for tender offers by an issuer for its own stock);

(C) Regulation 14A, 17 CFR 240.14a–1 through .14a–101 (for solicitation of proxies);

(D) Regulation 14C, 17 CFR 240.14c–1 through .14c–101 (for distribution of information statements); or

(E) Regulations 14D or 14E, 17 CFR 240.14d–1 through .14f–1 (for tender offers);

(ii) The institution to be acquired has not notified the Principal Supervisory Agent within the comment period specified in § 574.6(e) of its opposition to the proposed acquisition; and

(iii) The acquisition does not raise any significant issues of law or policy on which the Corporation has not taken a formal position.

(2) *Denial.* The Principal Supervisory Agent is authorized to disapprove any application or notice that he is authorized to approve or for which he is authorized to issue a statement of intent not to disapprove under paragraph (a)(1) of this section.

(3) *Other actions.* For notices filed pursuant to § 574.3(b), and applications filed pursuant § 574.3(a), which may be approved under paragraph (a) of this section, Supervisory Agent may take the following actions:

(i) Any action regarding publication provided for in § 574.6(d);

(ii) A determination that an application or notice is sufficient or requiring additional information under § 574.6(c)(1);

(iii) Extension of the review period under § 574.6(c)(2)(ii);

(iv) A grant or denial of any waivers of certified financial statements requested in connection with notices filed under § 574.3(b): *Provided,* that the acquiror provides the following substitute information: (A) A statement supporting the acquiror's contention that production of such certified financial statements is unduly burdensome; (B) tables setting forth (*1*) the acquiror's percent of interest in the insured institution to be acquired, the amount of investment in the insured institution and the investment as a percentage of the acquiror's net worth and (*2*) the amount of each entry as a percentage of the acquiror's total assets, net worth and gross income; (*3*) available unaudited financial statements for each entity for which a waiver has been requested which include at least three years of statements of operations and interim statements within 90 days of the most recently filed amendment, and 2 years of statements of condition and interim statements within 90 days of the most recently filed amendments; (*4*) a letter from an independent accountant indicating changes which would be required to reconcile the financial statements with ones prepared on a basis which would be consistent with generally accepted accounting principles; (*5*) an opinion of independent counsel stating that the counsel has made inquiry into the extent of undisclosed or contingent liabilities and setting forth, to the best of his knowledge, any disclosed or contingent liabilities relating to each entity; and (*6*) the latest available Federal income tax returns for each entity for the immediately proceding two taxable years.

(4) *Appeal.* Denial of an application or notice by a Principal Supervisory Agent pursuant to paragraph (a) of this section may be appealed to the Corporation under the following procedures: Within 20 days after notification of the Principal Supervisory Agent's decision, the acquiror must notify the Office of the Secretariat of the acquiror's desire to appeal the Principal Supervisory Agent's decision. Two copies of such request for review must be submitted to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, D.C. 20552, addressed, respectively, to the attention of the Director, Office of Examinations and Supervision and the General Counsel, with one copy to the appropriate Principal Supervisory Agent. The request for review must identify the party seeking review and describe with specificity the action taken for which review is sought and the reasons why the Principal Supervisory Agent's denial or notice of disapproval is contended to be erroneous.

(b) *Actions by the Director of the Office of Examinations and Supervision and the General Counsel.* The Director of the Office of Examination and Supervision with the concurrence of the General Counsel or their respective designees are authorized to take the following actions:

(1) Approve any application or issue notice of intent not to disapprove any notice which does not raise a significant issue of law or policy upon which the Corporation has not taken a formal position;

(2) Determine whether a presumption of control under § 574.4(b) or acting in

concert under § 574.4(d) has been rebutted;

(3) With regard to notices filed under § 574.3(b), to acquire control of insured institutions which cannot be approved under paragraph (a) of this section:

(i) All actions regarding publication required or permitted by § 574.6(d).

(ii) Any other action which would otherwise be delegated to the Principal Supervisory Agent pursuant to paragraph (a) of this section.

(c) *Sole authority in the Corporation.* The Corporation alone may:

(1) Approve or deny any applications or notices which are not delegated;

(2) In addition to any other remedies available to the Corporation, assess a civil penalty under paragraph (16) of the Control Act for any person who willfully violates any provision of the Control Act, or any regulation or order issued by the Corporation pursuant thereto, of not more then $10,000 per day for each day during which the violation continues:

(i) By giving written notice of the basis for the violation, the amount of the proposed civil penalty, and an opportunity for the person to submit data, views, and arguments within 20 days; and

(ii) By giving due consideration to the appropriateness of the penalty with respect to each of the factors specified in paragraph (16) of the Control Act, 12 U.S.C. 1730(q)(16), and issuing to the person, within 30 days of the expiration of the period provided to make a submission, a written notice of the Corporation's order of assessment which must be paid within 10 days, unless otherwise agreed to, or the Corporation may bring an action to collect the assessed penalty.

(3) In addition to any other remedies available to the Corporation, assess a civil penalty of not more than $1,000 per day for each day during which the violation continues under section 408(j) of the Holding Company Act, 12 U.S.C. 1730a(j), for any company that violates or any person who participates in a violation of the Holding Company Act or any regulation or order issued pursuant thereto. As used in this paragraph, the term "violates" includes, without limitation, any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding and abetting a violation.

SUBCHAPTER F—SAVINGS AND LOAN HOLDING COMPANIES

PART 584—REGULATED ACTIVITIES

4. Revise § 584.4 as follows:

§ 584.4 Prohibited acquisitions.

No savings and loan holding company, directly or indirectly, or through one or more transactions, shall:

(a) Acquire by purchase or otherwise any of the voting shares of an insured institution not a subsidiary, or of a savings and loan holding company not a subsidiary, or, in the case of a multiple savings and loan holding company, so acquire or retain more than five percent of the voting shares of any company that is not a subsidiary and that is engaged in any business activity other than those specified in paragraphs (b) of § 584.2 or § 584.2–1; or

(b) Acquire control of an uninsured institution or retain, for more than one year after the date any insured institution becomes uninsured, control of such institution.

§ 584.4–1 [Removed]

5. Remove § 584.4–1.

§ 584.10 [Amended]

6. Revise § 584.10 by removing paragraph (d) thereof and redesignating paragraph (e) as (d).

PART 589—BOARD RULINGS

§ 589.1 [Removed]

7. Remove § 589.1.

(Change in Savings and Loan Control Act, 12 U.S.C. 1730(a); Savings and Loan Holding Company Act, 12 U.S.C. 1730a; Section 17(a) of the Federal Home Loan Bank Act, 12 U.S.C. 1437(a); Reorg. Plan No. 3 of 1947, 3 CFR 1071 (1943–48 Comp.))

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85–9869 Filed 4–24–85; 8:45 am]

BILLING CODE 6720–01–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–21958; File No. S7–16–85]

Request for Comments on Issues Concerning Internationalization of the World Securities Markets

AGENCY: Securities and Exchange Commission.

ACTION: Request for Comments.

SUMMARY: The Commission solicits comment on issues concerning the increasing internationalization of the world's securities markets. In light of the accelerating movement towards global trading markets for certain securities and the increasing flow of investments across national borders, the Commission believes that it now is appropriate to review these developments and to consider ways of attaining the fairest and most efficient global markets possible.

DATES: Comments to be received by June 30, 1985.

ADDRESS: Persons wishing to submit comments should file three copies with John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. All comments should refer to File No. S7–16–85 and will be available for inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Andrew E. Feldman, Esq., (202) 272–2388, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Commission is requesting comment on a number of issues concerning the growing internationalization of the securities trading markets.[1] In recent years there has been an increasing tendency for major securities to be traded not only in the capital market of their country of origin, but also in other financial centers around the world. The future direction of this international trading and its implications for existing markets, however, remains largely unknown.

The Commission is publishing this request for comment with the aim of providing a forum for consideration of the issues raised by internationalization and for discussion of the manner in which global trading markets should develop. The Commission believes that forethought and cooperation between the securities industry and national regulatory bodies can help make the evolving global markets more fair, efficient, and accessible.

B. Market Developments

There has been an increasing tendency for securities to become traded internationally. The emergence of the Eurobond market in 1963 was the vanguard of this internationalization process, and debt has continued to be the most prominent element in the

[1] The Commission recently also requested comment on issues regarding the internationalization of the process of public offering of securities. Securites Act Release No. 6568 (March 1, 1985), 50 FR 9281 ("Multinational Offerings Release").

international markets. In recent years, the growth in this market has accelerated markedly. Total new issues of Eurobonds rose from $45 billion in 1983 to $180.3 billion in the first 11 months of 1984.[2] United States issuers raised $6.2 billion in Eurobonds in 1983 and $6.8 billion in the first half of 1984.[3] In addition, the United States government [4] and several quasi-governmental entities [5] have made direct offerings to foreign investors totaling over $14.35 billion since the repeal of the withholding tax on interest paid to foreign holders of such debt securities.

At the same time, foreign issuers and investors have increasingly tapped United States capital markets. Nineteen foreign private issuers raised $2.3 billion through debt offerings in the United States in 1983,[6] and foreign government issuers offered $3.1 billion in debt in the United States in 1984.[7]

Although the growth of the Eurobond market and cross-national issuances of debt in recent years have tended to overshadow development in the equities markets, global currents also have begun to touch the equities markets. Eighteen foreign companies (excluding Canadian issuers) raised approximately $1 billion in equity in the United States in 1983.[8] In addition, foreign purchases of United States stocks have increased year by year. Net foreign purchases of United States equities increased from $3.9 billion in 1982 to $5.2 billion in 1983;[9] total transactions by foreign investors in United States equities totaled $134.3 billion in 1983.[10] United States investment in foreign equities has also increased through the years.[11] It has been estimated that United States institutions now hold $10–$13 billion[12] in foreign stocks, compared to $1–2 billion five to ten years ago.[13] Surveys indicate that 19% of United States pension funds invested overseas in 1983, and another 9% were expected to begin in 1984.[14] Many foreign institutions also are investing substantial amounts in other countries.[15]

Several factors have been instrumental in fostering this global investment in equities.[16] In particular, investors have sought to diversify investments across national lines to take advantage of periods in which foreign markets have experienced rates of growth unmatched by domestic markets. This tendency was particularly pronounced during 1984, when the European, Australia, Far East ("EAFE") Index substantially outperformed the United States markets whether measured in local currencies or dollars.[17]

Increased familiarity with multinational companies and a desire to diversify investments globally also has generated interest in international investment among individual investors. Individuals invest both directly in foreign stocks[18] and through internationally-oriented investment companies.[19] Direct investment in foreign stocks has been made considerably simpler for United States investors as a result of the increased listing and trading of foreign stocks (or American Depository Receipts ("ADRs") on foreign stocks) on United States markets. As of the beginning of 1984, 46 foreign securities or ADRs were listed on the New York Stock Exchange ("NYSE"), 52 were listed on the American Stock Exchange ("Amex"), and 294 were quoted in NASDAQ.[20] In 1984, the trading volume of foreign securities and ADRs exceeded 817 million shares on the NYSE, 197 million shares on the Amex, and 906 million shares on NASDAQ.[21]

United States stocks also increasingly are being traded overseas, either through official listings on foreign exchanges or in over-the-counter ("OTC") trading by securities firms. As of January 1, 1985, approximately 200 domestic NYSE-listed companies were listed also on the London Stock Exchange ("LSE"), 43 on the Paris Bourse, and 6 on the Tokyo Stock Exchange.[22] A company may seek a listing on an overseas exchange to obtain greater exposure in that country in the hope of eventually raising capital there.

In addition, OTC trading has been initiated overseas in major stocks to accommodate trading interest in multinational companies among dealers and foreign institutions. An element of this OTC trading has been the development of the ability for broker-dealers to trade continuously around-the-clock by passing their trading positions on to traders located in branch offices in later time zones.

The desire to accommodate international trading interest has motivated the securities markets to

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[2] Kristoff, *World Financial Curbs Eased by Technology and Ideology*, New York Times, January 26, 1985, at 1 ("Kristoff").

[3] *The One World Capital Market*, Euromoney, October 1984, at 106. In recent months a Euroyen market also has begun to emerge.

[4] The Treasury has made a $1 billion offering of foreign targeted debt. Based on information obtained from the Treasury.

[5] The Federal National Mortgage Association ("Fannie Mae") and the Student Loan Marketing Association ("Sallie Mae") have made foreign offerings totaling approximately $13.25 billion and $100 million respectively. Based on information obtained from Fannie Mae and Sallie Mae.

[6] Soloman, *An SEC Survival Kit*, Institutional Investor, May 1984, at 119.

[7] SEC Monthly Statistical Review, v. 44 No. 2, February 1985, at 14.

[8] *Investors in the United States are Putting a Damper on Stocks offerings by Foreign Concerns*, Wall Street Journal, November 11, 1984, at 2. Major foreign offerings in the United States in 1983 included offerings by Ericsson, Alcan Aluminum, and Bell Canada. In 1984, Reuters Ltd. offered $310 million and British Telecom offered approximately $4.7 billion in equity simultaneously in the United States and other countries.

[9] SIA *Securities Industry Yearbook 1984–85* 594 (1984).

[10] *Id.*

[11] The pace of foreign investment slowed somewhat in 1984, however. *See U.S. Investors Slash Foreign Portfolios as Domestic Vigor Lures Back Dollars*, Wall Street Journal, February 25, 1985, at 58.

[12] Kristoff, *supra* note 2, at 1; *The Great Deregulation Explosion*, Euromoney, October 1984, at 61.

[13] Kristoff, *supra* note 2, at 1.

[14] *The Rise of the International Explosion*, Euromoney, May 1984, at 64.

[15] *The Great Deregulation Explosion*, Euromoney, October 1984, at 61

[16] These factors include the recent peace and prosperity of the developed countries, new transportation and communications technology, the advent of floating exchange rates, and the relaxation of foreign exchange controls. *See* Multinational Offerings Release, *supra* note 1, at 9281.

[17] DuBois, *The Year Eight Foreign Markets Outpaced Wall Street*, Barrons January 7, 1985, at 63 (based on Capital International S.A. data). Eight individual foreign markets outperformed the U.S. last year as measured in dollars, while 13 markets outpaced the U.S. as measured in local currencies.

[18] Foreign markets increasingly are being made more accessible to facilitate investment in the securities of such countries. For instance, Sweden and Finland recently established free share registers to allow foreigners to trade more freely in domestic equities.

[19] The number of international and global-oriented investment companies has increased in recent years. By April 1984 there were 16 globally oriented mutual funds (funds that invest both in the United States and overseas), with $4.5 billion in assets. Chesser, *American Money Managers Learn a Lesson*, Institutional Investor (Int. Ed.), April 1984, at 173.

[20] *NYSE 1984 Fact Book*, 40; *Amex 1983 Fact Book*, 10; *NASDAQ 1983 Fact Book*, 90.

[21] Based on information obtained from the NYSE, Amex, and NASD. These figures represent 3.5%, 12.8% and 5.9% respectively of the overall trading volume on these markets.

[22] Based on information obtained from the NYSE. Approximately 900 companies, including both U.S. and foreign companies, have officially listed on overseas stock exchanges. Of these, it has been estimated that 236 multinational companies are actively traded in international markets on a daily basis, of which 84 are United States corporations. *The Corporate List*, Euromoney, May 1984, at 71.

consider ways of extending their trading hours, as well as ways of cooperating with other markets through linkages and coordination of market information.[23] For instance, the Boston Stock Exchange ("BSE") and the Montreal Exchange ("ME") currently operate a link between their markets. In the first phase of the linkage, now operational, ME specialists can send orders in a small number of Canadian national issues also listed in the United States for execution by BSE specialists. This provides a means for ME specialists to offer additional markets to Canadian customers and provides the BSE access to an additional source of possible order flow. In subsequent phases, the two markets will connect BSE specialists to the ME's automated small order execution system ("MORRE")[24] and may provide access for United States broker-dealers and investors to the MORRE system.[25] In addition to linkage has been proposed between the Toronto Stock Exchange and the Amex.[26]

In addition, the NYSE recently has explored the idea of developing some form of twenty-four hour trading mechanism, and it appears to be considering an incremental extension of trading hours in the near future.[27] It also has engaged in discussions concerning a possible merger with the Pacific Stock Exchange ("PSE"), reportedly designed in part to take advantage of the PSE's location in a later time zone.[28] Informal discussions are also reported to have taken place between the NYSE and the LSE concerning coordinated trade reporting systems for dually listed stocks.[29]

Broker-dealers and banks from various countries also have expanded their international securities activities. This has been facilitated by initial steps taken by foreign regulators and markets to reduce restrictions on the involvement of foreign broker-dealers in their markets.[30] For example, as restrictions on foreign ownership of LSE members have been reduced, a number of banks and investment bankers have purchased interests in London brokerage firms with the intent of expanding these interests when greater foreign ownership of LSE member firms is allowed.[31] Foreign banks and investment bankers also have increased their activity in Japan, and one firm recently sought unsuccessfully to become the first foreign member of the Tokyo Stock Exchange.[32] In addition, certain Canadian regulators have signalled a willingness to loosen restrictions on the ability of foreign brokerage firms to register.[33]

Moreover, in the area of securities processing, United States clearing agencies since 1980 have been developing links with foreign clearing agencies to more efficiently and safely process international securities transactions.[34] Typically, the links involve a foreign clearing agency becoming a member of a United States clearing agency and participating on behalf of the foreign clearing agency's members. The foreign clearing agency is liable as principal for the transactions of its members and is subject to the United States clearing agency's rules. For example, the Candian Depository for Securities Limited, a Canadian clearing agency operating in Montreal and Toronto, has become a member of the National Securities Clearing Corporation in New York City.[35] That link processes over-the-counter transactions between United States and Canadian broker-dealers and transactions that occur on the BSE/ME trading floor link. Similarly, the Vancouver Stock Exchange Service Corporation has become a member of the Midwest Clearing Corporation. That link also processes over-the-counter trades between United States and Canadian broker-dealers. Other processing links not involving foreign clearing agency membership in a United States clearing agency have been developed between the Amsterdam Stock Exchange and the Depository Trust Company in New York City,[36] between Trans Canada Options, Inc. and the Options Clearing Corporation in Chicago,[37] and between Trans Canada Options, Inc. and the National Securities Clearing Corporation.[38] Only those links

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[23] Formal links with foreign markets also have been developed or proposed by a number of United States futures exchanges. The most sophisticated linkage to date involves the Chicago Mercantile Exchange and the Singapore International Monetary Exchange. These two markets have implemented a linkage in which fungible Eurodollar and Deutsche mark futures contracts are traded on both exchanges. An international mechanism allows a futures position established on one exchange to be offset on the other exchange. *See* Memorandum from the Division of Trading and Markets and the Division of Economic Analysis to the Commodity Futures Trading Commission, Re Proposed Rules and Rule Amendments of the Chicago Mercantile Exchange Relating to the Establishment of a Proposed Mutual Offset System with the Singapore International Monetary Exchange, Ltd. (August 22, 1985) ("CFTC CME-Simex Memorandum"). A similar link has been proposed by the Commodities Exchange and the Sydney Futures Exchange. *Wall Street Letter*, December 10, 1984, at 4. A number of United States and foreign exchanges also have discussed the possibility of introducing futures on foreign stock indices in the United States. *Wall Street Letter*, February 18, 1985, at 1, 9. In addition, various European exchanges have developed a pilot system to link their market information systems together. *Trading Across Frontiers*, Euromoney, May 1984, at 110.

[24] Securities Exchange Act Release No. 21925 (April 8, 1985). On April 8, 1985, the Commission approved the implementation of Phase II of the linkage, which will, in the summer of 1985, expand the list of securities eligible to trade through the linkage to include approximately 200 limited United States-listed securities available for trading through the Intermarket Trading System ("ITS"). *Id.*

[25] *See* Letter from Michael R. Lindburg, Vice President and General Counsel, BSE, to Richard Chase, Assistant Director, Division of Market Regulation (July 30, 1984).

[26] SR-Amex-85-8. The proposed linkage initially would be limited to trading on a one-way basis between the Toronto Stock Exchange and Amex in a limited number of dually listed stocks, and subsequently would be expanded to a two-way linkage in all dually listed stocks. *Id.*

[27] *Around the Clock Trading in Securities Ahead? Interview with John Phelan, Chairman, New York Stock Exchange*, U.S. News & World Report, January 14, 1985, at 73.

[28] *Big Board Hours Would Be Extended Under a Merger With Pacific Exchange*, Wall Street Journal, February 25, 1985, at 17.

[29] *Big Board, London Exchange Discuss Trading, Data Reporting Joint Ventures*, Wall Street Journal, January 7, 1985, at 3.

[30] The United States does not limit access by foreign broker-dealers to its securities markets. Foreign broker-dealers, moreover, can be members of United States exchanges. In many foreign countries, however, United States securities firms are restricted from selling and underwriting securities by regulations which do not apply to domestic firms. Although some of these restrictions have been reduced, restrictions still remain. *See infra* notes 61-63 and accompanying text.

[31] *See, e.g., United States Financial Firms Grab Growing Share of European Markets*, Wall Street Journal, February 25, 1985 at 1; *Citicorp to Buy London Dealer*, Wall Street Journal, February 23, 1985, at 32; *British Deal by Shearson*, New York Times, July 27, 1984, at D6.

[32] *Rebuff to Merrill in Tokyo Criticized*, New York Times, December 28, 1984, at D3.

[33] *A Regulatory Framework for Entry Into and Ownership Of The Ontario Securities Industry* (February 1985), A Report of the Ontario Securities Commission to the Minister of Consumer and Commercial Relations.

[34] The Commission's staff has analyzed the safety and efficiency of these proposed links and issued "no-action" letters under Section 17A of the Exchange Act. Those letters advise that, under the terms and conditions set forth in the private agreement between the United States and foreign clearing agencies, the Commission staff will not recommend that the Commission take enforcement action if the foreign clearing agencies do not register as clearing agencies in the United States on account of their activities.

[35] *See* Letters from Dan W. Schneider, Deputy Associate Director, Division of Market Regulation, to Karen L. Saperstein, Assistant General Counsel, National Securities Clearing Corporation (October 24 and November 26, 1984).

[36] *See* Letter from Jerry R. Marlatt, Staff Attorney, Division of Market Regulation, to Alan H. Paley, Debevoise, Plimpton, Lyons and Gates (July 25, 1980).

[37] *See* Letter from Dan W. Schneider, Assistant Director, Division of Market Regulation, to Andrew M. Klein, Schiff, Hardin and Waite (March 25, 1982).

[38] *See* Letter from Richard G. Ketchum, Associate Director, Division of Market Regulation, to Robert Woldow, Vice President and General Counsel, National Securities Clearing Corporation (August 18, 1982).

in which the foreign clearing agency has became a member of a United States clearing agency, however, have enjoyed significant use to date.

These actions by broker-dealers, banks, securities markets, clearing agencies, and regulators represent initial steps to respond to the emergence of international trading and to anticipate further developments. In many respects, however, the dimensions of this increased international trading remain unclear. As a result, industry participants, securities markets, and regulatory bodies find it difficult to prepare for future developments in this area. This is a result in part of the absence of a central forum for discussion of these trends, and the issues raised by global trading of securities. By issuing this request for comment, the Commission hopes to provide that central forum to promote better coordination as international markets continue to develop.

II. Issues

While the speed and growth of international trading is difficult to predict, the trend towards increased trading before or after NYSE trading hours in United States securities does appear to be clear. Howevêr, this trading, involving primarily market professionals and institutional firms, may not raise substantial investor protection or market efficiency concerns for the United States securities markets. Simultaneous trading on an international basis raises substantially more complex questions. Similarly, more coordinated trading involving passing public investor orders from marketplace to marketplace throughout the twenty-four hour day raises a number of difficult issues. While it is far less clear that the amount of simultaneous or coordinated trading of shares of stock on an international basis will increase substantially, domestic exchanges and the NASD have indicated an increasing interest in exploring such arrangements with foreign markets.

Nevertheless, the Commission believes that it is important for the United States and foreign securities industries, markets, and regulators to consider ways of ensuring that where a global marketplace does develop, it is fair, efficient, and accessible to investors.[39] Accordingly, the Commission is soliciting comment on a number of significant issues raised by the growing internationalization of the securities trading markets. The Commission is also interested in receiving comment on any additional investor protection, competitive, or market efficiency concerns raised by the internationalization of secondary market trading.[40] Comments received will enable the Commission to consider what, if any, international negotiations or regulatory initiatives may be necessary to facilitate the increasing internationalization of the markets. In addition, the Commission anticipates that the comments will contribute to the consideration of these issues by the self-regulatory organizations, the securities industry, and investors, and will provide a forum for further discussion of these matters.

A. International Trading

As stocks increasingly are held outside of their country of origin, a number of initial steps have been taken to provide international trading opportunities for these stocks.[41] Yet the demand for this extended trading is unclear. Accordingly, the Commission, as a preliminary matter, requests comment generally on the need for actions to facilitate international trading. Specifically, the Commission requests comment on the extent to which extended trading opportunities are sought and used by investors at present. To what extent is this trading institutional, proprietary, or retail, and how does that effect the need for regulators to take actions to accommodate such trading? In addition, what use of these services is expected in the future? Is the demand for extended trading opportunities primarily based on a desire for liquidity during crisis conditions or during a rapidly moving market, or for ease in executing routine transactions? Finally, will extending trading opportunities result in spreading out existing trading over longer hours, or will greater trading volume result?

Assuming that conditions support increased international trading, the Commission requests comment on what conditions and structures should characterize international trading markets. Areas of discussion include market structure, clearance and settlement arrangements, and broker-dealer access to markets.

1. Market Structure

Several types of extended trading arrangements have been suggested as ways in which the international markets might develop. One possibility is that simultaneous trading in stocks by markets located in different countries could develop for at least part of the trading day.[42] As stocks increasingly list on exchanges in more than one country, these exchange markets may seek to attract order flow from foreign investors by extending their trading hours. As a result, trading of these stocks in markets in different countries could increasingly overlap.

Another possibility is increased coordination between domestic and foreign markets in the trading of multiply-traded stocks. This could occur through exchanges arranging for consecutive trading in stocks rather than simultaneous trading, possibly involving the passing of positions or open orders from exchange to exchange when trading ends in the earlier time zone. A further possibility is the rise of around-the-clock in-house trading by securities firms, as they expand their in-house trading capacity in foreign countries to accommodate the interest of foreign or United States clients that wish to trade outside normal business hours.[43] This could involve shifting their market making function and trading positions from office to office as working hours end in earlier time zones.

The use of these differing approaches would appear to have a number of consequences. For example, expansion of firm in-house trading capabilities to international dimensions would appear to require less time and capital to establish; indeed, a number of United States broker-dealers already have a substantial international presence.[44] At the same time, such an expanded upstairs trading capability, while useful in facilitating around-the-clock trading by institutional investors, probably would not provide opportunities for the same degree of retail market participation as exchange linkages. In addition, such upstairs trading would be much more difficult to monitor than expanded exchange activity.

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[39] *See* Commissioner Aulana L. Peters, *"The Securities Industry in 1985: Excellence Amidst Challenges,"* Address to the Securities Industry Association 1985 Annual Convention (November 29, 1984).

[40] The Commission recently requested comment on the steps that it should take to accommodate disclosure requirements for secondary trading subsequent to the public offering of securities in the United States by a foreign issuer. Multi-national Offerings Release, *supra* note 1, at 9284.

[41] *See supra* text accompanying notes 23–29.

[42] *See big Board Pacific Tie Progresses*, New York Times, February 25, 1985, at D1. *See also supra* text accompanying notes 23–29.

[43] Third market makers such as Jefferies & Co., Inc. already provide their customers with the ability to execute trades in listed securities when United States stock exchanges are closed or have halted trading in a particular security. *See Jefferies' Third-Market Trading often Steals Show from Exchanges*, Wall Street Journal, July 14, 1984, at 79.

[44] *See supra* text accompanying notes 31–32.

The Commission requests comment on the advantages and disadvantages of each approach. To the extent that commentators prefer one arrangement, the Commission requests commentators to discuss how such arrangements would operate, especially with reference to the handling of customer market and limit orders, and what structures are necessary for these arrangements to function effectively. In addition, the Commission requests commentators to address the specific market structure areas discussed below.

a. *Consolidated Reporting.* In the United States securities markets, member firms executing transactions in reported securities [45] during normal trading hours are required to report the trade price and size of transactions to a consolidated reporting system. These last sale reports from exchange and over-the-counter markets nationwide are collected in a central repository, updated continuously during regular trading hours, and publicly disseminated. The United States consolidated transaction reporting systems currently capture on a real-time basis the vast majority of the trading volume in reported securities.[46]

If the trading of reported securities becomes more international, the volume of transactions not captured in a consolidated system could increase. The Commission, therefore, solicits comment on whether transaction reporting requirements for participants in the United States securities markets should be expanded. In this connection, commentators are requested to discuss the volume of international trading currently occurring in United States stocks and the usefulness of making last sale information available for those transactions. Should member firms be required to report such trades to a consolidated system? If so, should they do so on a real-time basis even if those trades occurred outside of United States trading hours?

The Commission understands that, at this time, a substantial portion of foreign trading in United States stocks continues to occur in the OTC market and involves United States broker-dealers. In the future, however, more activity may occur in United States stocks either on foreign exchanges or in OTC transactions involving only foreign participants. The Commission requests comment on the desirability and practicability of developing an international consolidated reporting system for stocks traded globally on an active basis. The Commission recognizes that perhaps the principal obstacle to international transaction reporting is the lack of uniformity in reporting requirements. The Commission notes that, while some securities markets (*e.g.*, the NYSE) require that transactions be reported on a real-time basis, other (*e.g.*, the LSE) compile neither transaction nor volume reports for individual stocks.[47] Accordingly, the Commission solicits comments on whether uniform reporting requirements for securities traded internationally could be devised.[48] Comment is also requested on what level of international trading activity would be necessary before the cost of such a system is justified.[49]

b. *Consolidated Quotations.* In the United States securities markets, quotations in reported securities are collected during trading hours from exchanges and OTC market makers in reported stocks. These quotations are consolidated into a single quotation stream and disseminated to market participants. By referring to these consolidated quotations, market participants are able to direct their customer orders to the best market for execution.

The Commission requests comment on whether a consolidated quotation system is or will be needed internationally. The need for a consolidated quotation system is directly related to the amount of simultaneous trading occurring on an international basis. How active would simultaneous trading have to be for the consolidated quotations to be justified? How could the differing requirements concerning display of quotations be accommodated in a consolidated quotations system?

The Commission notes that major United States broker-dealers are presently disseminating quotations through foreign vendor systems before or after United States trading hours. In the future, United States information vendors may wish to disseminate those quotations in the United States. Comment is requested on whether domestic dissemination of foreign quotations will increase international after-hours trading by United States institutional or public investors. Comment is also requested on whether present quotation and vendor display regulatory requirements should be applicable to such dissemination.

The Commission also notes that the quotation reporting systems established for debt securities are considerably less developed than for reported equity securities. For the most part, information with respect to government and corporate debt securities in the United States is available only through privately sponsored wire or other communications systems. The principal information displayed is indications of interest (as opposed to firm bids or offers or reports of actual transactions), although some "brokers' brokers" disseminate firm quotations anonymously on behalf of dealers in debt securities.[50] Given that much of the expansion of activity in the international securities markets has involved the trading of debt securities,[51] comment is requested on whether the market information presently available in the international markets for debt is sufficient to ensure efficient pricing.

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[45] The term "reported security" means any listed or OTC equity security subject to an effective transaction reporting plan filed with the Commission pursuant to Rule 11Aa3-1 under the Securities Exchange Act of 1934 ("Exchange Act"). In the market for securities listed on an exchange, this central reporting is effected through the facilities of the exchange. In the market for securities traded solely OTC, this reporting takes place through NASDAQ terminals or by communicating with the NASDAQ headquarters.

[46] The Commission believes that National Association of Securities Dealers, Inc. ("NASD") rules require that OTC transactions in reported securities executed overseas during normal trading hours by NASD members be reported on a real-time basis. *See* NASD By-Laws, Article XVI, Schedule D, XIV, Section 2(a)(4); NASD By-Laws, Article XVIII, Schedule G, Section 2(a)(4). OTC trades executed outside of normal trading hours by member firms are required to be reported weekly rather than on a real-time basis. *Id.*

[47] *Big Board, London Exchange Discuss Trading, Data Reporting Joint Ventures*, Wall Street Journal, January 7, 1985, at 3.

[48] The Commission also requests commentators to address the application of the Commission's short sale rule, Rule 10a-1 under the Exchange Act. The rule places certain restrictions on short sales in securities which are traded on a national securities exchange if transactions in such securities are reported pursuant to an "effective transaction reporting plan" under Rule 11Aa3-1 under the Act and information on such trades is made available on a real-time basis to vendors of securities information. The rule is intended to prevent the use of short sales to depress, or accelerate the depression of, a market for a security. Rule 10a-1 does not contain any exemption for short sales effected in international markets. The Commission requests commentators to address whether and under what circumstances an exemption would be appropriate.

[49] As an interim measure, the Commission solicits comment on whether it would be feasible to have an international consolidated reporting system that disseminates real-time last sale information for those markets that provide such data, while also compiling periodic volume data from markets lacking real-time last sale reporting.

[50] The NYSE and Amex maintain an odd-lot market for corporate and zero coupon government debt securities, and disseminate both quotation and transaction information on those securities. The transactions effected on the NYSE and Amex, however, constitute only a small portion of the overall market in debt securities and the quotes and sales reported are not necessarily reflective of the market as a whole.

[51] *See supra* text accompanying notes 1-7.

c. *Intermarket Linkages.* United States securities exchanges have developed an electronic system called ITS that links the participating exchange floors and the OTC market for multiply-traded listed securities.[52] Before ITS was developed in 1978, multiply-traded securities often were traded on different exchanges at disparate prices; these disparities often were not corrected by arbitrage activity. The establishment of ITS, coupled with consolidated last sale and quotation reporting, allowed orders to be routed from one market center to another so that transactions could be executed in the market that provided the best price.

With respect to the international marketplace, a number of securities already are being traded simultaneously in the securities markets of more than one country. For example, the securities of the issuers listed on both the NYSE and the LSE trade simultaneously during their overlapping trading hours. Presently, this trading presents few issues because activity in NYSE listed securities on the LSE is slight. As the international capital markets continue to develop, however, simultaneous international trading may become more commonplace, possible giving rise to disparities in prices in different markets, particularly if the same securities are traded in different currencies in each of those markets.

Assuming that this trading environment does develop, the Commission requests comment on whether pricing disparities are likely to result from this international multiple trading, and if so, whether arbitrage activity will bring the markets into line.[53] If commentators do not believe arbitrage will be sufficient, they are asked to address whether there should be mechanisms such as intermarket linkages to permit orders to be routed to the market with the best price.[54]

Moreover, if public orders were routed through any such linkage, should there be more detailed disputeresolution systems in place and greater scrutiny of the investor protections provided by the rules of foreign markets?[55]

The Commission notes that much of the activity in United States securities now appears to occur away from foreign exchanges in the OTC market.[56] Commentators may wish to discuss the feasibility or desirability of any links between this foreign OTC trading and trading in United States securities market. Commentators are also requested to discuss whether any linkages developed are likely to involve exclusive agreements between a national securities exchange and a foreign market, and if so, whether that exclusivity would impose a burden on competition inconsistent with the provisions of the Exchange Act.

2. Securities Processing

In the United States, most securities transactions between broker-dealers are compared, cleared, and settled through systems operated by clearing agencies registered with the Commission under section 17A of the Exchange Act. The registered clearing agencies are the central components of the National Clearance and Settlement System. Generally, clearing agenices use automated systems to match trade data, compute net money and securities settlement obligations, and move securities between members' book-entry accounts to settle trades. In addition, clearing corporations, a type of clearing agency, guarantee their members' trade settlement obligations after securities netting. To ensure the financial integrity of the clearing agencies and to support clearing corporation guarantees, each clearing agency, among other safeguards, maintains a reserve fund of contributions from its members.

In foreign securities markets, securities clearance and settlement operations vary in function and efficiency. Some foreign securities markets have developed entities that are similar in function and regulatory authority to the United States clearing agency model, *e.g.*, the Canadian Depository for Securities Limited. Other foreign securities markets are in the process of developing modern, automated clearing agency facilities. In those cases, foreign securities market participants, and even foreign governments, depending on the country's securities regulatory scheme, will need to expend considerable time and capital to develop those facilities. Nevertheless, as the trend toward international trading increases, it will become increasingly important for foreign trading markets to establish efficient, safe, and accurate comparison, clearance, and settlement systems especially if they seek to link with United States securities markets and their respective clearing agencies.

The Commission requests comment on whether international links between United States and foreign clearing agencies are necessary for further expansion of international trading markets, and if so, what form future clearing links should take. For example, should these links be developed on an incremental basis, or should all concerned parties consider the creation of a centralized, internationally-governed clearing or depository entity for international trades? The Commission also requests comment on whether specific standards should be developed, as more international clearing links are proposed, to determine whether foreign clearing agencies should be permitted to participate in a link with a United States clearing agency or required to register as a clearing agency in the United States under Section 17A of the Exchange Act. This question could become crucial when a foreign clearing agency is not registered with the Commission and participates in the clearance and settlement of a high volume of transactions.[57]

Commentators should consider whether United States clearing agencies' normal safeguarding mechanisms will adequately protect the financial integrity of United States clearing agencies that accept such foreign clearing agencies as members.[58]

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[52] Rule 19c-3 securities, *i.e.*, listed securities not subject to exchange off-board trading restrictions, are the only securities in which the OTC market is linked to ITS.

[53] A number of securities are inter-listed on the major Canadian exchanges and in the United States on NASDAQ. For many of these inter-listed securities, it is our understanding that active markets exist in both the United States and Canada. The Commission would appreciate comments on trading experience in these inter-listed securities and, in particular, on whether arbitrage has been successful in preventing serious pricing disparities between the various markets for these securities.

[54] In this connection, commentators are requested to discuss whether use of such a linkage by public investors is feasible or desirable in light of the added currency risk and conversion expense generally involved in trading in a foreign market.

[55] The Commission understands that prior to implementing a linkage, the Chicago Mercantile Exchange and the Singapore International Monetary Exchange, Ltd. established procedures for the arbitration of disputes between customers and clearing members, between clearing members, and between the two exchanges. *See* CFTC CME-Simex Memorandum, *supra* note 23, at 44–48.

[56] This trend may not continue if the United States and foreign exchanges that are currently negotiating or contemplating links are successful in establishing these connections. On the other hand, this trend may increase as a result of the greater emphasis on OTC trading which appears to be anticipated by the British Government's white paper on the securities markets. *See* The [London] Stock Exchange, *A discussion Paper (April 1984).*

[57] The Commission also requests comment on the extent of the conditions required by the Division of Market Regulation in its existing no-action letters. *See supra* text accompanying notes 35–38. Are these conditions too extensive or not extensive enough to ensure prompt, accurate, efficient, and safe securities processing?

[58] These mechanisms protect the clearing agencies from financial loss by, among other things, requiring

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Similarly, comment is requested on whether United States clearing agencies should develop special admission standards for foreign clearing agencies that seek to link with United States clearing agencies through membership.

The Commission finally requests comment on the issues that arise when a United States clearing agency and a foreign clearing agency create a two-way link, *i.e.*, an interface. Although all approved links to date have been one-way,[59] the Commission believes that development of two-way interfaces reasonably can be anticipated. How can the Commission and United States clearing agencies ensure both the safeguarding of securities and funds in the United States National Clearance and Settlement System, and ultimately the protection of United States investors, when one or more United States clearing agencies is exposed to regulatory requirements and financial risks that could be very different from those encountered in this country?

3. Barriers to Entry

As the world capital markets become internationalized, securities trading and distributions increasingly are transcending national barriers. As discussed previously, the spread of trading in domestic stocks in other countries has led securities firms of many nations to establish branch offices or affiliates overseas. This international expansion is not limited to United States firms; foreign securities firms also are expanding both into the United States and into other countries as well. The Commission notes that, while foreign broker-dealers can easily register with the Commission as broker-dealers, and the United States securities exchanges and the NASD generally provide foreign firms with ready access to their markets, other nations and securities markets have erected explicit barriers to entry that prevent or restrict foreign firms from trading directly. Barriers of this nature, for example, are found in Canada,[60] Switzerland,[61] Great Britain,[62] and Japan.[63] The Commission requests comment on the effect of these barriers to international trading of securities and what actions, if any, should be taken to reduce these barriers.

The Commission also recognizes that, to the extent that national schemes for broker-dealer regulation differ substantially, they could constitute *de facto* barriers to entry by making it difficult for one nation's broker-dealers to qualify to trade in another country.[64] Accordingly, the Commission solicits comment on what barriers, if any, result from the broker-dealer regulation of various countries and whether this regulation significantly limits broker-dealers from one country from entering the markets of another.

B. Multinational Distributions of Securities

A recent release discussed various issues and concerns related to the distribution of securities in the context of the Securities Act.[65] A multinational distribution of securities also raises a number of issues under the Exchange Act, which regulates certain activities on the part of persons engaged in a distribution of securities.

For example, Rule 10b–6 under the Exchange Act is an antimanipulative provision that, subject to certain exceptions, prohibits persons who are engaged in a distribution [66] of securities from bidding for or purchasing, or inducing others to bid for or purchase, such securities (or certain related securities) until they have completed their participation in the distribution. The purpose of the rule is to prevent participants in a distribution from artificially conditioning the market for the securities in order to facilitate the distribution. The rule is designed to protect the integrity of the auction market as an independent pricing mechanism and thereby enhance investor confidence in the marketplace. Where the activities of non-United States distribution participants, or foreign affiliates of United States distribution participants, may have an impact on the United States securities markets, the Commission has taken the position that Rule 10b–6 applies to all of

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contributions to reserve funds, monitoring member activity, and requiring mark-to-the-market payments.

[59] That is, only the foreign clearing agencies have become members in the United States clearing agency; the United States clearing agency has not become a member of the foreign clearing agency.

[60] In Canada, any foreign broker-dealer wishing to do business must register with the relevant provincial securities regulator unless it is doing business in exempted securities. In Ontario, for example, new broker-dealer registrations are limited to applicants that are no more than twenty-five percent owned by non-residents with no single non-resident having more than a ten percent interest. The Ontario Securities Commission, however, has proposed a new, limited category of registration for firms with more than thirty percent ownership by non-residents. *See supra* note 33 and accompanying text. In Quebec, foreign broker-dealers may register without meeting similar requirements.

[61] In Switzerland, United States brokerage firms are precluded from becoming members of the Zurich Stock Exchange. United States firms, however, are allowed a fifty percent discount on commissions paid to a member firm of the Zurich Exchange. In addition, there is an informal understanding between the Swiss Banking Association and the foreign brokerage community restricting the solicitation of Swiss residents other than through Swiss banking intermediaries. The United States firms are understood to be able to service the accounts of United States citizens residing in Switzerland.

[62] Branches of United States firms are permitted to trade and underwrite securities in Great Britain. To date, however, no foreign brokerage firms have been admitted to membership on the LSE. Foreign entities currently are also precluded from owning an interest larger than 29.9% in an LSE member firm. These restrictions on foreign brokerage firms require them to trade British securities listed on the LSE through a member firm, thereby increasing their costs of doing business in Great Britian.

The LSE is preparing for two major deregulatory changes that will occur in 1986. As part of these developments, it is expected that foreign firms will be allowed to join the LSE. These changes will involve the elimination of fixed brokerage commissions and the terminaiton of the "single capacity" system whereby an LSE member firm is prohibited from engaging in more than one line of securities business.

[63] In Japan, although the Tokyo Stock Exchange has amended its rules to permit membership by foreign firms, no foreign firm has been able to acquire an exchange seat. *See supra* note 32 and accompanying text. On listed business, therefore, the foreign branches of United States securities firms must go through exchange members. As a partial accommodation, however, the foreign branches get a seventy-three percent discount from the standard commission. Nonetheless, foreign securities firms' participation in local markets is limited largely to the over-the-counter bond market, since by law all trades in listed securities must be "exchange transactions."

[64] The Commission also notes that continuous disclosure requirements for issuers under a country's securities laws may constitute a barrier to entry in that the cost of compliance may dissuade foreign companies from having their securities traded in another country's market. In this regard, section 12(b) of the Exchange Act requires foreign issuers traded on a national securities exchange to register with the Commission and file periodic reports similar to those filed by registered domestic companies. In addition, section 12(g) of the Exchange Act and Rules 12g–1 and 12g3–2 thereunder together require certain foreign issuers whose securities are traded on NASDAQ and who have over $3 million in assets and 300 United States shareholders to register with the Commission and file periodic reports. The Commission solicits comment on the effects, if any, which these requirements, and any other comparable requirements in foreign markets, have on the development of international trading markets.

[65] *See* Multinational Offerings Release, *supra* note 1.

[66] The term "distribution" is flexibly defined in Rule 10b–6 to distinguish transactions covered by the rule from ordinary trading transactions on the basis of the magnitude of the offering and the presence of special selling efforts and selling methods. The rule applies to primary and secondary distributions whether they are registered under the Securities Act or not.

the distribution participants and their affiliates.[67]

The Commission believes that the maintenance of investor confidence is critical to the continued strength of the securities markets, both in the United States and globally. Commentators are asked to address the extent to which the investor protections afforded by the Exchange Act can be maintained and coordinated with those of other countries, particularly in the context of distribution of securities on a multinational basis.[68]

C. International Enforcement Problems

The Commission and United States securities market regulators, such as the self-regulatory organizations and state regulators, are responsible for ensuring the fairness and safety of the United States capital markets. To fulfill their responsibilities, the Commission and market regulators have implemented comprehensive surveillance mechanisms, and have worked together to enforce the securities laws. Through their combined efforts, the Commission and market regulators generally have been able to exercise effective oversight over trading in the United States securities markets by United States registered broker-dealers.

The Commission notes that the growing internationalization of the United States capital markets has made market surveillance and enforcement more difficult. Because the Commission's investigative subpoena authority is limited to United States citizens and persons within the United States, it cannot compel testimony from non-United States citizens located abroad. Further, because foreign law often does not allow for any investigative or pretrial discovery, Commission efforts to develop facts necessary to file a case where suspicious circumstances exist are often frustrated. Finally, the Commission has been required to engage in lengthy proceedings and negotiations to obtain information regarding transactions effected through banks or securities firms located in countries with secrecy or blocking laws.[69]

There are few surveillance or enforcement mechanisms in place to safeguard the integrity of securities trading conducted simultaneously in multiple international markets. This is a matter of concern to the Commission; as the global market becomes more developed, fraud or manipulation in multiply-listed securities may affect adversely the markets for those securities in the United States as well as other nations. Moreover, the efficacy of trading halts imposed by the Commission or a securities market could be impaired as more trading in United States stocks occurs abroad. The Commission seeks comment regarding the surveillance mechanisms which could be developed to scrutinize trading in multiple international markets as well as measures which could be taken to address the possible erosion of trading halts that could affect the integrity of the United States securities markets.

The Commission solicits public comment on the steps that should be taken to assure that both the United States capital markets and the developing global securities market operate fairly and safely. Specifically, the Commission asks commentators to address how systems to monitor international trading might be developed. In approving the BSE/ME linkage, the Commission noted that the exchanges had agreed to "cooperate fully" in the investigation of any questioned trade, including requiring member firms to provide information about the circumstances of such trades.[70] It also noted that the ME has rules that are comparable to those of the United States securities exchanges in a variety of areas, including manipulative trading practices, sales practices, and firm financial responsibility.

As other markets consider additional linkage, the Commission seeks comment on whether similar agreements to share exchange market surveillance data will be feasible, particularly if the regulatory environments of these markets have less in common than the United States and Canadian securities markets. The Commission also seeks comment on whether such informal written undertakings are or will continue to be sufficient to ensure meaningful cooperation on surveillance matters.

The Commission also asks commentators to address more generally how nations and securities markets might cooperate to ensure equivalent regulatory treatment and expedite enforcement of fraudulent or illegal securities transactions of an international scope. In particular, would it be practicable to reach bilateral or multinational agreements on securities law enforcement, possibly through the aegis of a coordinating body of national regulatory entities?[71]

C. Conclusion

In view of the increasing internationalization of the securities trading markets, the Commission is seeking comment on the future direction of those markets and a variety of issues relating to the operation of those trading markets on an international basis. The Commission solicits comment on the extent of international trading that is expected to develop, the need for structures such as consolidated reporting and quotation systems and order routing devices, clearance and settlement requirements, rules regulating multinational distributions of securities, and ways of improving international surveillance and regulatory mechanisms. The Commission also solicits comment on any other issues not addressed directly in the release that could be of importance in the developing world equity markets.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Dated: April 18, 1985.

By the Commission.

John Wheeler,

Secretary.

[FR Doc. 85-9972 Filed 4-24-85; 8:45 am]

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[67] *See, e.g.*, Louis Vuitton S.A. (June 21, 1984) [French bank affiliate of U.S. underwriter of American Depositary Receipts]; British Petroleum Company Limited (October 31, 1979) [secondary offering by United Kingdom distribution participants].

[68] Commentators may wish to focus, for example, on the extent to which to Commission's prior approach to international stabilization should be continued or refined. In this regard, underwriting syndicates in multinational firm commitment offerings have been permitted to adjust their stabilizing bids in compliance with Rule 10b-7 under the Exchange Act to account for fluctuations in the currencies of other countries in relation to the dollar during the period of the distribution. *See, e.g.*, Tricentrol Limited (July 2, 1980) [simultaneous offering in the United States, Great Britain and Canada].

[69] The Commission's recent waiver by conduct proposal was intended to stimulate discussion on how this enforcement problem might be addressed. *See* Securities Exchange Act Release No. 21186 (July 30, 1984). *See also* Multinational Offerings Release, *supra* note 1, at 9284.

[70] *See* Securities Exchange Act Release No. 21449 (November 1, 1984). In making this commitment, the ME noted that its rules allow it to furnish investigatory information to any other exchange regarding the activities of any of its members, a provision the ME indicated it deemed to encompass exchanging information with the BSE.

[71] *See* Commissioner Charles L. Marinaccio, *"Public Policy Issues Concerning the Subject of Tender Offers and the Developing International Equities Market,"* Address to the Chicago Regional Group of the American Society of Corporate Securities (January 9, 1985).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 83C-0130]

[Phthalocyaninato(2-)]Copper; Migration From Nonabsorbable Sutures

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the color additive regulations by removing the restriction that prohibits themigration of [phthalocyaninato(2-)] copper from nonabsorbable sutures to the surrounding tissues when the sutures are used for the purposes specified in their labeling. FDA is taking this action because the restriction is impractical and is not necessary to assure the safety or suitability of the use of [phthalocyaninato(2-)]copper in nonabsorbable sutures. Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule that lists [phthalocyaninato(2-)]copper for use in coloring polybutester nonabsorbable sutures.

DATE: Comments by June 24, 1985.

ADDRESS: Written comments 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: Michael E. Kashtock, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: The color additive [phthalocyaninato(2-)] copper is permanently listed under § 74.3045 (21 CFR 74.3045) for use in coloring contact lenses and for use in coloring polypropylene sutures (nonabsorbable sutures) for use in general and ophthalmic surgery. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending § 74.3045(c) to provide for the safe use of [phthalocyaninato(2-)]copper in coloring polybutester nonabsorbable sutures for use in general and ophthalmic surgery.

At the time the color additive was listed for use in coloring contact lenses, FDA recodified the regulation for this color additive by removing § 74.1045, where the additive has been listed for use in coloring sutures, and by adding § 74.3045, which is codified in a subpart that the agency established for color additives used in or on medical devices (48 FR 34946; August 2, 1983).

Based on the original regulation, § 74.3045 contains, in paragraph (c)(1)(iii), a restriction on the use of [phthalocyaninato(2-)]copper: "When the sutures are used for the purposes specified in their labeling, there is no migration of the color additive to the surrounding tissue." FDA is proposing to remove § 74.3045(c)(1)(iii) because this restriction is not practical and is not necessary to assure the suitability or safety of the use of [phthalocyaninato(2-)]copper in coloring nonabsorable sutures.

As the agency explained in a similar proposal recently published pertaining to the use of D&C Blue No. 6 for coloring sutures (49 FR 29970; July 25, 1984), color additives are added to sutures to facilitate their visibility both during surgery and, depending on the application, during removal of the suture after the sutured area has healed. Under section 706(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376(b)), FDA imposes restrictions on the use of color additives that are necessary to assure their safety and suitability for the proposed use.

The agency originally imposed the restriction on migration to the surrounding tissue as a suitability requirement for polypropylene nonabsorbable sutures containing [phthalocyaninato(2-)]copper, to ensure that the sutures would retain enough of their color to be visible for removal after the sutured area has headed. At that time, FDA believed that no migration of the color additive from the nonabsorbable suture to tissue took place. However, because analytical methods have become more sensitive over the last decade, FDA now recognizes that low levels of migration may occur that have no bearing on the suitability of the use of color additives in nonabsorbable sutures. Such is the case when [phthalocyaninato(2-)]copper is used to color polypropylene and polybutester nonabsorbable sutures.

On the basis of evidence presented in the petition submitted in 1966 (CAP 6C0045) and in the current petition (CAP 4C0181), FDA finds that the use of [phthalocyaninato(2-)]copper in polypropylene and polybutester nonabsorbable sutures meets the suitability criteria. This evidence shows that sutures to which [phthalocyaninato(2-)]copper is added will retain enough color to remain visible.

FDA further finds that the restriction against migration of the color additive is not necessary to assure the safety of the use of [phthalocyaninato(2-)]copper in the listed sutures. The agency's evaluation of the safety of these uses was not based on an assumption of no migration. The agency recognized that there would be low levels of migration of the color additive but still found on the basis of the extensive data on [phthalocyaninato(2-)]copper, developed in appropriate testing, that these uses would be safe. Thus, the safety of the use of this color additive in polypropylene and polybutester sutures is not dependent on the requirement that none of the color additive migrate.

Therefore, for the reasons above, the agency tentatively concludes that the restriction on migration is no longer necessary to assure the safety or the suitability of [phthalocyaninato(2-)]copper for use in nonabsorbable sutures. FDA consequently is proposing to remove 21 CFR 74.3045(c)(1)(iii).

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this proposed 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.

FDA, in accordance with the Regulatory Flexibilty Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proposal results in no cost associated with the change. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

§ 74.3045 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), (376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Part 74 be amended in § 74.3045 *[Phthalocyaninato(2-)] copper* by removing paragraph (c)(1)(iii).

Interested persons may, on or before June 24, 1985, submit to the Dockets

Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 18, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-9955 Filed 4-22-85; 12:22 pm]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 736, 740, 746, 750, and 772

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Application Fee for Permit to Conduct Coal Mining and Reclamation Operations; Application Fee for Coal Exploration Permit; Fee for Processing Mining Plan; Fee for Mid-Term Review of Surface Coal Mining and Reclamation Permit

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Change of location of public hearing on proposed rule concerning permit fees.

SUMMARY: The Office of Surface Mining (OSM) is changing the location of the public hearing on the proposed permit fee rule that was announced in the Federal Register on February 22, 1985 (50 FR 7522). The new location for the hearing in Denver, Colorado is listed under **ADDRESSES BELOW.**

DATES: Written Comments: OSM will accept written comments on the proposed rule until 5 p.m. eastern time on May 3, 1985.

Public Hearings: OSM will hold public hearings on the proposed rule in Washington, D.C., Denver, Colorado; and Olympia, Washington, at 9:30 a.m. local time on April 26, 1985.

ADDRESSES: Written Comments: Hand-deliver to the Office of Surface Mining, Administration Record, Room 5313, 1100 L Street, NW., Washington, D.C. 20240.

Public Hearings: Department of the Interior Auditorium, 18th & C Streets NW., Washington, D.C.; Executive Tower Inn Building, 28th Floor Conference Room, 1405 Curtis Street, Denver, Colorado; and Capitol Complex, Office Building No. 2, 12th and Franklin, Room 47, Olympia, Washington.

FOR FURTHER INFORMATION CONTACT: Murray Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5866.

Dated: April 19, 1985.

Richard G. Bryson,

Assistant Director, Program Operations.

[FR Doc. 85-9964 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 906

Public Comment and Opportunity for Public Hearing on Proposed Modifications of the Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule. Notice of receipt of permanent program modifications; Public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the Colorado Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) which were submitted to OSM by Colorado for the Director's approval on March 12, 1985. The amendments pertain to definitions; permit application requirements; performance standards pertaining to roads, revegetation, postmining land use, and fish and wildlife; declaratory orders; inspections; cessations orders and notices of violation; and penalty assessments.

This notice sets forth the times and locations that the Colorado program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public not received by 4:30 p.m., on May 28, 1985, will not necessarily be considered in the Director's decision on whether the proposed amendments satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for May 20, 1985. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by May 15, 1985. If no person has contacted Mr. Hagen by this date to express an interest to participate in this hearing, the hearing will not be held.

ADDRESSES: The public hearing will be held between 9:00 a.m. and 12:00 noon in room 2010, Technical Center West, Brooks Towers, 1020 15th Street, Denver, Colorado. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 219 Central Avenue NW., Albuquerque, New Mexico 87102.

Copies of the Colorado program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Office above and the OSM Headquarters office and the Office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge one single copy of the amendments by contacting the OSM Albuquerque Field Office listed above.

Colorado Mined Land Reclamation Division, Department of Natural Resources, 1313 Sherman Street, Denver, Colorado 80203

Office of Surface Mining, 1100 L. Street NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343-4855.

SUPPLEMENTARY INFORMATION: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, D.C. 20240, Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On February 29, 1980, OSM received a proposed regulatory program from the State of Colorado. On December 15, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of 45 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1980 **Federal Register** (45 FR 82173-82214).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed

explanation of the conditions of approval of the Colorado program can be found in the December 15, 1980 **Federal Register** (45 FR 82173–82214).

On March 12, 1985, the Colorado Mined Land Reclamation Division (MLRD) submitted proposed program amendments for OSM's approval (Administrative Record No. 218). The amendments include proposed changes to the regulations listed below:

State Rule

1.04(95)—Definition of "prime farmland"
1.04(111)—Definition of "road"
1.15—Guidelines (new section added)
2.03.5(3)—Compliance Information
2.03.9(1)—Personal Injury and Property Damage Insurance Information
2.04.4—Cultural and Historic Resources Information
2.04.8(1)—Climatological Information
2.04.10(4)—Vegetation Information
2.04.12(1)—Prime Farmland Investigation
2.04.12(2)(a)–(f)—Prime Farmland Investigation
2.04.12(4)(a)–(b)—Prime Farmland Investigation
2.05.3(4)(a)(i)(A)—Operation Plan—Permit Area
2.05.3(4)(l)(ii)(A)—Operation Plan—Permit Area
2.05.5(1)(a)(iv)—Postmining Land Uses
2.07.5(1)(b)—Public Availability of Information in Permit Applications
2.10.1(1)–(3)—Maps and Plans—General Requirements
2.10.2(4)—Maps and Plans—Permit and Adjacent areas
2.10.3(1)(j)(i)–(iii)—Maps and Plans—Specific Information Requirements
2.10.3(1)(l)—Maps and Plans—Specific Information Requirements
4.03.1(1)(c)—Haul Roads
4.03.1(1)(d)—Haul Roads
4.03.1(1)(e)—Haul Roads
4.03.1(3)—Haul Roads
4.03.1(3)(d)(vi)—Haul Roads
4.03.1(d)(vii)—Haul Roads
4.03.1(d)(ix)—Haul Roads
4.03.1(4)(c)—Haul Roads
4.03.1(4)(d)—Haul Roads
4.03.1(4)(e)(vi)—Haul Roads
4.03.1(6)(a)—Haul Roads
4.03.2(1)(c)—Access Roads
4.03.2(1)(e)—Access Roads
4.03.2(2)(b)—Access Roads
4.03.2(2)(c)—Access Roads
4.03.2(3)—Access Roads
4.03.2(3)(d)(v)—Access Roads
4.03.2(3)(d)(vi)—Access Roads
4.03.2(3)(d)(ix)—Access Roads
4.03.2(4)(v)(A)–(E)—Access Roads
4.03.2(6)(a)—Access Roads
4.03.2(6)(b)—Access Roads
4.03.3(2)(b)—Light Use Roads
4.03.3(2)(c)—Light Use Roads
4.03.3(2)(g)—Light Use Roads
4.03.3(3)(a)—Light Use Roads
4.03.3(7)—Light Use Roads
4.15.1(2)(a)—Revegetation—General Requirements
4.15.1(2)(d)—Revegetation—General Requirements
4.15.2—Revegetation—Use of Introduced Species
4.15.4(1)—Mulching and Other Soil Stabilizing Practices
4.15.4(3)—Mulching and Other Soil Stabilizing Practices
4.15.4(5)—Mulching and Other Soil Stabilizing Practices
4.15.5(1)–(3)—Grazing
4.15.6(3)—Field Trips
4.15.7(2)(c)—Determining Revegetation Success
4.15.7(2)(d)—Determining Revegetation Success
4.15.8(2)—Revegetation Success Criteria: General Requirements and Standards
4.15.8(3)–(4)—Revegetation Success Criteria: General Requirements and Standards
4.15.8(7)—Revegetation Success Criteria: General Requirements and Standards
4.15.8(8)—Revegetation Success Criteria: General Requirements and Standards
4.15.9—Revegetation Success Criteria: Cropland
4.16.2—Determining Premining Land Use
4.16.2(1)—Determining Premining Land Use
4.16.2(3)—Determining Premining Land Use
4.16.3—Postmining Land Use—Prior to the Release of Lands from the Permit Area
4.16.3(1)—Postmining Land Use—Prior to the Release of Lands from the Permit Area
4.16.3(2)—Postmining Land Use—Prior to the Release of Lands from the Permit Area
4.16.3(3)–(5)—Postmining Land Use—Prior to the Release of Lands from the Permit Area
4.16.3(6)—Postmining Land Use—Prior to the Release of Lands from the Permit Area
4.18(3)—Protection of Fish, Wildlife, and Related Environmental Values
4.18(4)(e)—Protection of Fish, Wildlife, and Related Environmental Values
4.18(4)(i)—Protection of Fish, Wildlife, and Related Environmental Values
4.15.1(4)—Revegetation—General Requirements
1.14—Declaratory Orders (new section added)
5.02.2—Frequency, Time and Manner of Inspections
5.02.2(1)—Frequency, Time and Manner of Inspections
5.03.2(2)—Cessation Orders and Notices of Violation
5.04.6(4)—Assessment of Separate Violations for Each Day.

The proposed amendments are available for review, in full text, at the addresses listed above. The Director seeks public comment on whether the proposed modifications to the Colorado permanent program listed above satisfy the criteria for approval of State program amendments at 30 CFR 732.15 and 732.17. With respect to Colorado's penalty provisions, OSM must find that the State program, as proposed to be amended, incorporates penalties no less stringent than those set forth under the Federal requirements and contains the same or similar procedural requirements. With respect to Colorado's enforcement provisions, OSM must find that the State program, as proposed to be amended, incorporates sanctions no less stringent than those set forth in the Federal requirements and contains the same or similar procedural requirements. If the Director determines the proposed modifications satisfy the criteria, the amendments will be approved, and 30 CFR Part 906 modified accordingly.

Additional Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regualtory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules woud be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

Dated: April 19, 1985.

Brent W. Blauch,

Acting Director, Office of Surface Mining.

[FR Doc. 85–10024 Filed 4–24–85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD3 85-06]

Regatta; Barnegat Bay Air Brook Classic, Toms River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Annual Barnegat Bay Air Brook Classic sponsored by the Barnegat Bay Power Boat Racing Association of Bricktown, NJ. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this powerboat race event.

DATES: Comments must be received on or before June 10, 1985.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt . D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 85-06) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rule making process.

Drafting Information

The drafters of this notice are Lt. D.R. Cilley, Project Officer, Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Regulations

The Annual Barnegat Bay Air Brook Classic is a powerboat race sponsored by the Barnegat Bay Power Boat Racing Association of Bricktown, NJ. This event is traditionally held each year on the fourth Saturday in August. Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 of Title 33, U.S. Code of Federal Regulations and thereafter provide the public with full and adequate notice of this annual powerboat race by publication in the Third District Local Notice to Mariners. This event is well known to the residents of the communities surrounding Tom's River and Barnegat Bay. There will be one (1) 80 mile race sanctioned by the National Power Boat Association. Between 45-60 powerboats will compete during the day reaching speeds of 65-80 mph. The oval track has been laid out so that there should be little or no interference with vessel traffic in the Intercoastal Waterway (I.C.W.). Access to and from any section of Tom's River and Barnegat Bay will not be restricted. The sponsor is providing in excess of 40 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish spectator anchorages for what is expected to be a large spectator fleet. Mariners are urged to use extreme caution when transiting the area due to the large number of spectators, and should adhere closely to the charted I.C.W. The Coast Guard will issue a safety voice broadcast to advise the general public of this event.

Economic Assessment And Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services to the spectators. This area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations by adding § 100.302 to read as follows:

§ 100.302 Barnegat Bay Air Brook Classic, Toms River, NJ.

(a) *Regulated Area.* Barnegat Bay, New Jersey in the area bounded by 39 degrees 55 minutes north latitude on the north, 39 degrees 50 minutes north latitude on the south, the Intercoastal Waterway (I.C.W.) on the west and Island Beach on the east.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 3:00 p.m. on August 17, 1985 and thereafter annually on the fourth Saturday in August unless otherwise specified in the Third District Local Notice to Mariners and **Federal Register** notice.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with the sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(3) The sponsor shall anchor race committee boats on each turn. Checkpoints shall be positioned so that race participants will pass no closer than 200 feet from the I.C.W. A line of committee boats shall be positioned to separate the race course from the I.C.W.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with mariners transiting the I.C.W. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Between the race course and the I.C.W. in the area to the west of the race course.

(ii) Between the race course and Island Beach State Park in the area north of Tices Shoal.

(5) All persons and vessels shall comply with the instruction of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel

shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35)

Dated: April 15, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-10016 Filed 4-24-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD3 85-16]

Regatta; Harvard-Yale Regatta, Thames River, New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Annual Harvard-Yale Regatta being sponsored by the Harvard-Yale Regatta Committee of Needham, Massachusetts. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during the event.

DATES: Comments must be received on or before May 28, 1985.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LT D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 85-16) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The comment period for this proposed rulemaking is less than the normal 45 days because of the time constraints involved. Due to the shortened comment period, verbal comments submitted by telephone are acceptable.

Drafting Information

The drafters of this notice are LT D.R. Cilley, Project Officer, Third Coast Guard District Boating Safety Division, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Regulations:

The Annual Harvard-Yale Regatta is a crew race event to be held on the Thames River in New London, Connecticut. It is sponsored by the Harvard-Yale Regatta Committee and is well known to the boaters and residents of this area. This event is traditionally held each year on the first or second Saturday in June. Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations and thereafter provide the public with full and adequate notice of this annual crew race by publication in the Third District Local Notice to Mariners. Due to the large number of spectator boats present on the river for the purpose of watching this crew race it is anticipated that there will be considerable congestion in the area. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the area prior to, during, and after the races. The crew shells will race upriver again this year. This helped to reduce congestion at the Penn Central Draw Bridge at the conclusion of the races last year and ensured the safe movement of the spectator fleet down the Thames River after the races. Any races not held will be postponed until the next day. Three races are scheduled, starting with a 2 mile freshman race followed by the junior varsity's 3 mile race and the 4 mile varsity race. The sponsor is providing patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the race course area and will establish special anchorages for what is expected to be a large spectator fleet.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area early in the boating season for the duration of the races. This should have a favorable impact on commercial facilities by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 U.S.C. 108; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.304 to read as follows:

§ 100.304 Harvard-Yale Regatta, Thames River, New London, CT.

(a) *Regulated Area.* The Thames River at New London, Connecticut, from the Penn Central Draw Bridge to Bartlett Cove.

(b) *Effective Period.* This regulation will be effective from 10:00 a.m. to 1:30 p.m. on June 8, 1985, and thereafter annually on the first or second Saturday in June as published in the Third District Local Notice to Mariners. In case of postponement due to weather, this regulation will be in effect the following day.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No spectator or press boats shall be allowed out onto or across the race course without Coast Guard escort.

(3) No person or vessel may transit through the regulated area during the effective period unless participating in the event, or as authorized by the sponsor or Coast Guard Patrol personnel. The Patrol Commander may open up the regulated area to allow for vessel movement between scheduled races.

(4) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area in such a way that they shall not interfere with the progress of the event at least 30 minutes prior to the start of the races. They must remain moored or at anchor until the men's varsity have passed their positions. At that time, spectator vessels located south of the Harvard Boathouse may proceed downriver at a reasonable speed. Vessel's situated between the Harvard Boathouse and the finish line must remain stationary until both crews return safely to their boathouses. If for any reason the men's varsity crew race is postponed, spectator vessels will remain in position until notified by Coast Guard or regatta patrol personnel.

(5) The last 1000 feet of the race course near the finish line will be delineated by four (4) temporary white buoys provided by the sponsor. All spectator craft shall remain behind these buoys during the event.

(6) Spectator craft shall not anchor:

(i) To the west of the race course, between Monocoke Hill and Bartlett Point Light.

(ii) Within the race course boundaries or in such a manner that would allow their vessel to drift or swing into the race course.

(7) During the effective period all vessels shall proceed at a speed not to exceed six (6) knots in the regulated area.

(8) Spectator vessels shall not follow the crews during the races.

(9) Swimming is prohibited in the vicinity of the race course during the races.

(10) A vessel operating in the vicinity of the Submarine Base may not cause waves which result in damage to submarines or other vessels in the floating drydocks.

(11) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(12) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navgiation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Supension or revocation of a license for a licensed officer.

Dated: April 18, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-10019 Filed 4-24-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD3 85-08]

Regatta; Night in Venice, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish Special Local Regulations for the Annual Night in Venice Boat Parade sponsored by the City of Ocean City, New Jersey. The purpose of this regulation is to provide for the safety of participants and spectators on navigable waters during this event.

DATES: Comments must be received on or before June 10, 1985.

ADDRESSES: Comments should be mailed to Commander (b), Third Coast Guard District, Governors Island, New York, NY 10004. The comments will be available for inspection and copying at the Boating Safety Office, Building 110, Governors Island, New York, NY. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lt. D.R. Cilley, (212) 668-7974.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD3 85-08) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed. The rules may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information:

The drafters of this notice are Lt. D.R. Cilley, Project Officer, Boating Safety Officer, Boating Safety Office, and Ms. MaryAnn Arisman, Project Attorney, Third Coast Guard District Legal Office.

Discussion of Proposed Reguations

The Annual Night in Venice Boat Parade is a Marine Parade to be held on Great Egg Harbor Bay. It is sponsored by the City of Ocean City, New Jersey and is well known to the boaters and residents of this area. This event is traditionally held each year on the fourth Saturday in July. Because of the annual nature of this event, the Coast Guard proposes to promulgate a permanent amendment to Part 100 of Title 33, Code of Federal Regulations and thereafter provide the public with full and adequate notice of this Annual Boat Parade by publication in the Third District Local Notice to Mariners. Approximately 800 spectator craft are expected to watch the 125 participating vessels in the boat parade. The sponsor is providing in excess of 6 patrol vessels in conjunction with Coast Guard and local resources to patrol this event. In order to provide for the safety of life and property, the Coast Guard will restrict vessel movement in the marine parade area and will establish spectator anchorages for what is expected to be a large spectator fleet.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the race. This should have a favorable impact on commercial facilities providing services

to the spectators. The area is used primarily by recreational boaters; any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

PART 100—[AMENDED]

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended by adding § 100.303 to read as follows:

§ 100.303 Night in Venice, Great Egg Harbor Bay, City of Ocean City, NJ.

(a) *Regulated Area.* The southwest side of Ship Channel from Buoy C, seaward to Broad Thorofare Buoy No. 17 (black can) to Ocean City Longport Bridge, thence south to Great Egg Waterway Daybeacon 28.

(b) *Effective Period.* This regulation will be effective from 4:30 p.m. to 11:45 p.m. on July 27, 1985 and thereafter annually on the fourth Saturday in July unless otherwise specified in the Third District Local Notice to Mariners and **Federal Register** notice.

(c) *Special Local Regulations.* (1) All persons or vessels not registered with sponsor as participants or not part of the regatta patrol are considered spectators.

(2) No person or vessel may enter or remain in the regulated area unless participating in the event, or authorized to be there by the sponsor or Coast Guard patrol personnel.

(3) Spectator vessels must be at anchor within a designated spectator area or moored to a waterfront facility within the regulated area prior to the start of the parade in such a way that they shall not interfere with mariners transiting Great Egg Harbor Bay. The spectator fleet shall be held behind buoys or committee boats provided by the sponsor in the following areas:

(i) Northwestward of a line marked by a patrol vessel in position 39 degrees 17 minutes 45 second N latitude; 074 degrees 33 minutes 45 seconds W longitude to the 9th Street Route 52 Bridge in Ocean City, New Jersey, including Great Egg Waterway Red Buoy No. 2, but shall not extend northwestward of the Great Egg Waterway Point Buoy.

(ii) Westward of a line of buoys between Great Egg Waterway Buoys 10 and 14.

(iii) Within the area around the shoals and islands in Beach Thorofare between Great Egg Waterway Buoys 15 and 21. This area shall at no point be closer than 150 yards from the line of bulkheads and lagoon entrances in Ocean City, New Jersey.

(4) All persons and vessels shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard patrol personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(5) For any violation of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any person in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

Dated: April 16, 1985.

P.A. Yost,

Vice Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 85-10017 Filed 4-24-85; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-41

Transportation Disbursement Procedures

AGENCY: Office of the Comptroller, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) by requiring that appropriate accounting information accompanies payment checks sent to carriers by the Department of the Treasury. Air carriers consistently complain that Treasury checks used to pay for passenger transportation often lack sufficient information to reconcile payments. This problem is attributed to improper carrier preparation of vouchers, improper or inadequate preparation of voucher-schedules by the paying agencies, and inadequate payment procedures at the disbursing facilities. The proposed revisions will provide explicit instruction for handling voucher-schedules and minimize the payment accounting problems by ensuring that proper payment information accompanies payment checks to carriers.

DATE: Written comments must be received by no later than 4 p.m., May 28, 1985.

ADDRESS: Comments should be sent to the General Services Administration (BWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits (202-786-3014).

SUPPLEMENTARY INFORMATION: Section 101-41.806-3 is revised to allow the disbursing office to retain the original voucher-schedules, forwarding copies of the voucher-schedules to the issuing office. This change is necessary to correspond with the requirements of the Treasury Fiscal Requirements Manual (TFRM) Transmittal Letter Number 422. The revisions also update Standard form (SF) 1166 citations to conform with the current TFRM. The GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. The GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

The reporting forms required by this regulation are not subject to the provisions of Pub. L. 96-511, the Paperwork Reduction Act of 1980, and FPMR 101-11.11.

List of Subjects in 41 CFR Part 101-41

Air carriers, Accounting, Freight forwarders, Government property management, Moving of household goods, Passenger services, Railroads, Transportation.

GSA proposes to amend Part 101-41 as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 is:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by revising the following entries:

Sec.
101–41.804 Preparation of SF 1166 OCR, Voucher and Schedule of Payments.
101–41.804–2 Listing of items of SF 1166 OCR.
101–41.806 Processing of SF 1166 OCR.

Subpart 101–41.8—Transportation Disbursement Procedures

3. Section 101–41.802 is amended by revising paragraphs (a)(2) through (a)(6), by adding paragraph (a)(7), and by revising paragraph (b) to read as follows:

§ 101–41.802 Standard forms for scheduling transportation vouchers for payment.

(a) * * *

(2) SF 1166 OCR (Optical Character Recognition—Readable Format), Voucher and Schedule of Payments (Original) (white paper).

(3) SF 1166–A OCR, Voucher and Schedule of Payments (Memorandum) (yellow paper).

(4) SF 1166–EDP (Electronic Data Processing), Voucher and Schedule of Payments (Computer-generated).

(5) SF 1167, Voucher and Schedule of Payments (Continuation Sheet) (Original) (white paper).

(6) SF 1167–A, Voucher and Schedule of Payments (Continuation Sheet) (Memorandum) (yellow paper).

(7) SF 1186, Transmittal for Transportation Schedules and Related Basic Documents.

(b) The procedures prescribed for preparation of SF 1166 OCR, Voucher and Schedule of Payments (voucher-schedule), are applicable to all Federal agencies using the disbursing facilities of the Department of the Treasury. Other agencies may adopt these procedures following notification to General Services Administration (BWA), Washington, DC 20405. The procedures prescribed for the use of SF 1166 OCR apply also to SF 1166–A OCR, SF 1167, and SF 1167–A.

* * * * *

4. Section 101–41.803 is revised to read as follows:

§ 101–41.803 Scheduling procedures.

(a) Agencies shall prepare a voucher-schedule (SF 1166 OCR) for all basic vouchers covering transportation services furnished for the account of the United States submitted by carriers in accordance with §§ 101–41.214 and 101–41.310 of this part. Transportation vouchers (SF 1113) shall be listed separately from all other types of payment vouchers. All information required for check issuance purposes must be included on the SF 1166 OCR. After certification by the authorized certifying officer, the voucher-schedule shall be transmitted to the appropriate disbursing office. The transportation vouchers shall be retained by the agency for later transmittal to GSA (BWAA/C) in accordance with § 101–41.807 of this subpart.

(b) The tear-off slips from the related basic SF 1113 must also be sent to the disbursing office for forwarding to the carrier-payees with the payment checks. However, agencies using the Department of the Treasury disbursing facility may arrange with that facility for the production of punched cards, SF 1166 OCR, or SF 1166–EDP voucher-schedule bearing all information shown on the tear-off slips, which must be sent to carrier-payees with the payment checks instead of the tear-off slips.

(c) Paid amounts must be clearly identified against individual carrier bills. Each carrier bill number and related payment amount for transportation charges and payment amount for interest, if any, for that bill number must be included in each check issue entry if the agency certifies on SF 1166 OCR, or it must be included as magnetic tape payment data if the agency certifies on SF 1166–EDP.

5. Section 101–41.803–1 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 101–41.803–1 Classification of basic transportation vouchers for purposes of separate scheduling.

(a) Basic transportation vouchers shall be sorted into three general classifications for separate listing on SF 1166 OCR:

* * * * *

6. Sections 101–41.804, 101–41.804–1, and 101–41.804–2 are revised to read as follows:

§ 101–41.804 Preparation of SF 1166 OCR, Voucher and Schedule of Payments.

§ 101–41.804–1 Assignment of schedule numbers.

Each SF 1166 OCR covering transportation vouchers shall be assigned a schedule number, prefixed by the letter "T" and taken from a series of numbers running consecutively for each fiscal year. The "T" numbers assigned to transportation voucher-schedules shall be taken from a series of numbers separate from the series assigned to voucher-schedules covering nontransportation charges.

§ 101–41.804–2 Listing of items on SF 1166 OCR.

Each basic voucher shall be listed on a voucher-schedule with all information required for check issuance purposes, and paid amounts must be clearly identified against individual carrier bills (see § 101–41.803 (a) and (c)). The maximum practical number of check issue entries, consistent with normal spacing requirements, shall be listed on each voucher-schedule page.

7. Sections 101–41.804–4 and 101–41.804–5 are revised to read as follows:

§ 101–41.804–4 Name and address space.

Generally, the disbursing office draws checks only from information recorded on the SF 1166 OCR. Thus, except as provided in § 101–41.805, the information shown in the name and address column shall be complete (including ZIP codes) but shall be restricted to the information to be shown on the face of the check. Long addresses shall be avoided unless necessary for postal identification. The format and State abbreviations developed by the U.S. Postal Service for addressing envelopes shall be used.

§ 101–41.804–5 Amount column.

The amount for which the check is to be drawn shall be imprinted in the amount column on the same line as the payee's name. The total of the amount column on the SF 1166 OCR must include all items listed on the continuation sheets and must agree with the aggregate of amounts classified by appropriation or fund in the appropriation summary block.

8. Section 101–41.805–1 is amended by revising paragraph (a) to read as follows:

§ 101–41.805–1 No-check vouchers.

* * * * *

(a) Vouchers requiring the processing of an accounting transaction for inclusion in the agency's SF 1220, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts, or SF 1221, Statement of Transactions According to Appropriations, Funds, and Receipt Accounts (Foreign Service Account), or other approved reporting form, by transfer or without the issuance of a check shall be listed on SF 1166 OCR covering transportation vouchers for which checks are to be issued. Show the

words "NO CHECK" in the amount column of SF 1166 OCR opposite the payee's name and address. The amount shall be shown on SF 1096, Schedule of Voucher Deductions, as provided in § 101–41.805–2.

* * * * *

9. Section 101–41.805–2 is amended by revising the introductory text of paragraph (c), (c)(1), and (c)(2) to read as follows:

§ 101–41.805–2 Deductions from disbursement vouchers.

* * * * *

(c) When an amount is deducted from more than one basic voucher listed on an SF 1166 OCR, the agency shall take action as follows:

(1) Show the net amount payable to each payee in the amount column of the SF 1166 OCR;

(2) Record the total amount deducted as the last item in the address column of the SF 1166 OCR: "See attached SF 1096 No. —— $——";

* * * * *

10. Sections 101–41.806, 101–41.806–1, 101–41.806–2, and 101–41.806–3 are revised to read as follows:

§ 101–41.806 Processing of SF 1166 OCR.

§ 101–41.806–1 Makeup and initial distribution of forms.

Agencies shall prepare an original SF 1166 OCR and at least four copies of the SF 1166–A OCR. The original and three copies shall be forwarded to the appropriate disbursing office for payment processing.

§ 101–41.806–2 Information to be furnished by the disbursing office.

The disbursing office (D.O.) shall insert the D.O. voucher number in the upper right corner of each voucher-schedule (SF 1166 OCR) and clearly imprint within the PAID BY block the word "Paid"; the month, day, and year of payment; and the D.O. (station) symbol number. The disbursing office shall also list in the appropriate column opposite each payee's name the serial numbers of any checks issued in payment of the voucher.

§ 101–41.806–3 Disposition of forms after payment.

The disbursing officer shall forward the payment check to the carrier-payee with pertinent tear-off slips (or punched cards bearing all information shown on the tear-off slips), return three copies of the voucher-schedule to the issuing agency, and retain the original voucher-schedule to support its statements of accountability. If neither a tear-off slip nor a punched card is prepared, the carrier's bill number and related payment amount for transportation charges, and payment amount for interest, if any, for that bill number must appear on the check. In distributing the accomplished voucher-schedule, the issuing agency shall use one copy to support its statement of transactions (SF 1220 or SF 1221), retain a copy in its files, and forward a copy to GSA (BWAA/C) with the related basic transportation vouchers. (See § 101–41.807 of this subpart.)

11. Section 101–41.807–1 is amended by revising the introductory paragraph to read as follows:

§ 101–41.807–1 Identification of basic transportation payment documents.

Each basic transportation voucher (SF 1113) and its related voucher-schedule (SF 116 OCR) shall be cross-referenced by voucher number in a manner which enables positive association of one with the other.

* * * * *

Dated: April 4, 1985.

Raymond A. Fontaine,

Comptroller.

[FR Doc. 85–10050 Filed 4–24–85; 8:45 am]

BILLING CODE 6820–AM–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 159 and 160

[CGD 83–030]

Lifesaving Equipment

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule: extension of comment period.

SUMMARY: This notice extends the comment period on the notice of proposed rulemaking that would substitute independent laboratory inspection for Coast Guard factory inspection of approved inflatable liferafts, lifeboats including disengaging apparatus and hand propelling gear, lifeboat davits and winches. The extension was requested by the United States Lifesaving Manufacturers Association in order to gather information concerning the cost of the proposed rules and the effect that the proposed rules might have on the competitive position of U.S. manufacturers. Since these issues must be considered in the development of the final rules and the final evaluation, the request for an extension of 90 days from the Association's March 6, 1985 request is granted.

DATE: The comment period on the notice of proposed rulemaking is extended to June 4, 1985.

ADDRESS: Comments should be mailed to the Commandant (G–CMC/21) (CGD 83–030), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593. Between the hours of 8:00 a.m. and 4:00 p.m. Monday through Friday, except holidays, comments may be delivered to, and are available for inspection and copying at, the Marine Safety Council (G–CMC/21) Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC, (202) 426–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markle, Office of Merchant Marine Safety (G–MVI–3), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 426–1444.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking was published on September 27, 1984 in the **Federal Register** (49 FR 38151). The original comment period closed on December 26, 1984. This comment period was extended to March 21, 1985 by a notice in the **Federal Register** (January 31, 1985; 50 FR 4544) to provide interested persons an opportunity to submit written comments on issues raised at the public hearing in Washington, DC on February 19, 1985.

Dated: April 22, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 85–10020 Filed 4–24–85; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 85–107; FCC 85–177]

International Competitive Carrier Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing for public comment a Notice of Proposed Rulemaking to apply competitive carrier policies to international common carriers found to be non-dominant. If finally adopted, these policies will reduce the tariff and facility authorization requirements for those international carriers that are subject to competitive forces.

DATES: Comments must be received on or before May 24, 1985, and Reply Comments must be received on or before June 14, 1985.

ADDRESS: Comments on these proposed rules should be submitted to: The Secretary, Federal Communications

Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steven Goldman, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 63

Communications common carriers.

Notice of Proposed Rulemaking

In the matter of international competitive carrier policies; CC Docket No. 85-107.

Adopted: April 11, 1985.
Released: April 19, 1985.

By the Commission.

I. Introduction

1. Over the last several years the international telecommunications marketplace has undergone dramatic change. The rigid carrier and service dichotomies which limited carriers' operations and offerings have been abandoned in favor of a more competitive marketplace. The elimination of these restrictive policies and technological developments have led to the entry of a variety of new carriers in the international market including The Western Union Telegraph Company (Western Union), International Relay Inc. (IRI), Satellite Business Systems (SBS), MCI and GTE Sprint as well as a number of resellers and enhanced service providers offering a range of varying international services.[1] We also expect that our recent *Authorized User*[2] and *Earth Station Ownership*[3] decisions will further spur expansion in the number of service providers. In addition, we presently have under consideration private fiber optic cable and satellite system proposals. In light of the many developments we have seen over the last several years, we believe it is time to review the efficacy of tariff and facility licensing practices as they apply to international common carrier service providers.

2. We tentatively propose to reduce out international common carrier tariff and facility authorization regulations by streamlining the procedures that non-dominant carriers must follow. In addition, we are asking affected carriers, interested parties and the public to comment on the benefits of reducing regulation for non-dominant carriers as well as on our proposed findings. We also seek comment on the extent to which differences in the international market should be reflected in the extension of our competitive carrier policies to that market. In particular, would competition among U.S. international carriers be sufficient to make the international telecommunications market competitive given the presence of foreign PTT's in the provision of all international telecommunications services? Below we briefly examined the history of our *Competitive Carrier Rulemaking*[4] in the domestic market which has greatly reduced regulatory requirements for domestic carriers without market power. We also examine the legal authority for reducing regulation for such carriers. We then look at international services and classify them into market groupings to determine the dominance or non-dominance of the service provider's various offerings. Finally we discuss the changes in the tariff and facilities licensing requirements that we are proposing for those firms found to be non-dominant.

II. Background

A. Domestic History

3. The actions we now propose are not being drawn on a clean slate. Our *Competitive Carrier Rulemaking* proceeding greatly modified the applicability of our tariff and licensing practices as they apply to certain providers of domestic interstate common carrier telecommunications services. We initiated the *Competitive Carrier* proceeding in 1979 in the aftermath of a number of Commission decisions which permitted entry into the domestic market by new service providers.[5] This docket began the process of eliminating unnecessary regulatory burdens applicable to service providers operating in the domestic interstate service market. The foundation in *Competitive Carrier* was our finding that, in a competitive environment, market forces could provide the public the statutorily mandated protection against unreasonably high rates and undue discrimination. That is, marketplace forces could replace regulation and make unnecessary burdensome regulatory requirements for both carriers and the Commission.

4. The *First Report and Order* implemented our policy objectives of limiting unnecessary regulatory burdens in a limited segment of the marketplace. There, we analyzed carriers' market power and classified those carriers with market power and the ability to exercise that power as dominant while carriers without market power were classified as non-dominant. Carriers which we found to be dominant remained subject to the full panoply of regulatory tools because market forces could not be expected to exert the necessary restraint on carrier facility decisions and pricing practices. We found, however, that non-dominant carriers did not have market power or the ability to set price and, therefore, we streamlined the regulation of these carriers.[6] In the *First Report and Order*, we found AT&T and the independent telephone companies to be dominant. Due to certain transitional factors like facility shortages relative to the demand, we also found Western Union, domestic satellite carriers, resellers and miscellaneous common carriers to be dominant. All other service providers

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[1] Resellers use IMTS to provide telex-like and other record services. Enhanced service providers offer transmission services which are in some way processed by computer. We determined that enhanced service providers are not subject to Title II regulation in our *Computer II Rulemaking*. *See*, In The Matter of GTE Telenet Communications Corp., FCC 85-29, released February 22, 1985. In addition, there are refilers and others that use IMTS for their own private non-IMTS use.

[2] Proposed Modification of the Commission's Authorized User Policy Concerning Access to the International Satellite Service of the Communications Satellite Corporation, FCC 84-633, —— FCC 2d ——, released January 11, 1985, 50 FR 2552 (January 17, 1985) [Authorized User II].

[3] Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System, FCC 84-605, —— FCC 2d ——, released December 18, 1984.

[4] Policy and Rules Concerning Rates and Facilities Authorizations for Competitive Carrier Services (CC Docket No. 79-252), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979); First Report and Order, 85 FCC 2d 1 (1980); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981); Second Report and Order, 91 FCC 2d 59 (1982), *recon.* FCC No. 83-69, released March 21, 1983; Second Further Notice of Proposed Rulemaking, FCC No. 82-187, released April 21, 1982; Third Further Notice of Proposed Rulemaking, Mimeo No. 33547, released June 14, 1983, 48 FR 28292 (June 21, 1983); Third Report and Order, Mimeo No. 012, released October 6, 1983, 48 FR 46791 (October 15, 1983); Fourth Report and Order, 95 FCC 2d 554 (1983); Fourth Further Notice of Proposed Rulemaking, FCC No. 84-82, released March 22, 1984, 49 FR 11856 (March 28, 1984); Fifth Report and Order, FCC No. 84-394, released August 27, 1984, 49 FR 34824, September 4, 1984; Sixth Report and Order, FCC No. 84-566, released January 4, 1985, 50 FR 1215 (January 10, 1985).

[5] These decisions include MCI, 118 FCC 2d 953 (1969), *recon. denied*, 21 FCC 2d 190 (1970); Specialized Common Carrier Services, 29 FCC 2d 870 (1971), *recon.* 31 FCC 2d 1106 (1971), *aff'd sub nom.* Washington Utilities and Transportation Commission v. FCC 513 F.2d 1142 (9th Cir. 1975), *cert. denied*, 423 U.S. 836 (1975); MCI Telecommunications Corp., 60 FCC 2d 25 (1976), *rev'd* MCI Telecommunications Corp. v. FCC, 561 F.2d 365 (1977) (Execunet); Domestic Satellite Facilities, 35 FCC 2d 844 (1972), *recon.*, 38 FCC 2d 665 (1972); Resale and Shared Use, 60 FCC 2d 261 (1976), *recon.*, 62 FCC 2d 588 (1977), *aff'd sub nom.*, AT&T v. FCC, 572 F.2d 17 (2d Cir. 1978), *cert. denied*, 99 S. Ct. 213 (1978); Customer Interconnection, 61 FCC 2d 766 (1976).

[6] 85 FCC 2d at 20.

considered in that proceeding were found to be non-dominant.

5. After discussing several theories for further reduction of Title II regulation we settled, in the *Second Report and Order*, on a forbearance approach. Under this approach we forbore from applying certain filing requirements. Specifically, in the *Second Report and Order* we determined that the burdens outweighed the benefits in requiring tariff filings and facilities applications with respect to terrestrial resellers. The *Third Report and Order* extended the scope of the *Competitive Carrier Rulemaking* to include services provided to all domestic points outside the continental United States such as Hawaii, Guam and Puerto Rico.

6. The *Fourth Report and Order* extended forbearance to all domestic resellers and specialized common carriers. In addition, we extended streamlined regulation to all domestic satellite carriers, miscellaneous common carriers and facilities-owning interexchange carriers affiliated with exchange telephone companies. More importantly, the *Fourth Report and Order* clearly developed an analytical framework for applying the competitive carrier policies. This approach, which stresses antitrust law considerations and relies on marketplace regulation in suitable circumstances, will be discussed in Section III.

7. The *Fifth Report and Order* extended forbearance to domestic satellite carriers providing interstate service, miscellaneous common carriers, carriers providing DEMS systems and affiliates of exchange carriers providing interstate, interexchange services. Finally, *The Sixth Report and Order* took a further step by requiring non-dominant carriers to detariff their service offerings. In effect, our five years of experience with the *Competitive Carrier* line of decisions has demonstrated that in the presence of competition, it is possible to lessen or eliminate certain regulatory practices, thereby reducing carrier and Commission costs without harm to the public.

B. Legal Basis For Reducing Regulation

8. The legal basis for what we propose to do here, streamlining Title II facility and tariff requirements for non-dominant carriers, was set forth in great detail in the *First Report & Order*.[7] In administering the Communications Act, 47 U.S.C. 151 *et seq.*, the Commissions's goal is to ensure the availability to United States users of "rapid, efficient, nation-wide, and world-wide wire and radio communication services with adequate facilities at reasonable charges. . . ."[8] In order to achieve these goals the Commission has "broad discretion in choosing how to regulate."[9] In regulating in the public interest, competition in the telecommunications industry is clearly a relevant factor.[10] Where we used to rely on regulation to ensure that carriers operated in the public interest, we now rely on the marketplace when possible.[11] A further basis for what we propose is found in the Record Carrier Competition Act of 1981 (RCCA).[12] The RCCA directs the Commission to forbear from exercising its authority as the development of competition among record carriers reduces the degree of regulation necessary to protect the public. We emphasize, however, that our increased reliance on marketplace regulation does not mean that we are abandoning our duties as set forth in the Communications Act. We will retain our power to investigate non-dominant carriers based upon complaints or upon our initiative to ensure that rates and practices are just and reasonable.

9. Our experience in the domestic *Competitive Carrier* proceeding gives us confidence that when a competitive environment exists the goals of the Communications Act are best satisfied by reducing, to the extent possible, entry, exit, and pricing burdens for non-dominant carriers. Less regulation, moreover, allows carriers to better respond to consumer desires at the lowest price on a timely basis.

III. Discussion

10. Changes in the structure and composition of the international component of the U.S. telecommunications industry suggest that the time is ripe to reconsider the usefulness of full fledged rate and facilities regulation. Today, we tentatively conclude that there are adequate reasons for reducing regulation for some international service providers. Specifically, we propose lessening regulation for those carriers that are found to lack market power (*i.e.*, are non-dominant) and whose behavior and conduct are effectively controlled by market forces.[13] As we see it, the carriers we tentatively conclude to be non-dominant need not be burdened with excessive regulation in order to ensure that their charges and practices are just and reasonable or that their facility investment decisions are warranted. This is consistent with our domestic experience which has shown that the existence of competition permits some carriers to be substantially freed from rate and facility regulation.

11. Any such decision would only be proper after a careful analysis of the particulars of the market, and the degree of market power possessed by service providers. In order to determine the market power of a given firm, we must first define the relevant market.[14] Generally, in antitrust cases and legal and economic literature, a market has two dimensions to it—geographic location and product substitutability. If a product can be shipped from one location to another to prevent a price rise, the relevant geographic market includes both locations. Similarly, if two products are functionally similar, they are both part of the same product market. Among the factors which are used to define the relevant product market are custom and usage patterns, substitutability in production, and substitutability in use.[15] The *Fourth Report and Order* examined service characteristics and geographic scope to define the relevant market in domestic communications.[16] We propose to define the relevant markets for international communications service by examining the same two market dimensions.

A. Product Market

12. A wide variety of telecommunication services are available from a number of firms in the

[7] 85 FCC 2d at 12–20, 40–44.

[8] 47 U.S.C. 151.

[9] *AT&T* v. *FCC* 572 F.2d 17, 26, *cert. denied*, 439 U.S. 875 (1978).

[10] *FCC* v. *RCA Communications, Inc.*, 346 U..S. 86 (1953); *Hawaiian Telephone Co.* v. *FCC*, 589 F.2d 647 (D.C. Cir. 1978).

[11] As the court said in *Wold Communications, Inc.* v. *FCC*, 735 F.2d 1465, 1475 (D.C. Cir. 1984), "the public interest touchstone of the Communications Act, beyond question, permits the FCC to allow the marketplace to substitute for direct Commission regulation in Appropriate circumstances."

[12] 47 U.S.C. 222(b)(1).

[13] To the extent that behavior and conduct may not be effectively controlled by market forces, we retain the ability to appropriately respond. For example, control of bottleneck facilities by PTTs, which may encourage whipsawing of U.S. carriers, will be countered through the application of our uniform settlements policy.

[14] 95 FCC 2d at 502; *United States* v. *E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956).

[15] Cross-elasticity of demand can be used to determine substitutability in use. It is a measure of the percentage change in the quantity demanded of one product that results from a percentage change in the price of another product. Direct application and use of this concept in actual cases has been limited due to difficulties in gathering appropriate data as well as difficulties in interpretation of the results. Thus, most cases have relied on practical indicia of this concept such as peculiar characteristics and uses and reasonable interchangeability. *See, U.S.* v. *Brown Shoe Co.*, 370 U.S. 294 (1962).

[16] 95 FCC 2d at 562–63.

international marketplace. This includes International Message Telecommucation Service (IMTS), telegram, telex, high and low speed data, private line and video.[17] Our definition of the relevant product markets must meet the test established in the *Fourth Report and Order, i.e.* that services in a single market be substitutable in demand or in supply.[18] The *Fourth Report and Order*, due to interchangeability of use and supply of services, defined domestic interstate telecommunications as a single market.[19] Our analysis of customer usage and carrier ability to provide varying services leads us to conclude tentatively that international telecommunications is markedly different from domestic telecommunications and consists of two separate and distinct markets—IMTS and non-IMTS.[20]

1. Demand Substitutability

13. Demand substitutability refers to a subscriber's ability and willingness to switch among and between various services.[21] The cornerstone of demand substitutability is customer perception of the services in question and includes factors such as service quality, relative prices, availability, and geographic coverage as well as the marketing of the services.

14. In effect, the key aspects of demand substitutability are the interchangeability of use and the relative prices of the services. For example, in the relevant price range, two products which have similar characteristics are said to be substitutes if a rise in the price of product A causes consumers to switch to product B. The smaller the price increase and the larger the consumer switch, the closer substitutes the two services are. A and B are perfect substitutes if a very small increase in the price of A caused all of A's customers to switch to B. Similarly, if A and B are close substitutes then a drop in A's price would cause B's customers to switch to A.

15. IMTS is the major international telecommunications service in terms of revenues (approximately 70%) and circuit requirements (over 80%) and continues to have a healthy growth rate.[22] The major non-IMTS service is telex, a relatively mature low speed data service, which has a declining growth rate.[23] While telex's declining rate of growth may be partially attributable to declining IMTS prices, we believe that there are other significant factors influencing its slower growth. These factors include the rapid expansion of high speed data, facsimile, private line and other services. Also, as telex is almost exclusively a business service, one would expect the recent world economic downturn to have depressed its growth.

16. Empirical analysis suggests that demand for IMTS is not greatly influenced by the rates of other services and vice versa. Our own review of relative usage and rate fluctuations also indicates that demand for IMTS and non-IMTS services seems to be relatively unaffected by the cost of the other service. For example, despite declines of 50% and more in international telephone rates and stable telex rates over the last few years the number of telex messages has continued to increase.[24] If IMTS and telex were substitutable then an increase in telex demand would not be expected in light of the changing IMTS-telex price relationship. On the contrary, we would expect telex demand to decline as these customers shifted their use to IMTS.

17. A study by Rea and Lage found that changes in telex rates do not affect IMTS demand, that IMTS prices are not related to the demand for telex service and that telegraph rates are inversely related to IMTS demand.[25] While the results of this study are not conclusive, they suggest that high rates for voice service will not lead IMTS users to shift to record services. Similarly, the study seems to indicate that high rates for record services (or lower charges for voice services) will not cause a shift to IMTS.

18. Thus, the data tend to show that, unlike the domestic market, IMTS and various non-IMTS services are not substitutes in the international communications market. A number of factors support this conclusion. Foremost are the language and significant time zone differences which exist in the international marketplace. It is much less useful, for example, to make a telephone call to a nation in which a foreign language is spoken since the caller and recipient must share a common language in order to communicate effectively. Also, in many instances the nation being called is six or more hours ahead or behind U.S. time so that business hours barely overlap if they do at all.[26]

19. These international marketplace realities have a greater impact on the use of IMTS as opposed to the use of other telecommunications services and lead us to conclude that IMTS and non-IMTS services are not substitutable. For example, a service like telex which produces a hard copy, can be translated, can provide a record of the communication, and can be sent regardless of the time in the receiving country. Likewise, other non-IMTS services, such as high speed data and video can also be transmitted without regard to time or language. Indeed, telex and other non-IMTS services are the preferred way of handling international business transactions because non-voice information can be transmitted without regard to time of language and can be processed by computers immediately or stored for later use. Also, whereas non-IMTS services are used almost exclusively by business customers, a substantial proportion of IMTS users are residential customers. For residential users IMTS and non-IMTS services are even weaker substitutes than they are for business customers.

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[17] IMTS is standard telephone voice service.

[18] 95 FCC 2d at 583–84.

[19] 95 FCC 2d at 573.

[20] Historically, the international telecommunications service market has been divided into two broad product groupings—voice and record. For the most part, AT&T provided IMTS and the international record carriers provided a variety of record services. Even though now permitted to provide any service on the U.S. end, a variety of factors, especially the need to obtain the agreement of a foreign correspondents before offering any service to a particular foreign point, continues to restrict international carriers' freedom to provide any service to any foreign point.

[21] 84 FCC 2d at 501; 351 U.S. at 404; II Areeda & Turner, Antitrust Law 370 (1978) (Areeda & Turner).

[22] From 1980 to 1983 IMTS has experienced a yearly growth rate ranging from 39.7% in 1981 to 18.5% in 1983.

[23] The growth in telex traffic has slowed from 15.2% in 1980 to 6.3%

[24] For example, from 1980 to 1983 the price of peak period IMTS Direct Dial to the United Kingdom dropped from $4.80 for the first minute and $1.60 for additional minutes to $2.06 and $1.28 respectively. Telex rates to the United Kingdom have only dropped from $1.43 to $1.41 over the same time period. During that time the number of telex messages to the United Kingdom increased from 7,254,783 to 8,974,061. IMTS and telex rates and traffic for other countries have shown similar trends.

[25] Rea, John D. and Gerald M. Lage, "Estimates of Demand Elasticities for International Telecommunications Services." *The Journal of Industrial Economics* 363–381 (June 1978). The study presents estimates of demand elasticities for telecommunications services that originate in the United States. Data for 37 major routes were combined for the 1964–1973 period to estimate the elasticities. Separate equations were postulated for telephone, telegraph and telex. The independent variables that are included in the equations are price indices for telephone, telegraph, and telex messages; international trade between the United States and the foreign countries in the sample; and nominal household disposable income. Two statistical models are used, the covariance model and the error components model.

[26] We note that because of more significant language and time zone differences a higher percentage of traffic between the United States and the Pacific Basin is non-IMTS than between the United States and Europe.

20. We view various non-IMTS services such as telex, high speed data, and private line as generally substitutable for each other.[27] For the most part, all of these services are used for transmitting data and other information of a business nature. In addition, all of these services are generally used without regard to language and time zone differences between countries. Thus, based on factors such as price and speed requirements customers are able to use these services interchangeably. Some evidence of this may be found by examing growth trends for the various non-IMTS services. For example, while yearly growth of telex traffic slowed from 15.2% to 6.3% and yearly growth of telex revenue slowed from 8.0% to 3.9% from 1980 to 1983, private line revenues grew at an increasing pace over the same period up from 3.8% in 1980 to 11.7% in 1983.[28] Growth in the number of circuits used for private line service has shown similar growth with the number of private line circuits worldwide increasing from 1497 in 1980 to 2216 in 1983. Thus, we believe that customers view various non-IMTS services as generally substitutable with each other but not with IMTS.

2. Supply Substitutability

21. As we have indicated, market definition rests not only upon demand, but supply substitutability as well. We have defined supply substitutability as the ability of a service provider to shift its resources from the manufacture or provision of one product or service to another product or service.[29] Typically, such a shift would be in response to changes in market conditions or in the pursuit of profits that exceed the opportunity costs of capital. Products are said to be substitutable on the supply side if barriers to entry are low so that a firm may easily shift facilities and resources from the provision of one service to the provision of a second service in the short-run.[30]

22. Traditionally, supply substitutability hinges on issues such as the technical and cost obstacles faced in shifting resources from one use to another. Carriers in the domestic market, for example, are generally free to respond to customer demand by redeploying their existing facilities so that almost all services are substitutable from the producer's viewpoint. However, there seem to be substantial non-technological obstacles internationally which impede the alternative use of plant and facilities. An international carrier, for example, must obtain the agreement of a foreign administration in order to provide a specified service to a particular overseas point, to place additional circuits in operation or to provide any new service offerings. An IRC may have an operating agreement to provide specific record services but if it wishes to provide IMTS it must negotiate a new operating agreement with the foreign administration. Thus, while it may be technically possible to convert facilities that are used to provide non-IMTS services to IMTS service, institutional limitations make the conversion more difficult in the international arena than in the domestic arena of communications. This is true both for companies trying to enter a market for the first time as well as established carriers trying to offer new or expanded service.

23. Our experience is that carriers can more easily shift their facilities from the provision of one non-IMTS sevice to the provision of another non-IMTS service than they can shift non-IMTS facilities to provide IMTS service. Most IRCs' operating agreements reflect the ability to provide a variety on non-IMTS services and it appears to be relatively easy for these carriers to gain approval from foreign governments to alter their operating agreements to provide varying non-IMTS services. At the same time it appears more difficult for these carriers to gain the necessary approval to shift their facilities to IMTS use.

24. While a few countries, notably Canada, Australia, Belgium and the United Kingdom are beginning to offer increased opportunities for entry, the global prospects are still limited. Our experience is that it is particularly difficult for the IRCs or new entrants to gain operating agreements for the provisions of IMTS.

25. Another factor limiting the degree of supply substitutability for those international carriers with customer requirements for private line cable services stems from the limited number of cable facilities available for the provisions of international services. The provision for international services over a few high capacity cable facilites introduces the possibility of a significant time lag in these carriers' ability to respond quickly to a user's demand for additional capacity. Thus, while excess capacity generally exists internationally, it is not impossible that a customer's need for a particular type of facility to a particular overseas point may go unmet until the next transatlantic, transpacific, Caribbean or other cable is introduced, this limitation generally is not present in the domestic market where carriers have greater control over their facilities, facilities are generally less expensive and carriers are better able to switch service offerings or add new facilities to respond quickly and economically to meet customer demand. It is also generally not present in the international satellite arena.

26. The existence of resellers, refilers, and others, may be evidence of some limited supply substitutability from IMTS to record and data services. It seems, however, that if there is supply substitutability between the IMTS and non-IMTS markets it presently works in only one direction—from IMTS to non-IMTS. The use of non-IMTS facilities for the provision of voice service is extremely limited, as reflected in the IRCs' inability to gain a foothold with their Datel services which have been authorized since 1979. Given that total revenues in the IMTS market exceeded $1.7 billion in 1983 and that AT&T, the major provider of IMTS service, has an attractive rate of return [31] as well as the declining profitability of the international record market, logic compels us to conclude that international record service providers would have an incentive to shift their facilites from non-IMTS to IMTS use, and would presumably do so, if such a shift were feasible. We have seen no evidence of this transfer of facilities occurring, however.

27. Thus, in contrast with our demand and supply substitutablity analysis of the domestic market which led us to find substantial substitutability and one product market, our analysis of the international market, particularly time zone, language, business practices and the need to obtain operating agreements, appears to support a finding of two products. Accordingly, we tentatively conclude that the international telecommunications marketplace is

[27] There may be a number of limited services such as television transmission service that are not highly substitutable with other non-IMTS services from the customer's point of view. They are, however, substitutable on the supply side and properly placed in the non-IMTS market.

[28] While there may be some substitutable between IMTS and private line services, we believe that the usage and pricing of private line services indicates that there is a greater substitutability between private line services and non-IMTS than between private line services and IMTS.

[29] 95 FCC 2d at 565. *See*, Areeda & Turner at 374.

[30] Barriers to entry are generally technological or economic, for example, a patented process that is unavailable to new entrants or the extremely high capital costs required to enter a given market. Due to the unique nature of international telecommunications, there are also substantial regulatory barriers which confront U.S. service providers on the foreign end.

[31] *See infra*, footnoote 35.

made up of two products, IMTS and non-IMTS for purposes of this proceeding.

B. International Geographic Market

28. In addition to supply and demand characteristics, markets are defined in terms of their geographic scope. The dimensions of the geographic market are based upon a supplier's ability to provide service to a given area or upon a subscriber's ability to receive service from a supplier in a given area.[32] Domestic carriers, for instance, are able to provide interstate service throughout the United States. Thus, if a price differential unrelated to the quality or cost of the service develops in a particular location, some competitor can enter that market and reduce or eliminate the price differential. Similarly, the existence of several carriers supplying service to a particular geographic market prevents a disparity in prices from developing. Thus, we found that all domestic services operate in a single geographic market.[33]

29. It appears to us that in the international market, due to the need to obtain operating agreements, a carrier cannot freely provide service to a given country merely if it wishes to do so. It is also difficult for a carrier to shift its facilities from serving one country to serving another based upon market conditions. This is due in part to the use of a relatively few cable and satellite facilities which give less flexibility then the broader based domestic facilities. In addition, before reducing or adding facilities, a carrier must obtain the acquiescence of the foreign correspondent in both the country in which facilities are being reduced and in which they are being increased. In light of these substantial restraints which limit the provision of service to a country-by-country basis we tenatively conclude that each county is a separate geographic market. We realize that alternative formulations are possible and, therefore, are interested in commenters' views on our proposed country-by-country geographic market definition. In addition we request comments on the ease with which carriers can enter and exit foreign markets.

C. Market Power

30. Given our tentative findings that each nation constitutes a separate geographic market and that the product markets are defined as IMTS and non-IMTS services, we now consider whether any firm is dominant in a given market. A finding of dominance for any firm would lead us to conclude that the marketplace would not operate to ensure either that it would price its services competitively or employ practices consistent with the Communications Act. Consequently, a finding of dominance woud justify the continued application of full Title II regulation.

31. Under traditional antitrust analysis dominance is defined as "the power to control prices or exclude competiton."[34] As we discussed earlier, our *Competitive Carrier* decisions found that firms lacking market power do not have the ability to maintain prices unreasonably above or below cost. We also concluded that a firm's ability to price above marginal cost without encountering entry may be evidence of a noncompetitive market. A firm with the ability to maintain prices below marginal costs could drive competitors out of the market and subsequently permit that firm to raise its prices and earn monopoly profits. Firms lacking market power, however, do not have the ability to raise price above the competitive level because other firms would enter and force price down to the competitive level. Thus, we found that a non-dominant firm is effectively regulated by maketplace forces so that the imposition of more than minimal regulation is unnecessary. Rather, our ability to intervene based upon complaints or upon our own initiative is sufficent.

32. While any determination of a carrier's dominance or non-dominance is not scientifically precise, we tentatively conclude that the factors discussed below give an adequate indication of maket power. They include market share, control of bottleneck facilities, rate of return as well as the existence of actual or potential competition. Rather than make any single factor central to our analysis, it is necessary to look at them as a whole.[35]

1. The IMTS Market

33. In view of our tentative finding that demand and supply substitutability factors warrant treating IMTS as a separate service, we will not analyze whether any provider of this service is dominant. AT&T is the only IMTS service provider to most countries. In those countries where there are other carriers offering IMTS, AT&T is the overwhelming service provider.[36] In addition, AT&T is the major owner of submarine cables which are one of the two basic means of providing service between the United States and most of the rest of the world. This creates a bottleneck which may make it more difficult and expensive for new firms to enter the market. The existence of satellite facilities is not enough to completely eliminate this bottleneck because intermodal (cable v. satellite) competition is not yet fully developed.[37] Thus, for the IMTS maket, we believe that AT&T possesses market power as well as the ability to exercise that power. We therefore tentatively conclude that AT&T is dominant.[38]

34. We also tentatively conclude that in addition to AT&T, certain carriers providing service between domestic, non-contiguous points and foreign points on a monopoly or near monopoly basis also possess market power and should be considered dominant. These points include Hawaii which is served by The Hawaiian Telephone Company; Alaska served by Alascom; Puerto Rico served by All American Cables & Radio; the U.S. Virgin Islands served by ITT–CIVI and Guam served by RCA Globcom.[39] These service providers appear to be in a position similar to AT&T's. While they do not have the same control of facilities, they do seem to have the ability, absent regulation, to raise or lower prices at will as they are the only provider of IMTS service to these points. Thus, we tentatively conclude that they too are dominant and should remain subject to full regulation.

35. We tentatively conclude that all other IMTS carriers are non-dominant for that service. For the most part, these carriers, (*e.g.*, MCI, GTE Sprint, SBS)

[32] 95 FCC 2d 573.
[33] *Id.*

[34] 351 U.S. at 391; *Areeda & Turner* at 322.
[35] While we recognize that foreign owned carriers may not have maket power, they may, in concert with their parent organizations, distort the market and give rise to questions relating to equal interconnection, discrimination and reciprocity. We also note the control of facilities and entry by the parent organization. Therefore, we tentatively conclude that foreign owned carriers and should be subject to full tariff and facility regulation. For purposes of this proceeding we would define a foreign owned carrier as any entity that would be unable to hold a station license under section 310 of the Communications Act.

[36] MCI and GTE Sprint have recently begun offering IMTS service to selected overseas points. To date their market shares are negligible.
[37] *See supra*, paragraph 25; Authorized User II at paragraphs 39–40.
[38] Our tentative finding that AT&T possesses market power in the IMTS market is also supported by its reported rates of return of 36% in 1979, 23% in 1978 and 15% in 1977. Data on AT&T's specific IMTs rate of return has not been collected since 1979. However, from available aggregated data it appears that AT&T's rate of return for IMTS since 1979 has exceeded its overall authorized rate of return.
[39] This rulemaking does not affect the provision of service between these noncontiguous domestic points and the continental United States. These services were streamlined in the domestic *Competitive Carrier* proceeding. *See*, Third Report and Order, 48 FR 46791.

have only recently begun offering IMTS. They have minimal market shares and clearly face competitive pressures given the presence of AT&T in the marketplace. Thus, they cannot raise price above or lower price below marginal costs and remain in business. In this regard, these carriers are analogous to the OCCs which we streamlined and later forbore from regulating in the *Competitive Carrier* decisions because their presence could not dictate operation of the market.

2. The Non-IMTS Market

36. Our proposed findings for the non-IMTS market are that no carrier is dominant in any given geographic market. The primary focus of our analysis in the non-IMTS market are the IRCs (and Western Union) and their major services—telex and private line services. While there are other firms operating in this market, their market shares are small and they are subject to competition from the IRCs, Western Union and other service providers.

37. Our analysis of the non-IMTS market leads us tentatively to conclude that any IRC or other carrier attempting to price uncompetitively will be met by a variety of forces operating to make such action difficult, if not impossible. Thus, if a carrier attempts to raise prices it will lose customers to other service providers.

38. In all of the major geographic markets there are at least three carriers which split telex traffic between them fairly evenly. For example, in the United Kingdom and West Germany, ITT World Communications Inc., RCA Global Communications, Inc. and Western Union International, Inc. (WUI) each have 22% to 26% of the telex traffic while in Japan they each have 18% to 32% of the telex traffic. Similarly, there are multiple carriers providing private line service in all of the major geographic markets. For example, six carriers provide private line service to the United Kingdom. WUI with 207 out of the 770 private line circuits to the United Kingdom, has the largest share, and AT%T, with 50, has the smallest share. In addition, there are a number of other record carriers such as FTCC, TRT, Western Union, Graphnet, IRI and SBS and resale and enhanced service providers such as CCI and GTE Telenet in these markets.

39. Another factor which supports the proposed finding of non-dominance for all non-IMTS service providers in the practice of regional pricing by the IRCs. Under this type of pricing approach a particular country in which one IRC has a large market share is not priced to reflect this apparent market power. Thus, when one looks at the non-IMTS market as a whole, we believe that no one carrier is dominant with respect to any particular geographic market.[40]

40. Due to AT&T's very limited entry into and small share of the non-IMTS market, we tentatively conclude to classify it as non-dominant in the non-IMTS market. First, AT&T does not provided telex service. Second, the major non-IMTS service AT&T provides is private line and its provision of this service is on a very small scale. For example, it has only ninety out of a total of 1441.5 private line circuits to all of Europe and fifty of those are to the United Kingdom. Since 1982, when this Commission allowed AT&T to begin non-voice service in the international market, AT&T has achieved a market share of less than 10% in private line. Therefore, we tentatively plan to streamline regulation of AT&T's operations in this market. However, given the disparity of resources between AT&T and other international carriers, we are concerned about the possibility of anticompetitive pricing and therefore invite interested parties to comment on any danger presented by streamlining AT&T's international non-IMTS services.

3. Comsat

41. Comsat's position in the international marketplace is unique and its classification under a competitive carrier approach warrants special attention. Comsat's provision of INTELSAT space segment services through its World Systems Division is presently a monopoly offering. Further, excluding certain transborder satellite transmissions, Comsat is the sole provider of international space segment capacity to U.S. carriers and users. Additionally, we note that Comsat is the sole U.S. investor in INTELSAT, that Comsat has a guaranteed market share under the present traffic loading guidelines, and that intermodal (cable v. satellite) competition is not yet fully developed. In view of all these factors, we tentatively conclude that Comsat's World System Division is dominant for these Title II services. Any Comsat subsidiary providing end-to-end or other competitive services would be classified as non-dominant. The only exception to this non-dominant treatment of Comsat's competitive activities woud be Comsat's provision of earth station services other than IBS or television.[41] We tentatively conclude that these earth station services (*i.e.*, earth station services other than IBS and television) should remain subject to full-scale regulation as Comsat apparently will remain the primary earth station service provider at least for the near future since the Earth Station Ownership Consortium (ESOC) is continuing with Comsat being the sole provider of earth station services from ESOC earth stations. Once the structure of the earth station market becomes more clear we will consider applying *Competitive Carrier* to Comsat's remaining earth station offerings as well.

IV. Implementation of International Competitive Carrier

42. The *Competitive Carrier* decisions and our proposals here impact carriers' tariff and facilities licensing requirements. In the domestic market we have forborne from regulating all non-dominant carriers. Here, we proposed only to streamline international non-dominant carriers. We feel that streamlining is an appropriate first step in an environment now undergoing dynamic changes. As the new structure of the international market evolves we will be in a better position to consider and evaluate further streamlining and forbearance options.

A. Tariff Requirements

43. We tentatively propose to subject the tariffs of non-dominant firms to the streamlined rules developed in the *Competitive Carrier* proceedings. Under streamlining, tariffs filed by non-dominant carriers for the provision of services under the Commission's rules are presumptively lawful. Only fourteen days advance notice is required before non-dominant carrier tariffs take effect. 47 CFR 61.58(b). In addition § 61.38 economic and cost data is not required.

44. The standard of review we propose for petitions to suspend tariffs of non-dominant carriers is whether the injury to competition which would result if the tariff were allowed to take effect is greater than the harm to the public

[40] There are a number of very small countries such as Albania and the Ascension Islands in which one carrier handles over 50% of the originating (*i.e.*, outbound from the U.S.) telex traffic. These figures, however, do not conclusively prove market power. Market share by itself does not prove dominance. Carriers with large market shares face competition from resellers, refilers and other service providers. Additionally, foreign administrations are very much aware that their total revenues are affected by their U.S. correspondents' collection rates. Therefore, foreign correspondents may inhibit U.S. carriers which appear to have market power from exercising that power. Thus, even if a carrier has a very large market share in one of these small markets, there is no evidence that they have the ability to exercise or have exercised market power.

[41] We intend to monitor the competitive development of the provision of IBS and television earth station services over the next several months to determine whether this tentative conclusion accurately reflects the realities of the marketplace.

from not allowing the tariff to take effect. The burden of proof will be on the party asking that the tariff be suspended.

B. Facilities Licensing

45. We also propose to apply streamlined regulation to non-dominant carriers for section 214 facilities licensing. On the domestic side, streamlined carriers are given blanket authority for unlimited expansion of circuits anywhere in the United States. A reporting requirement noting any addition of circuits within thirty days of their placement in service is required. Discontinuance of service is allowed provided that thirty days notice is given to customers and no showing is made that a reasonable substitute is not available.

46. Because international carriers participate in the facilities planning process and submit circuit status reports and activation/usage plans, it would appear that streamlining the section 214 facility authorization process would not adversely affect our oversight, monitoring or facilities planning responsibilities. Additional information is filed under §§ 43.61 (*e.g.*, revenues, messages, minutes, etc.) and 43.52 (*e.g.*, contracts and operating agreements). We do not propose any changes in these reporting requirements in this proceeding. In addition, the granting of applications filed by the IRCs and other non-dominant carriers has over the last several years become routine.

47. Specifically, we propose that those carriers found to be non-dominant be required to file an initial application under § 63.01 in order to provide service to a specific country. Once the initial grant is given, a carrier will not have to file any additional applications for adding circuits or changing facilities. We tentatively conclude, however, that even non-dominant carriers will be required to file applications to construct, acquire or operate lines in all major facility projects (such as the transatlantic cables) or to acquire capacity from any future private cable or satellite sources. (See Appendix A). Authorizations on these projects are necessary for our long-range facilities planning as well as the consultative process and is consistent with our recent policy statement concerning private submarine cables. *See*, Tel-Optik, Ltd., FCC 85-99 released April 5, 1985. Domestic non-dominant carriers are required to submit § 63.07 reports noting circuit additions on a semi-annual basis. In the international sector we believe a separate report is unnecessary and that it will be sufficient for carriers to note circuit additions in their circuit status reports on a semi-annual basis (December and June).[42]

V. Conclusion

48. We remain committed to the elimination of unnecessary and burdensome regulation where possible. Our *Competitive Carrier* decisions have shown that when there is competition in a given market it is possible to streamline tariff and facility regulations for non-dominant carriers. The marketplace will ensure that those carriers act in the public interest. Any non-dominant carrier attempting to charge unreasonable rates or carry out unreasonable policies will be met by competition from new or existing service providers, forcing them to yield to the demands of the marketplace. In addition, we emphasize that we are in no way abandoning our oversight duties and will remain ready to intercede upon complaint or whenever the need develops. We believe that implementation of an international competitive carrier policy will allow carriers to operate more efficiently and innovatively and will allow our recent decisions allowing more competition in the international service markets to have a greater effect.

49. Above, we tentatively concluded that there is now sufficient competition in the international telecommunications market to allow implementation of competitive carrier policies. Our analysis of international telecommunications services leads us tentatively to find two product markets—IMTS and non-IMTS for purposes of this notice. Further, we tentatively find that each country represents a separate geographic market. Based upon these market definitions we tentatively find that only AT&T, those companies that are the primary service providers of IMTS for non-contiguous domestic points and Comsat's provision of space segment and earth station services are dominant. All other providers of IMTS are non-dominant. In addition, we tentatively find that all carriers providing non-IMTS services are non-dominant and subject to streamlined regulation. We invite all interested parties to comment upon our tentative conclusions as well as any other issues applicable to this rulemaking.

[42] At the present time the circuit status reports of some carriers, at the request of those carriers, are treated as confidential for several months. Since we believe circuit additions should be public (and are public for non-dominant domestic carriers pursuant to § 63.07 of our Rules), non-dominant international carriers may desire not to combine circuit additions data with their circuit status reports. Carrier comment in this reporting process is encouraged.

VI. Ordering Clauses

50. Accordingly, pursuant to section 4(i), 4(j), 201–205, 214 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 214, 403 (1976), it is ordered that a rulemaking is hereby instituted into the above-described issues.

51. It is further ordered, pursuant to applicable procedures set forth in § 1.410 and 1.415 of the Commission's Rules, that, on or before May 24, 1985, and on or before June 14, 1985, all interested persons may file comments and reply comments, respectively. Before final action is taken in this proceeding we shall consider all relevant and timely comments filed. In reaching a decision on this matter we may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of our reliance upon such information is noted in the Report and Order. Participants must file an orginal and five copies of all comments. If participants wish each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. They should serve reply comments upon all those who file comments in this rulemaking. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

52. It is further ordered, that for purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time public notice is issued stating that substantive disposition of the matter is to be considered at a forthcoming meeting. In general, and *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's

Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

53. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified, that sections 603 and 604 of the Act do not apply because these rule changes will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b). Provision of international telecommunications services requires the commitment of amounts of capital in excess of those that characterize a small entity.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 63—[AMENDED]

47 CFR Part 63 is proposed to be amended as follows:

Section 63.09 is proposed to be added as follows:

§ 63.09 Special procedures for non-dominant international carriers.

(a) Any party that would be a non-dominant international communications common carrier must file an application pursuant to § 63.01 for certification to initiate a service to any point or to construct, acquire or operate lines in any major common carrier facility project or any facility offering capacity on a non-common carrier basis.

(b) Any non-dominant international carrier certified to provide a service to a particular point is authorized to construct, acquire or operate any transmission line to that point except as provided in paragraph (a) of this section.

[FR Doc. 85-9849 Filed 4-24-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of a fishery management plan amendment and request for comments.

SUMMARY: NOAA issues this notice that the Mid-Atlantic Fishery Management Council has submitted an amendment to the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries for Secretarial review, and is requesting comments from the public. The amendment proposes measures for (1) dividing the New England Area into the Nantucket Shoals and Georges Bank Areas, (2) revising the optimum yield (OY) and management regime for the Nantucket Shoals Area, (3) establishing an OY and management regime for the Georges Bank Area, and (4) revising the effort limitation provisions regulating the Mid-Atlantic Area surf clam fishery. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan should be submitted on or before July 5, 1985.

ADDRESS: All comments should be sent to Mr. Richard Schaefer, Acting Regional Director, National Marine Fisheries Service, Northeast Regional Office, 14 Elm Street, Gloucester, MA 01930. Clearly mark, "Comments for Surf Clam and Ocean Quahog Plan Amendment 6" on the envelope.

Copies of the amendment are available upon request from Mr. John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 11901.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, Plan Coordinator, 617-281-3600, ext. 273.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. 1801 *et seq.*), requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan, or amendment.

The proposed Amendment 6 divides the New England Area into the Nantucket Shoals and Georges Bank Areas and establishes quote ranges and management measures for those areas. The amendment adds a requirement in the Mid-Atlantic Area Surf clam fishery that surf clams may be landed only one time during an authorized fishing period, prohibits the Regional Director from authorizing fishing periods less than the allowed hours when the allowed hours are set at twelve hours or less, and adds a requirement that surf clam vessel or operators must notify NMFS in advance if they intend to fish in a Notification Area.

Regulations proposed by the Council and based on this amendment are scheduled to be published within 30 days.

(16 U.S.C. 1801 et seq.)

Dated: April 22, 1985.

Richard B. Roe,

Director, Office of Protected Species, National Marine Fisheries Service.

[FR Doc. 85-10072 Filed 4-23-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 80
Thursday, April 25, 1985

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

Forest Service

Hells Canyon National Recreation Area; Wallowa-Whitman National Forest, Adams and Idaho Counties, ID; Intent To Supplement an Environmental Impact Statement

The Department of Agriculture, Forest Service, will prepare a Supplement to the Final Environmental Impact Statement for the Comprehensive Management Plan for Hells Canyon National Recreation Area.

The purpose of the analysis will be to determine whether to construct a trail on the east side of the Snake River immediately downstream from Hells Canyon Dam for fishing and other recreation access to the river. The May 28, 1981, decision by R. Max Peterson, Chief of the Forest Service, to implement the Comprehensive Management Plan, determined there would not be a trail constructed at this location. Since that time, steelhead runs have increased to levels not anticipated in the original analysis. If current enhancement programs are successful, salmon runs will also increase significantly.

A range of alternatives will be considered, one of which will be nondevelopment of the trail. Others will consider different lengths of trail. The primary decisions to be made are whether to build a trail and, if it is to be built, where it should terminate. If it is determined that the trail will be constructed, the precise location and standards will be determined through subsequent analysis.

Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of those issues to be addressed.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those which have been covered by the previous environmental analysis.

4. Determination of potential cooperating agencies and corporations and assignment of responsibilities.

The Fish and Wildlife Service of the Department of the Interior will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any species are found to exist along the potential trail location.

Jeff M. Sirmon, Regional Forester, Pacific Northwest Region, Portland Oregon, is the responsible official.

The analysis is expected to take about five months. The Draft Supplement should be available for public review by August 15, 1985. The Final is expected to be completed no later than January 1986.

Written comments and suggestions concerning the analysis should be sent to Jerry Allen, Forest Supervisor, Wallowa-Whitman National Forest, Federal Building, Baker, Oregon 97814, by June 15, 1985.

Questions about the proposed action and environmental analysis should be directed to Bill Fessel, Recreation Staff Officer, Wallowa-Whitman National Forest, phone 503–523–6391.

Dated: April 17, 1985.

Richard A. Ferraro,

Acting Regional Forester.

[FR Doc. 85–10036 Filed 4–24–85; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Bethlehem Kasson Grove Community Flood Control and Land Drainage RC&D and Measure, CT

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Philip H. Christensen, State Conservationist, Soil Conservation Service, 16 Professional Park Road, Storrs, Connecticut 06268, telephone (203) 429–9361.

Notice: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Bethlehem, Kasson Grove Community Flood Control and Land Drainage RC&D Measure, Litchfield County, Connecticut.

The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Philip H. Christensen, State Conservationist, has determined the preparation and review of an Environmental Impact Statement is not needed for this project.

The measure concerns a plan to remove excess surface and groundwater from the Kasson Grove Development. The planned action includes construction of three grassed, earthen diversions totaling 3,000 feet in length. Two stone lined (riprap) waterways will be constructed totaling 1,700 feet, 6 culvert crossings, and seeding of approximately 2.0 acres will be required.

The diversions will intercept and collect surface runoff and the waterways will safely convey the runoff to Long Meadow Pond. The culverts are necesary to convey runoff under interior roads.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Philip H. Christensen. The Environmental Assessment has been sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the Environmental Assessment are available to fill single copy requests at the above address.

Implementation of the proposal will not be initiated until 30 days after the date of this publication in the **Federal Register.**

Dated: April 15, 1985.

Philip H. Christensen,

State Conservationist.

(Catalog of Federal Domestic Assistance Progrm No. 10.901, Resource Conservation and Development Program)

[FR Doc. 85–10037 Filed 4–24–85; 8:45 am]

BILLING CODE 3410–16–M

Roadside and Streambank Critical Area Treatment RC&D Measures, OH; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the following RC&D Measures in Ohio:

Belmont County Road 4, Belmont County, Ohio
Brown County Roadbanks, Brown County, Ohio
Gallia County Roadbanks, Gallia County, Ohio
Gares Road, Defiance County, Ohio
Hocking County Roadsides, Hocking County, Ohio
Lawrence County Roadsides, Lawrence County, Ohio
Pike County Roadsides, Pike County, Ohio
Plum Run, Ross County, Ohio.

FOR FURTHER INFORMATION CONTACT: Harry W. Oneth, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)–469–6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the projects will not cause significant local, regional, or national impact on the environment. As a result of these findings, Harry W. Oneth, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for these projects.

These measures address critical area treatment problems along county and township roads in eight Ohio counties. Areas planned for treatment include eroding roadsides, unstable streambanks and landslips that are causing excessive maintenance costs and creating safety hazards for motorists. Planned works of improvement include diversions, rock-lined waterways, grade stabilization structures, subsurface drains, streambank protection and critical area seeding. The improvements will stabilize 32 landslips, along with 130,000 feet of streambank, and control erosion on 68 acres.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Harry W. Oneth.

No administrative action on implementation of the proposals will be taken until 30 days after the date of this publication.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding state and local clearinghouse review of federal and federally assisted programs and projects is applicable)

Harry W. Oneth,

State Conservationist.

April 17, 1985.

[FR Doc. 85–10044 Filed 4–24–85; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1985 Panel Wave 3
Form No.: Agency—SIPP—5300, 5303, and 5305; OMB 0607–0425
Type of request: Revision of a currently approved collection
Burden: 29,400 respondents; 14,700 reporting hours
Needs and uses: This survey will be used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. In addition to the core questions on the labor force and income, wave 3 contains sections on assets and liabilities.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census
Title: Special Population Census Address Register and Enumeration Book-Supplement
Form No.: Agency—SC–19A; OMB—NA
Type of request: New collection
Burden: 41,800 respondents; 3,470 reporting hours
Needs and uses: The data obtained in this experiment will be useful in planning sample survey redesign following the 1990 Census. The data is needed for decisions on size and compactness of clusters in the surveys.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census
Title: 1985 Special Survey
Form No.: Agency—DD–1, 2, and 3; OMB—NA
Type of request: New collection
Burden: 2,000 respondents; 433 reporting hours
Needs and uses: This special survey is needed to determine if other versions of the questions can be developed for the 1990 Census that would yield improved data. The survey will be used to test alternative wording versions of the race and Spanish origin questionnaire.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—Wave 7
Form No.: Agency—SIPP–4700, 4703, 4705; OMB—0607–0425
Type of request: Revision of a currently approved collection
Burden: 32,760 respondents; 16,380 reporting hours
Needs and uses: This survey is used to provide the executive and legislative branches with improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. In addition to the core questions on the labor force and income, wave 7 contains sections on assets and liabilities, and pension plan coverage.
Affected public: Individuals or households
Frequency: One time
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395–4814.

Agency: Bureau of the Census
Title: Current Population Survey/ Computer Assisted Telephone Interviewing (CPS/CATI)
Form No.: Agency—CPS-1 and 260; OMB—NA
Type of request: New collection
Burden: 6,695 respondents; 4,285 reporting hours
Needs and uses: The CPS/CATI project will provide data on feasibility of conducting CPS interviews by telephone from a centralized facility, following an initial visit by a field interviewer.
Affected public: Individuals or households
Frequency: Monthly
Respondent's obligation: Voluntary
OMB desk officer: Timothy Sprehe, 395-4814.

Agency: Bureau of the Census
Title: Shipper's Export Declaration for In-Transit Goods
Form No.: Agency—7513; OMB—0607-0001
Type of request: Revision of a currently approved collection
Burden: Unknown respondents; 19,500 reporting hours
Needs and uses: Exporters use this form to report shipments of merchandise from one foreign country to another through the United States. This form serves as the basic source document from which Census compiles the U.S. statistics on outbound in-transit shipments.
Affected public: Individuals or households; businesses or other for profit institutions; Federal agencies or employees; non-profit institutions; Small businesses or organizations
Frequency: On occasion
Respondent's obligation: Mandatory
OMB desk officer: Timothy Sprehe, 395-4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: April 22, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85-10001 Filed 4-24-85; 8:45 am]

BILLING CODE 3510-07-M

Bureau of the Census

1990 Census: Block Boundary Suggestion Project; Establishment

Before establishing the full criteria specified under Pub. L. 94-171 (13 U.S.C. 141), the Director of the Bureau of the Census is announcing the Block Boundary Suggestion Project (BBSP), one component of the 1990 census Pub. L. 94-171 program. This announcement provides information for the ". . . officers or public bodies having initial responsibility for legislative apportionment or districting of each state . . ." (or their designee) who wish to participate in the BBSP.

These guidelines for state participation in the BBSP have been provided to the Governor, Secretary of State, and legislative leaders of each state. Copies of these guidelines are available on request from the Director, Bureau of the Census, Washington, D.C. 20233.

Under the provisions of Pub. L. 94-171, the Census Bureau must provide each state with 1990 census population counts for legislative reapportionment/ redistricting. In addition to counts by standard geographic areas (counties, minor civil or census county divisions, places, census tracts, and census blocks nationwide), the Census Bureau will provide population counts for voting districts by aggregating data for census blocks for those participating states that meet the criteria issued by the Census Bureau for the 1990 census Pub. L. 94-171 program. The BBSP component of this program gives states the opportunity to suggest certain visible features for the Census Bureau to use as block boundaries for the 1990 census if such features meet the guidelines issued by the Census Bureau.

If a state plans to participate in the BBSP, we are asking the Governor, Secretary of State, and legislative leadership to designate jointly a contact person with whom Census Bureau staff will communicate for this Project. The final deadline for participation in the BBSP is July 31, 1985.

In early 1986 we will announce the full set of criteria for the 1990 census Pub. L. 94-171 program. Participation in the BBSP is not a prerequisite for participation in the other elements of the Pub. L. 94-171 program. An outline of the tentative elements of the 1990 census Pub. L. 94-171 program follows:

1. Through the BBSP, in 1985 and 1986 the state can suggest features to be held as 1990 census block boundaries that will increase the coincidence of 1990 census blocks with state voting districts (VTDs). The state need take no further action until 1991. At that time, the Census Bureau will provide the state with redistricting counts for standard census tabulation areas, including census blocks [1] statewide.

2. During 1985 and 1986 the state can participate in the BBSP. During late 1988 and 1989 the state can delineate boundaries around groups of whole census blocks [1] comprising its VTDs on Census Bureau block-numbered maps. The Census Bureau then includes these VTD lines in its 1990 geographic system and provides the state with redistricting counts for VTDs, VTD equivalents, other standard census tabulation areas, and census blocks [1] statewide in 1991.

3. The state may decide not to participate in the BBSP but to submit VTD boundaries bounding groups of whole census blocks [1] on block-numbered maps in 1988-1989. In 1991 the Census Bureau furnishes the state with redistricting counts for VTDs, VTD equivalents, other standard census tabulation areas, and census blocks [1] statewide.

4. The state takes no part in the 1990 Pub. L. 94-171 program and, in 1991, the Census Bureau provides redistricting counts for standard census tabulation areas and census blocks [1] state-wide.

Both the BBSP component and the full Pub. L. 94-171 program are voluntary, and a state may choose to limit its participation to only selected counties. Address questions concerning the Pub. L. 94-171 program or the BBSP to the Director, U.S. Bureau of the Census, Washington, D.C. 20233.

Dated: April 22, 1985.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 85-10022 Filed 4-24-85; 8:45 am]

BILLING CODE 3510-07-M

Foreign-Trade Zones Board

[Docket No. 7-85]

Foreign-Trade Zone 29, Louisville, KY; Application for Subzone IBM Typewriter & Printer Plant, Lexington

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, requesting special-purpose subzone status for the typewriter and printer manufacturing plant of International Business Machines Corporation (IBM) in Lexington, Kentucky, some 75 miles east

[1] Plus parts of blocks split by standard census tabulation areas.

of Louisville. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 2, 1985. The applicant is authorized to make this proposal under section 65.530(b) of the Kentucky Revised Statutes. The adjacency requirement will be considered by Customs.

The subzone would be located at IBM's plant at New Circle and Newton Roads, Lexington, Kentucky. The 407-acre facility, which employs 6,000 persons, is used to produce home and office-use typewriters, keyboards, printers and supplies. Up to 5 percent of the plant's components are purchased from abroad, including motors, power supplies, electronic components, and a variety of mechanical parts. Some 19 percent of the finished products are expected to be exported in the current year.

Zone procedures would allow IBM to avoid duty payment on the foreign components it uses in its exports. On its domestic sales, the company will be able to take advantage of the same duty rate available to importers. The duty rates on the parts IBM uses ranges from 4.1 to 11.9 percent (average 5.3 percent). Typewriters are duty-free. Keyboards and printers are dutiable at 4.0 and 3.0 percent, respectively. Zone procedures will thus help the plant become more competitive with manufacturing facilities abroad.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; John F. Nelson, District Director, U.S. Customs Service, North Central Region, Plaza Nine Bldg., 6th Floor, 55 Erieview Plaza, Cleveland, OH 44114; and Colonel Dwayne G. Lee, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, KY 40201.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before May 23, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, U.S. Post Office and Courthouse Bldg., Room 636B, Louisville, KY 40202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: April 19, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85–10002 Filed 4–24–85; 8:45 am]

BILLING CODE 3510-25-M

International Trade Administration

[A-428-061]

Precipitated Barium Carbonate From the Federal Republic of Germany; Final Results of Administrative Review of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Duty Order.

SUMMARY: On October 31, 1984, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany. The review covers the two known manufacturers and/or exporters of this merchandise to the United States and the period July 1, 1982, through June 30, 1983.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–1130.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 43738) the preliminary results of its administrative review of the antidumping duty order on precipitated barium carbonate from the Federal Republic of Germany (46 FR 32864, June 25, 1981). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of precipitated barium carbonate, a chemical compound ($BaCO_3$), currently classifiable under item 472.0600 of the Tariff Schedules of the United States Annotated.

The review covers the two known manufacturers and/or exporters of West German precipitated barium carbonate to the United States, Kali-Chemie AG and E. Merck, and the period July 1, 1982, through July 30, 1983.

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. The Department received no written comments or requests for a hearing. Based on our analysis, the final results of our review remain unchanged from the preliminary results of review, and we determine that no dumping margins exist for Kali-Chemie AG and E. Merck for the period July 1, 1982, through June 30, 1983.

The Department shall instruct the Customs Service not to assess antidumping duties on all appropriate entries. Further, the Department shall not require a cash deposit of estimated antidumping duties, as provided for in § 353.48(b) of the Commerce Regulations, on any shipments of West German precipitated barium carbonate entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 85–9998 Filed 4–24–85; 8:45 am]

BILLING CODE 3510-DS-M

[A-461-008]

Titanium Sponge From the U.S.S.R.; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On January 25, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on titanium sponge from the U.S.S.R. The review covers the one known exporter of this merchandise to the United States, Techsnabexport, and the period August 1, 1982, through July 31, 1983.

We gave interested parties an opportunity to submit oral or written comments on the preliminary results. We received no comments or requests for a hearing. However, based on our correction of certain mathematical errors, we have changed the final results of reveiw from those presented in the preliminary results.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: G. Leon McNeill or John R. Kugelman, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On January 25, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 3584) the preliminary results of its administrative review of the antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138, August 28, 1968). The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of titanium sponge, currently classifiable under item 629.1420 of the Tariff Schedules of the United States Annotated.

Titanium sponge is chiefly used for aerospace vehicles, specifically in the construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines.

The review covers the one known exporter of Soviet titanium sponge to the United States, Techsnabexport, and the period August 1, 1982, through July 31, 1983.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no written comments or requests for a hearing. Based on our correction of certain mathematical errors, we have changed the margin from that presented in our preliminary results of review, and we determine that a margin of 83.96 percent exists for Techsnabexport for the period August 1, 1982, through July 31, 1983.

The Department shall determine, and the Customs Service shall assess, dumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties of 83.96 percent shall be required on all shipments of Soviet titanium sponge entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

The Department encourages interested parties to review the public record and submit applications for protective orders as early as possible.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 17, 1985.

[FR Doc. 85–9999 Filed 4–24–85; 8:45 am]

BILLING CODE 3510–DS–M

University of Minnesota; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket No. 84–327. Applicant: University of Minnesota, Minneapolis, MN 55455. Instrument: Electrophoresis Separator with 90 Fractions Capability, Model VAP II and Accessories. Manufacturer: Bender & Hobein, West Germany. Intended use: See notice at 49 FR 42774.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument separates human cells into types and subtypes based on their surface charge without causing serious biological modification. The National Institutes of Health advises in its memorandum dated February 6, 1985 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 85–10000 Filed 4–24–85; 8:45 am]

BILLING CODE 3510–DS–M

[A–580–405]

Grand and Upright Pianos From the Republic of Korea; Preliminary Determination of Sales at Not Less Than Fair Value

AGENCY: International Trade Administration/Import Administration/ Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that grand and upright pianos (pianos) from the Republic of Korea are not being, nor are likely to be, sold in the United States at less than fair value.

EFFECTIVE DATE: April 25, 1985.

FOR FURTHER INFORMATION CONTACT: Francis R. Crowe, Office of Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–4087.

SUPPLEMENTARY DETERMINATION:

Preliminary Determination

We have preliminary determined that pianos from the Republic of Korea are not being, nor are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff act of 1930, as amended (19 U.S.C. 1673b(b)) (the Act). We have preliminarily found that the margins for all companies investigated are *de minimis.*

If this investigation proceeds normally, we will make our final determination by July 3, 1985.

Case History

On September 21, 1984, we received a petition from counsel for Aeolian Pianos, Inc., Baldwin Piano & Organ Co., Kohler & Campbell, Inc. and Sohmer & Co., Inc., on behalf of the U.S. piano industry. In accordance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that pianos from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or are threatening material injury to, a U.S. industry.

After reviewing the petition, we determined it contained sufficient grounds to initiate an antidumping investigation. We notified the U.S. International Trade Commission (ITC) of our action and initiated such an investigation on October 11, 1984 (49 FR 40627). The ITC subsequently found, on November 5, 1984, that there is a reasonable indication that imports of pianos from the Republic of Korea are materially injuring a United States industry. On January 31, 1985, counsel for the petitioners requested the Department to extend the preliminary determination until not later than April 19, 1985. On February 8, 1985, we granted the request (50 FR 6226).

Scope of Investigation

The products covered by this investigation are grand and upright pianos as currently provided for under item numbers 725.0320 and 725.0100, respectively, of the *Tariff Schedules of the United States, Annotated*. We investigated sales of these pianos which were made by three Korean producers and sold to the United States during the period of investigation, April 1, 1984, through September 30, 1984. The firms investigated were Samick Musical Instruments Mfg. Co., Ltd. (Samick), the Korean American Music Instrument Corp. (KAMIC), and Young Chang Akki Co., Ltd. (Young Chang). Sales by the above firms accounted for approximately 90 percent of all Korean pianos sold to the United States during the period of investigation.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value. For Samick and Young Chang we compared United States price based both on purchase price and exporter's sales price with foreign market value based on home market sales. We did not use sales of certain KAMIC pianos assembled from U.S. parts in making our fair value comparisons because of difficulties in determining comparable merchandise for comparison. For the remainder of the sales of KAMIC pianos, we received insufficient data to consider them for this determination. We have requested supplemental information concerning these sales. If such information is not received in time to allow analysis and verification prior to the final determinaton, we may make our final determination with respect to these sales on the basis of the best information available, including information from the petitioners.

United States Price

For a portion of the Young Chang and Samick sales, we used the purchase price of the subject merchandise to represent the United States price, as provided in section 772(b) of the Act, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price on the f.o.b., c.i.f. or c. & f. price to unrelated purchasers in the United States or to unrelated trading companies for sale to the United States. We made deductions, where appropriate, for inland freight, ocean freight, marine insurance and brokerage charges. For the remainder of the Young Chang and Samick sales we used exporter's sales price to represent the United States price because the merchandise was sold to unrelated purchasers after importation into the United States. For these sales we made additional deductions, where appropriate, for U.S. brokerage, U.S. customs duties, U.S. inland freight and insurance, commissions, credit expenses, discounts, advertising and warranty expenses and other selling expenses incurred in the United States.

We made additions to purchase price and exporter's sales price for import duties which were rebated, or not collected, by reason of the exportation of the merchandise to the United States, pursuant to section 772(d)(1)(B) of the Act. Section 772(d)(1)(C) of the Act requires that indirect taxes imposed upon home market merchandise, but which have not been collected upon exported merchandise by reason of its exportation to the United States, be added to the United States price, "but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation". As in previous cases involving such taxes, we have deducted the taxes, in full, from the foreign market value. Counsel for the petitioners has argued that these taxes should be added to the U.S. price and, furthermore, that the Department should limit the amount of the adjustment to the amount of the taxes actually passed through to home market purchasers. We are currently examining these issues and will make the results known in the final determination after comments are received from all parties.

Foreign Market Value

Sales of such or similar merchandise in the home market were used to represent foreign market value, as provided for in section 773(a)(1)(A) of the Act. We made comparisons between pianos of the same type (grand or upright) and size. Comparisons were made using sales to the same level of trade as the U.S. sales. Calculations for foreign market value were based on delivered or ex-factory, unpacked prices to unrelated purchasers in the home market. Deductions were made, as appropriate, for inland freight. We also made adjustments for differences in commissions, credit, warranty and advertising expenses, as appropriate. For some home market sales used for comparison to U.S. purchase price, sales commissions were paid in one market and not the other. In these cases we made adjustments for the differences between commissions in the applicable market and indirect selling expenses in the other market, used as an offset to the commissions, in accordance with § 353.15(c) of our regulations. Where we used exporter's sales price, we deducted home market indirect selling expenses to offset U.S. selling expenses. U.S. export packing was added to all home market prices. We also adjusted for physical differences in the merchandise in accordance with § 353.16 of the Commerce Regulations.

In calculating foreign market value, we made currency conversions from Korean Won to United States dollars in accordance with § 353.36(a)(1) of our regulations, using certified daily exchange rates as furnished by the Federal Reserve Bank of New York.

Verification

We have verified the data used in reaching the preliminary determination in this investigation, by using standard verification procedures, including on-site inspection of the manufacturers' operations and examination of accounting records and randomly selected documents. We will verify all

data used in reaching a final determination.

Preliminary Results

The preliminary results of our investigation are as follows:

Manufacturer/seller/exporter	Weighted-average margin percentage
Young Chang	0.0013
Samick	0.1077

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on May 16, 1985, at the U.S. Department of Commerce, room 3708, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by May 9, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least 10 copies.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

April 19, 1985.

[FR Doc. 85-10075 Filed 4-24-85; 8:45 am]

BILLING CODE 3510-DS-M

National Bureau of Standards

National Bureau of Standards' Visiting Committee; Meeting

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the National Bureau of Standards' Visiting Committee will meet Tuesday, June 25, 1985, from 9:00 a.m. to 5:15 p.m. and Wednesday, June 26, 1985, from 8:30 a.m. to 11:30 a.m., in Lecture Rm. A, Administration Building, National Bureau of Standards, Gaithersburg, MD, from 2:00 p.m. to 3:00 p.m. in Rm. 5854, Department of Commerce, Washington, D.C.

The NBS Visiting Committee is composed of five members prominent in the fields of science and technology and appointed by the Secretary of Commerce.

The purpose of the meeting is to review the efficiency of the Bureau's scientific work and the condition of its equipment in order to assist the Committee in reporting to the Secretary of Commerce as required by law.

The public is invited to attend, and the Chairman will entertain comments or questions at an appropriate time during the meeting. Any person wishing to attend the meeting should inform Peggy Webb, Office of the Director, National Bureau of Standards, Gaithersburg, Maryland 20899, telephone (301) 921-2411.

Dated: April 22, 1985.

Ernest Ambler,

Director.

[FR Doc. 85-9973 Filed 4-27-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council will convene a public meeting in Anchorage, AK, May 21-24, 1985, with the possibility of continuing on Saturday, May 21, at the Sheraton Hotel, for a review of public comments received on proposed amendments to the Bering Sea and Gulf of Alaska groundfish management plans and supporting environmental and regulatory analyses, and decide which proposals will be sent to the Secretary of Commerce for implementation.

The Council also will consider emergency action to minimize joint venture interception of salmon in the Gulf of Alaska and Bering Sea and review any foreign permit applications received.

The Council's Scientific and Statistical Committee will convene a public meeting on Sunday, May 19, at 1:30 p.m. at the Sheraton Hotel. The Council's Advisory Panel also will convene a public meeting at 8 a.m. on May 20 at the same location. The Council's Finance Committee is scheduled to convene a public meeting at 1:30 p.m. on Monday, May 20, and the Council's Permit Review Committee will convene a public meeting at 3:30 p.m. on the same day. Other plan teams and workgroups meetings may be held on short notice during the week.

For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 274-4563.

Dated: April 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation.

[FR Doc. 85-9867 Filed 4-24-85; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council will convene a public meeting, May 6-7, 1985, at the CNMI Convention Center, Capitol Hill, Saipan, CNMI, and May 8-9, 1985, at the Hilton International Guam, Marianas Ballroom II, Agana, Guam, to discuss final approval for the draft Bottomfish Fishery Management Plan (FMP); final approval for the draft revised Pelagics FMP; continuing development of a draft Shrimp FMP; status of the Spiny Lobster FMP emergency regulations currently in effect, as well as other Council business.

The Council's Scientific and Statistical Committee also will convene a public meeting, May 2-3, at the National Marine Fisheries Service Honolulu Laboratory Conference Room, 2570 Dole Street, Honolulu, HI, to discuss the same subjects as above.

For a detailed agenda for either meeting and/or further information, contact Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 546-8923.

Dated: April 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-9868 Filed 4-24-85; 8:45 am]

BILLING CODE 3510-22-M

CONSUMER PRODUCT SAFETY COMMISSION

Chronic Hazard Advisory Panel on Di(2-Ethylhexyl)Phthalate; Meeting

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of meeting.

SUMMARY: A Chronic Hazard Advisory Panel, established by the Commission to provide advice about the potential chronic hazards presented by Di(2-ethylhexyl)phthalate (DEHP) in consumer products, has scheduled a meeting to hear invited speakers on this subject. On the day following that meeting, the Panel will meet in open session to continue its review of draft working papers.

DATES: The meeting to hear invited speakers will begin at 9:00 am on May 9, 1985 and is expected to conclude by 5:00 pm. The Panel also will meet in open session on May 10, 1985; this meeting also will start at 9:00 am and is expected to conclude by 5:00 pm.

ADDRESS: The meeting will be at 5401 Westbard Avenue, Bethesda, Maryland, in room 456.

FOR FURTHER INFORMATION CONTACT: Colin B. Church, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, D.C. 20207; (301) 492–6957.

SUPPLEMENTARY INFORMATION: The Chronic Hazard Advisory Panel on DEHP is a seven-member group which has been established to advise the Commission concerning the potential chronic hazard of cancer associated with the use of consumer products containing DEHP. The Panel, convened in January, 1985, is addressing the concern that the presence of DEHP as a plasticizer in children's products may result in a substantial exposure of children to a substance that is known to cause cancer in animals.

At its meeting on May 9, the Panel will hear invited speakers on matters related to its work.

On May 10, the Panel will meet in open session to continue its review of draft working papers.

Dated: April 22, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–10023 Filed 4–24–85; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities

AGENCY: Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of subsection (a) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that an open meeting of the Blue Ribbon Panel on Sizing DoD Medical Treatment Facilities has been scheduled as follows:

DATE: May 9, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: The Pentagon, Room 5C1042, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: LTC Michael Averbuch, Deputy Staff Director, Blue Ribbon Panel on Sizing DoD MTF c/o ASD (HA), Room 3E349, The Pentagon, Washington, D.C. 20301 [(202) 653–0080/0081].

SUPPLEMENTARY INFORMATION: This meeting of the Panel will continue discussion of issues relevant to sizing to include presentations by CHAMPUS and the GAO. The meeting is open to the public; however, to obtain access to the room where the meeting is being held, members of the public must call 653–0080, by 2:00 p.m. on May 9, 1985 to arrange for an escort.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

April 22, 1985.

[FR Doc. 85–10026 Filed 4–24–85; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Fund for the Improvement of Postsecondary Education

AGENCY: Department of Education.

ACTION: Application Notice for the Comprehensive Program Final Year Dissemination Competition for Fiscal Year 1985.

Applications are invited for new awards to be made in fiscal year 1985 under the Comprehensive Program Final Year Dissemination Competition conducted by the Fund for the Improvement of Postsecondary Education (the Fund).

Under this competition, the Secretary of Education makes awards to institutions of postsecondary education and other public and private educational institutions and agencies. The purpose of the awards is to improve postsecondary education by supporting the efforts of current grantees to disseminate project ideas and results.

Authority for this program is contained in Part A of Title X of the Higher Education Act, as amended.

(20 U.S.C. 1135)

Closing Date for Transmittal of Applications

An application for a Final Year Dissemination award must be mailed or hand delivered by *June 10, 1985.*

Applications Delivered by Mail

An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.116D, 400 Maryland Avenue SW., Washington, D.C. 20202.

To establish proof of mailing, an applicant must show one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept a private metered postmark or a mail receipt that is not dated by the U.S. Postal Service as proof of mailing. An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand

An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Attention: 84.116D, 7th and D Streets SW., Regional Office Building 3, Room 5673, Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand delivered will not be accepted after 4:30 p.m. on June 10, 1985.

Program Information

Type of Competition: Applications under the Final Year Dissemination competitions are limited to grantees of

the Fund whose projects are in their final year of funding, except that a recipient of a single-year grant may apply for assistance under this Competition within one year following the termination of its project.

Selection Criteria: The following selection criteria apply to the fiscal year 1985 competition:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Achieve the purposes of the Final Year Dissemination Competition;

(2) Address an important problem or need;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the project, as evidenced by the quality of the dissemination project design;

(3) The applicant is capable of carrying out the project, as evidenced by the adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(4) The applicant is capable of carrying out the dissemination project, as evidenced by the applicant's qualifications and relevant prior experience; and

(5) The applicant and any other participating organizations are committed to the success of the dissemination project, as evidenced by contributions of resources and prior work in the area.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Fund is appropriate in terms of the availabiltiy of other funding sources for the proposed dissemination activities.

(20 U.S.C. 1135)

The selection criteria (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (c) are of equal importance. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Other Information To Be Requested From Applicants

During the final stages of the selection process, the Secretary will contact by telephone all applicants being considered for funding in order to clarify or verify information relevant to their applications.

Available Funds

The Department of Education Appropriation Act, 1985, appropriated $12,710,000 for the Fund for the Improvement of Postsecondary Education for fiscal year 1985. Of this amount, approximately $100,000 will be available for Final Year Dissemination awards under the Comprehensive program. These funds could support approximately 12 new awards. The estimated size of the final awards is $8,000 for a 12-month period. These estimates do not bind the U.S. Department of Education to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms

Application forms included in the program information packages will be sent directly to all potential applicants that are eligible for a Final Year Dissemination award. Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program informatin package. However, the program package is intended only to aid applicants in applying for assistance under this competition. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the competition.

(Approved by the Office of Management and Budget under control number 1840-0117)

Applicable Regulations

The regulations governing awards made by the Fund for the Improvement of Postsecondary Education are contained in:

(1) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78, with the exceptions noted in the regulations referred to below.

(2) The regulations in 34 CFR Part 630.

Further Information: For further information contact the Fund for the Improvement of Postsecondary Education regarding the Comprehensive Program Final Program Year Dissemination Competition (84.116D), telephone (202) 245-8091.

(20 U.S.C. 1135)

(Catalog of Federal Domestic Assistance No. 84.116D. Fund for the Improvement of Postsecondary Educaton—Comprehensive Program Final Year Dissemination Competition).

Dated: April 22, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-10027 Filed 4-24-85; 3:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the Nebraska State Department of Education Funds Recovered as a Result of a Final Audit Determination (ACN: 07-20000)

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Nebraska State Department of Education an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination issued on June 17, 1982 by the Acting Assistant Secretary for Elementary and Secondary Education. This notice describes the State educational agency's (SEA's) plan, submitted on behalf of the Falls City Public School, for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before May 28, 1985.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245-9846.

SUPPLEMENTAL INFORMATION:

A. Background

On June 17, 1982, the Acting Assistant Secretary for Elementary and Secondary Education issued a final audit determination against the SEA, finding that the Falls City Public Schools had improperly spent $8,533 in funds provided under Title I of the Elementary and Secondary Education Act of 1965 (Title I). This final audit determination was based on an audit of the Title I program in the SEA during Fiscal Years 1980 and 1981 conducted by the Department's Inspector General Audit Agency in response to a citizen's allegation of irregularities in the local educational agency's (LEA's) Title I program.

The Acting Assistant Secretary concluded in her final audit determination that an amount of $8,533 was expended improperly by the LEA for salaries and benefits for two teacher aides who assisted two teachers in special education programs. The students served by the two special education teachers were not selected in accordance with a proper needs assessment under section 124(b) of Title I (20 U.S.C. 2734(b)), and were not eligible for Title I services. The auditors found that the LEA corrected the situation for school year 1980–81.

The SEA challenged the final audit determination in an application for review filed with the Education Appeal Board on July 16, 1982. The Appeal document did not contain the information required by 34 CFR 78.13, however, and the SEA was given the opportunity to submit a revised application for review within 20 days. *See* 34 CFR 78.15(b). The SEA failed to file a revised application within the required 20 day period.,

On June 22, 1984, and SEA submitted a check for $9,142.40 to the Department. This amount represented $8,533 owed as a result of the final audit determination and $609.40 for accured interest.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affected by that determination and amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On October 1, 1984 the SEA formally requested in writing repayment of $6,399 (75 percent of the $8,533 returned to the Department as a result of the final audit determination) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEA that resulted in the final audit determination have been corrected and that the LEA is in all other respects in compliance with the requirements of the program. Also included with the SEA's request was a detailed budget prepared by the LEA for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA, in its October 1, 1984 request, submitted a plan on behalf of the LEA outlining the LEA's intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1).

The final audit determination against the SEA resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the SEA's proposal reflects the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

The plan demonstrates that the LEA proposes to use the grantback funds to augment the regular Chapter 1 program during school year 1984–85. In the regular program, supplemental reading and math activities are provided for eligible public and private school students in grades 1–8. Because of insufficient funds, the LEA has reduced instructional staff to four days a week as opposed to five days. The grantback funds will be used for salaries and social security payments for instructional staff and will allow the LEA to increase the number of hours of supplementary instruction provided for Chapter 1 students. Services will be provided, to the extent possible, to those eligible children who were affected by the misexpenditures that resulted in the final audit determinaton.

Equitable math and reading services will be provided with the grantback funds to approximately 22 children in private schools.

E. The Secretary's Determinations

Based upon a thorough review of the SEA's request for the repayment of funds under section 456 of GEPA, including the SEA's discharge of its payment obligation to the Department in June 1984, the SEA's assurances described in Part C of this notice, and the SEA's plan and budget, the Secretary makes the following determinations:

(1) The LEA has corrected the practices and procedures that resulted in the final audit determination, and the LEA is in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted a plan on behalf of the LEA for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the Chapter 1 program and, to the extent possible, benefits the children who were affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretray is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $6,399, which is 75 percent of the funds the Department has recovered as a result of the Acting Assistant Secretary's final audit determination. The Secretary bases his intention to enter into a grantback arrangement under section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determination.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan are approved by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plan, all funds received under the grantback arrangement will be expended by June 30, 1985.

(3) The SEA, on behalf of the LEA, must, not later than January 1, 1986, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the SEA's proposed plan and approved budget.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation to Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Nebraska SEA on behalf of the Falls City Public Schools. Interested persons may send written comments to Dr. A Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before May 28, 1985.

(Catalog of Federal Domestic Assistance No. 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: April 22, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-10029 Filed 4-24-85; 8:45 am]

BILLING CODE 4000-01-M

Chapter 1, Education Consolidation and Improvement Act of 1981; Intent To Repay to the Tennessee State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Notice is given that, under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay under a grantback arrangement to the Tennessee State Department of Education (SEA) an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of final audit determinations issued by the SEA on December 14 and 28, 1983. This notice describes the SEA's plans, submitted on behalf of two local educational agencies (LEAs), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make these funds available.

DATE: All written comments must be received on or before May 28, 1985.

ADDRESS: All written comments should be submitted to Dr. A. Bruce Gaarder, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 3616, ROB-3), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. A. Bruce Gaarder. Telephone: (202) 245-9846.

SUPPLEMENTARY INFORMATION:

A. Background

The SEA issued final audit determinations based on its audits of the operations and administration of the Title I, Elementary and Secondary Education Act programs in Anderson Public Schools and Dyersburg City Schools.

Anderson Public Schools

The SEA audit of the Title I program in Anderson Public Schools covered the period of July 1, 1978 to June 30, 1980. In the final audit determination issued on December 28, 1983, the SEA sought a refund of $25,601.75 on the basis that Title I funds had been used in violation of §§ 116.40(b) and 116a.22(b)(7) of the Title I regulations (45 CFR 116.40(b), 116a.22(b)(7) (1978)).

Title I funds must be used to supplement, and not supplant, State and local funds. Section 116.40(b) provided that Title I funds could not be used to provide services which the LEA was required to provide by State law. The State auditors found that Title I funds were used to pay the salaries of three special education teachers for conducting classes that were the responsibility of the special education department of the LEA. The handicapped students served by these teachers were provided services required by State law. Based on this violation of the Title I regulations, the SEA determined that the LEA had misspent $25,458.37 of Title I funds.

The LEA also was required to refund $143.38 for violating § 116a.22(b)(7) of the Title I regulations, which required that Title I services be offered only to those children who were selected to participate in the Title I project in accordance with the required needs assessment. The SEA found that a Title I nurse had provided screening-type services to non-Title I children in violation of this requirement.

Dyersburg City Schools

The SEA audit of the Title I program in Dyersburg City Schools covered the period of July 1, 1980 to June 30, 1981. The SEA issued a final audit determination on December 14, 1983 requiring the LEA to refund a total amount of $41,360.91.

The LEA was found to be in violation of § 201.139(a)(1) of the Title I regulations (34 CFR 201.139(a)(1) (1981)), which prohibited an LEA from using Title I funds to provide services that the LEA is otherwise required to make available under Federal, State, or local law. The auditors found that Title I funds were used to provide required special education services and, accordingly, the LEA was required to refund $39,959.21.

The SEA also determined that the LEA violated 34 CFR 200.52(b) (1981), which required that an LEA receiving Title I assistance could not use Title I funds for purposes designed to meet, or that would have the effect of meeting, the general needs of a school, the LEA, an entire grade, or the student body at large in a school. Specifically, the SEA found that Title I funds had been used to pay one-third of the salary of a clerk, who was not spending one-third of her time on Title I activities. As a result, the LEA was required to refund $1,401.70.

On August 24, 1984, the Department received a check in the amount of $66,962.66, the full amount owed by the two LEAs as a result of the SEA's final audit determinations.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (20 U.S.C. 1234e(a)) provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available to that program and may arrange to repay to the SEA or LEA affecated by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that—

(1) The practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and that the SEA or LEA is in all other respects in compliance with the requirements of the applicable program;

(2) The SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program and, to the extent possible, benefits the population that was affected by the misexpenditures that resulted in the audit exception; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the program under which the funds were originally granted.

C. Request for Repayment of Funds Awarded Under a Grantback Arrangement

On October 11, 1984, the SEA formally requested in writing repayment of $50,221.99 (75 percent of the $66,962.66 returned to the Department as a result of the final audit determinations) under a grantback arrangement. With its request, the SEA provided assurances that the practices and procedures of the LEAs that resulted in the final audit determination have been corrected and that the LEAs are in all other respects in compliance with the requirements of the program. Also included with the SEA's request were detailed budgets prepared by the LEAs for the expenditure of the funds to be awarded under the grantback arrangement.

D. Plan for Use of Funds Awarded Under a Grantback Arrangement

In accordance with section 456(a)(2) of GEPA, the SEA submitted plans on behalf of the LEAs outlining the LEAs' intent to use the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (Chapter 1).

The final audit determinations against the LEAs resulted from improper expenditures of Title I funds. However, since Chapter 1 supersedes Title I, the SEA's proposals reflect the requirements in Chapter 1—a program, similar to Title I, designed to serve educationally deprived children in low-income areas.

Anderson Public Schools

In the regular Chapter 1 program for school year 1984–85, the LEA is providing services to approximately 1,350 children. The objective of the program is to improve educational opportunities for children with educational deficiencies in reading.

The LEA's plan demonstrates that the grantback funds will be used to supplement the regular Chapter 1 program. A Learning Unlimited Computer-assisted reading program for Chapter 1 children is currently being leased. The LEA plans to purchase this system and the grantback funds will be used to make partial payment on this purchase. Regular Chapter 1 funds will be used for the remaining costs.

Dyersburg City Schools

According to the LEA's plan, the grantback funds will be used to supplement the regular Chapter 1 program during school year 1984–85. The funds will provide partial payment for teachers' salaries and indirect costs, thereby enabling the LEA to serve additional childern who are eligible for Chapter 1 services. The Chapter 1 program consists of remedial instruction in reading, math, and the language arts. Services will be provided in four schools and approximately 45 additional childeren will be able to participate in Chapter 1 programs.

There are no children who are eligible for Chapter 1 services in private schools in either of the two LEAs.

Services will be provided in both LEAs, to the extent possible, to those eligible Chapter 1 children who were affected by the misexpenditures that resulted in the final audit determinations.

E. The Secretary's Determinations

Based upon a thorough review of the SEA/s request for the repayment of funds under section 456 of GEPA, including the SEA's discharge of its payment obligations to the Department in August 1984, the SEA's assurances described in Part C of this notice, and the LEAs' plans and budgets, the Secretary makes the following determinations:

(1) The LEAs have corrected the practices and procedures that resulted in the final audit determinations, and the LEAs are in all other respects in compliance with the requirements of the Chapter 1 program;

(2) The SEA has submitted plans on behalf of the LEAs for the use of the funds to be awarded under the grantback arrangement that meet the requirements of the Chapter 1 program and, to the extent possible, benefit the eligible children who were affected by the misexpenditures that resulted in the audit exceptions; and

(3) The funds to be awarded under the grantback arrangement, if used in accordance with the SEA's plan, would serve to achieve the purposes of the Chapter 1 program.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

F. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires, at least 30 days prior to entering into an arrangement to award funds under a grantback, that the Secretary publish in the **Federal Register** a notice of his intent to do so, and the terms and conditions under which the payment will be made.

In accordance with this requirement, notice is given that the Secretary intends to make available under a grantback arrangement to the SEA an amount of $50,221.99, which is 75 percent of the funds the Department has recovered as a result of the SEA's final audit determinations. The Secretary bases his intention to enter into a grantback arrangement under section 456 of GEPA on his determinations outlined in Part E of this notice, and payment by the SEA of all funds owed to the Department as a result of the final audit determinations.

G. Terms and Conditions Under Which Payment Under the Grantback Arrangement Will Be Made

Section 456(b) of GEPA provides that any payments made under a grantback arrangement shall be subject to the terms and conditions that the Secretary deems necessary to accomplish the purposes of the affected program. The SEA agrees to comply with the following terms and conditions under which

payment under the grantback arrangement will be made:

(1) The SEA will spend the funds awarded under the grantback in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plans that the SEA submitted and any amendments to those plans that are approved by the Secretary; and

(c) The budgets that were submitted with the plans and any amendments to the budgets that are approved by the Secretary.

(2) In accordance with section 456(c) of GEPA and the SEA's plans, all funds received under the grantback arrangement will be expended by August 31, 1985.

(3) The SEA, on behalf of the LEAs, must, not later than January 1, 1986, submit a report to the Secretary which indicates that the funds awarded under the grantback have been spent in accordance with the approved budgets.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

Invitation To Comment

The Secretary invites public comments on this notice of intent to award funds under a grantback arrangement to the Tennessee SEA on behalf of the Anderson Public Schools and Dyersburg City Schools. Interested persons may send written comments to Dr. A. Bruce Gaarder at the address at the beginning of this notice. All comments must be received on or before May 28, 1985.

(Catalog of Federal Domestic Assistance No: 84.010—Educationally Deprived Children—Local Educational Agencies)

Dated: April 22, 1985.

[FR Doc. 85-10028 Filed 4-24-85; 8:45 am]

BILLING CODE 4000-01-M

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education.

ACTION: Notice of Closed Meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a) of the Federal Advisory Committee Act.

DATES: May 19, 1985 at 12:00 p.m. through May 21, 1985 at 2:00 p.m.

ADDRESS: Airlie House, Airlie, Virginia.

FOR FURTHER INFORMATION CONTACT: Sven Groennings, Director, Fund for the Improvement of Postsecondary Education, 7th and D Streets, S.W., Washington, D.C. 20202 (202-245-8091).

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under section 1001 of the Higher Education Amendments of 1980, Title X (20 U.S.C. 1135a-1). The National Board of the Fund is established to "advise the Secretary and the Director of the Fund for the Improvement of Postsecondary Education . . . on the selection of projects under consideration for support by the Fund in its competitions."

The meeting of the National Board is closed to the public. The meeting is for the sole purpose of reviewing and evaluating grant applications submitted to the Fund under the Comprehensive Program.

The meeting of the National Board of the Fund will be closed to the public from 12:00 p.m., May 19 until the conclusion of the agenda, approximately 2:00 p.m., May 21 for review, discussion or consideration of proposals submitted to the Fund for grant awards. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under subsections (4) and (6) of 5 U.S.C. Appendix 2) and under subsections (4) and (6) of 5 U.S.C. 552b(c) (Pub. L. 94-409). Discussions of the applications and the qualifications of proposed staff may disclose commercial or financial information which is privileged or confidential and will tuch upon matters that would constitute a clearly unwarranted invasion of personal privacy if conducted in open session.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5 U.S.C. 552b will be available to the public within fourteen days of the meeting.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building, 7th and D Streets, S.W., Washington, D.C. 20202 from the hours of 8:00 a.m. to 4:30 p.m.

Dated: April 18, 1985.

Edward M. Elmendorf,

Assistant Secretary for Postsecondary Education.

[FR Doc. 85-10013 Filed 4-24-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Cooperative Agreement; Combustion/Emissions Research (Pittsfield Facility) New York State Energy Research and Development Authority (NYSERDA)

Summary

The Department of Energy announces that, pursuant to 10 CFR 600.7(b), eligibility for a cooperative agreement has been restricted to NYSERDA to perform research to determine the generalized relationships between municipal solid waste (MSW) combustion variables, MSW properties (moisture and organic/inorganic chlorine content) and specific products of the MSW Combustion process (CO, CO_2, O_2, PCDD, PCDF, SO_x, NO_x, THC, HCl, etc.).

Background

Airborne emissions of polychlorinated dibenzo-dioxins (PCDD) and furans (PCDF) are one of the most controversial environmental issues associated with municipal solid waste (MSW) incineration, and represent a significant potential barrier to implementation of incineration technology. PCDD and PCDF can be produced as a result of incomplete combustion of MSW, but little is known about the incinerator design and operating conditions which cause these compounds to be formed and which minimize or eliminate their discharge. The project focuses on determining the generalized relationships between the incinerator combustion variables, refuse quality (moisture and inorganic/organic chlorine content) and the products of combustion (including PCDD and PCDF).

This project is being conducted under the auspices of the ASME Dioxin Committee, and is being sponsored by a number of different States, a Federal agency (DOE) and various other governmental organizations. VICON management has agreed to allow all necessary testing for environmental emissions to be conducted at their Pittsfield, Massachusetts facility. Thus, major *planning* decisions regarding the project will be made by a group comprised of the American Society of Mechanical Engineers (ASME) Dioxin Test Sub-Committee (designated by the ASME Dioxin Committee), the co-

funding organizations, and VICON management.

The funding provided by DOE will be used to co-sponsor an RFP (with various other organizations) that will be issued by NYSERDA. The process for selection of the contractor to perform the required research will be done under NYSERDA competitive procurement guidelines which are similar to DOE's.

Solicitation Number: DE–FC01–85CE30838.

Scope of Project

The proposed research program provides a reasoned approach towards the resolution of major environmental questions regarding resource recovery mass-burning technology.

The proposed research is intended to be completed by November, 1985. Since environmental emissions from resource recovery facilities have recently come under public scrutiny, the acquisition of useful research data in this area is of utmost importance to the industry at this time.

For further information contact: Christopher A. Kouts, CE–323, U.S. Department of Energy, Room 5H078, 1000 Independence Avenue SW., Forrestal Building, Washington, D.C. 20585, (202) 252–1697.

Issued in Washington, D.C. on April 18, 1985.

James R. Higgins,

Director, Contract Operations Division B–1, Office of Procurement Operations.

[FR Doc. 85–10079 Filed 4–24–85; 8:45 am]

BILLING CODE 6450–01–M

Office of the Secretary

National Petroleum Council; 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 meeting:

Name: National Petroleum Council.

Date and time: Wednesday, May 22, 1985, starting at 9:30 a.m.

Place: Madison Hotel, Dolley Madison Ballroom, Fifteenth and M Street N.W., Washington, D.C.

Contact: Carolyn B. Klym, U.S. Department of Energy, Office of Oil, Gas, Shale and Coal Liquids, Mail Stop F–31, D–122, GTN, Washington, D.C. 20545, Telephone: 301–353–2709.

Purpose of The National Petroleum Council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Tenative Agenda

—Call to Order by Robert A. Mosbacher, Chairman, National Petroleum Council.
—Remarks by the Honorable John S. Herrington, Secetary of Energy.
—Reports of Study Committees of the National Petroleum Council:
—Progress report of the Committee on U.S. Petroleum Refining, John K. McKinley, Chairman.
—Consideration of Administrative Matters.
—Discussion of Any Other Business Brought Before the National Petroleum Council.
—Public Comment—10 minute rule.
—Adjournment.

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 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 Carolyn B. Klym at the address or telephone number listed above. 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.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on April 19, 1985.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 85–9978 Filed 4–24–85; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of restriction of eligibility for grant award.

SUMMARY: DOE announces that, pursuant to 10 CFR 600.7(b), it intends to award on a restricted eligibility basis a continuation grant to the National Academy of Sciences in support of the National Research Council, Commission on Physical Sciences, Mathematics and Resources Geophysics Research Forum.

Project Scope—The National Academy of Sciences, through the Commission of Physical Sciences, Mathematics and Resources Geophysics Research Forum, is to continue to provide guidance to ensure scientific integrity of a geophysics film series being produced. Eligibility for this continuation award is restricted to the National Academy of Sciences, charted by Congress to conduct scientific research for the Government, to permit continuance of efforts initiated several years ago.

FOR FURTHER INFORMATION CONTACT: James P. Beiriger, MA–452.1, U.S. Department of Energy, Office of Procurement Operations, 1000 Independence Avenue SW., Washington, D.C. 20585, Telephone (202) 252–1024.

Issued in Washington, D.C. on April 19, 1985.

Ben Goldman,

Director, Contract Operations, Division "A", Office of Procurement Operations.

[FR Doc. 85–9976 Filed 4–24–85; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 81–32–NG]

Midwestern Gas Transmission Co.; Final Order Granting Amendments to Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Issuance of Opinion and Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that on April 18, 1985, the ERA Administrator issued an opinion and order amending Midwestern Gas Transmission Company's (Midwestern) authorization to import natural gas from Canada for its northern marketing area. The order extends the term of Midwestern's import authorization through October 31, 1992, with an additional year to take quantities of gas paid for but not delivered during the term of the authorization. The order amends the maximum daily and annual volumes of gas that can be imported. The order also approves the amended pricing and take provisions Midwestern negotiated with its Canadian supplier, TransCanada PipeLines Limited.

The text of the opinion and order follows.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr. (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-8162.

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6667.

Issued in Washington, D.C., on April 19, 1985.

James W. Workman,

Director, Office of Fuels Program, Economic Regulatory Administration.

In the matter of Midwestern Gas Transmission Company, ERA Docket No. 81-32-NG, Final Order Granting Amendments to Authorization to Import Natural Gas From Canada, DOE/ERA Opinion and Order No. *57A*.

April 18, 1985.

I. Background

On July 12, 1984, in DOE/ERA Opinion and Order No. 57 (Order No. 57), the Economic Regulatory Administration (ERA) conditionally extended the term of the Midwestern Gas Transmission Company's (Midwestern) existing authorization to import Canadian natural gas from TransCanada PipeLines Limited (TransCanada) subject to submission of an amendment by June 1, 1985, demonstrating that the import arrangement is competitive and not inconsistent with the public interest.[1]

In Order No. 57, the ERA amended Midwestern's existing import authorization to extend the term of the authorization to October 31, 1992, and allowed an additional year, until October 31, 1993, to import any quantities of gas paid for but not taken during the term. Order No. 57 also amended Midwestern's existing gas import volume authorization to permit Midwestern to import from Canada a maximum of 222,360 Mcf per day through October 31, 1990, a maximum of 148,518 Mcf per day for the contract year commencing November 1, 1990, and a maximum of 74,259 Mcf per day for the contract year commencing November 1, 1991, in accordance with the provisions of its contract No. 1, as amended.[2] The order established as maximum annual contract quantities 74,000 MMcf through October 31, 1990, 49,284 MMcf from November 1, 1990, through October 31, 1991, and 24,644 MMcf from November 1, 1991, through October 31, 1992.

The contract amendments authorized in Order No. 57 gave Midwestern the right, subject to certain notice provisions, to reduce the daily contract quantity by as much as 51,945 Mcf effective November 1, 1984, 50,590 Mcf effective November 1, 1985, and up to the outstanding contract quantity effective December 15, 1985. Further, the amendments allowed Midwestern to reduce its current obligation to purchase minimum volumes from a minimum annual quantity equal to 75 percent of the daily contract quantity to 50 percent of the annual contract quantity for each of the three consecutive contract years for the three contracts (Nos. 1, 2 and 3) ending October 31, 1985. Also, effective November 1, 1983, the payment obligation would be 50 percent of the minimum annual quantity at contract prices. Take-or-pay payments by Midwestern may be deferred for four years upon payment of interest on the amount due and Midwestern has make-up rights concerning the take-or-pay volumes of gas.

These amendments, preserved by the conditional order, contribute to greater flexibility in Midwestern's import arrangement. However, since negotiations on the import price and pricing provisions had not been completed, Order No. 57 was conditioned, at Midwestern's request, on Midwestern furnishing to the ERA by June 1, 1985, an acceptable demonstration that its import arrangement had been amended so as to be competitive and market-responsive within the meaning of the Department of energy's gas import policy guidelines.[3]

On January 25, 1985, Midwestern filed an application to remove the condition from Order No. 57 based upon the provisions of agreements executed on October 31, 1984 (the October agreement) and on November 16, 1984 (the November agreement) amending contract No. 1 with TransCanada. Midwestern stated that the October agreement mirrors the contract amendment submitted with its second amendment to its import applications filed on February 21, 1984, and incorporates into contract No. 1 all the provisions approved by the ERA in Order No. 57.

The November agreement became effective November 1, 1984, and supercedes those provisions in the October agreement pertaining to pricing and minimum takes which were operative only for the period between November 1, 1982, and October 31, 1984. In the November agreement Midwestern and TransCanada agreed to restructure their contract price as permitted by Canada's new export pricing policy. Midwestern now has a two-part demand-commodity pricing formula.

The monthly demand charge will be $15.20834 (U.S.) per Mcf of the daily contract quantity. This represents about $.50 (U.S.) of the price for each Mcf of purchased gas at 100 percent of daily contract quantity and about $.71 per Mcf at 70 percent of daily contract quantity. This demand charge will be adjusted on a monthly basis for contract years starting November 1, 1985, and thereafter, to reflect changes in allowable transportation costs of the gas to the Canadian border which comprise the demand charge.

The following table shows the commodity charge which varies seasonally based on load factor and differentiation between volumes of gas purchased for resale to ANR Pipeline Company (ANR), Midwestern's largest customer which has other sources of gas, and gas purchased to meet Midwestern's other requirements.

Daily takes as percent of daily contract quantity	Summer commodity charge (per MMBtu)	Winter commodity charge (per MMBtu)
For Gas Purchased for Resale to ANR Under Rate Schedule CD-2		
Up to 70 percent	$2.63	$2.63
70 to 80	2.80	3.34
80 to 100	2.80	4.25
For Gas Purchased for Other Requirements		
Up to 70 percent	$2.63	$2.63
70 to 100	2.80	3.34
Supplemental daily volumes		4.25

Combining the commodity charge of $2.63 with $.71 (the demand charge at 70 percent load factor) produces a 70 percent load factor price of $3.34 per Mcf for gas purchased after November 1, 1984, compared to $4.40 per Mcf prior to the November agreement. The new commodity charges are subject to adjustment to the extent that the contractually defined Alternate Fuels Price Index (based on gas and fuel oil

[1] *Midwestern Gas Transmission Company*, DOE/ERA Opinion and Order No. 57, issued July 12, 1984 (1 ERA ¶ 70,568).

[2] Contract No. 1 is Midwestern's underlying supply contract. Without extension, it will expire December 15, 1985. Midwestern also imports, under separate authorizations lesser volumes of gas from TransCanada under Contract Nos. 2, 3 and 4, which extend further in time and involve different terms. Contracts 1, 2 and 3 are affected by the instant application and contract amendments.

[3] 49 FR 6684, February 22, 1984.

prices in Midwestern's marketing area) varies by more than five percent from a base price for October 1984.

In addition to the change in the pricing provisions, Midwestern cites the following contract changes which help make the amended import arrangement more market-competitive and flexible:

1. Either party may require that the pricing and price adjustment provisions (except for certain components of the demand charge factor) for any contract year be determined by renegotiation or, failing agreement, by arbitration.

2. Commencing November 1, 1984, there are no take-and-pay or take-or-pay provisions.

3. Midwestern can apply over 50 percent of the annual contract quantity to make up presently accumulated take-or-pay obligations, and additionally is allowed a two-for-one makeup for takes in excess of 70 percent.

On February 26, 1985, the ERA issued a procedural order providing all parties the opportunity to comment and request additional procedures on all aspects of the amended import arrangement with respect to the competitiveness of the new pricing provisions and conformance with the other criteria in the Department of Energy's import policy guidelines.

II. Response to Procedural Order

One response was received. It was from Inter-City Gas Corporation (Inter-City). Inter-City stated that Midwestern's pricing amendments will be beneficial and effect a fairly substantial price reduction for gas supplies it purchases from Midwestern. Although Inter-City urged even more effective price competition between Canadian natural gas and the mix of fuels available in its market area, it concluded that the amended pricing provisions represent a positive step in the positive step in the right direction and bring Midwestern's price closer to those of alternative fuels in the area. Inter-City urged the ERA to approve Midwestern's application.

III. Decision

Midwestern's application to remove the condition from Order No. 57 has been evaluated to determine if the import arrangement as amended meets the public interest requirements of section 3 of the Natural Gas Act. Under section 3, an import is to be authorized unless there is a finding that it "will not be consistent with the public interest." [4] The Administrator is guided by the Department of Energy's stated policy relating to the regulation of natural gas imports.[5] The guidelines prescribed in the policy statement emphasize that the competitiveness of an import arrangement in the markets served is the primary consideration for meeting the public interest test.

The pricing provisions negotiated by Midwestern in its contracts with TransCanada substantially reduce the price of the imported gas and provide a mechanism for scheduled review and adjustment of the two-part, demand-commodity pricing structure. These conform to the intent of the competitiveness requirement of the guidelines. The renegotiated pricing provisions coupled with the amendments approved in Order No. 57 give Midwestern a competitive and market-responsive long-term import arrangement.

Furthermore, only one response to ERA's request for comments was filed. This was by Inter-City, a customer of Midwestern, who actively supports the amendment. The fact that no unfavorable comments were received from any party indicates that the parties are satisfied with the proposed extension of the amended import arrangement.

After taking into consideration all information in the record of this proceeding, it is concluded that the condition in Order No. 57 has been met—that Midwestern has demonstrated that its import arrangement, as now structured, is competitive and market-responsive and should continue so over the term. Therefore, granting the extension as amended is not inconsistent with the public interest.

Order

For the reason set forth above, pursuant to section 3 of the Natural Gas Act, it is ordered that:

A. The import authorization previously issued by the Federal Power Commission to Midwestern Gas Transmission Company (Midwestern) under consolidated Docket Nos. G–18313, G–18314, G–18315, and G–18316 on October 31, 1959 (22 FPC 775), is hereby amended to extend the authorization to October 31, 1992. Additional authority is granted, commencing on November 1, 1992, and ending on October 31, 1993, to import quantities of gas paid for but not taken during the term of this authorization.

B. The authorization issued to Midwestern under Docket No. G–18314, on August 10, 1965 (34 FPC 457), is hereby amended to permit Midwestern to import from Canada a maximum of 222,360 Mcf per day through October 31, 1990; a maximum of 148,518 Mcf per day for the contract year commencing November 1, 1990, and a maximum of 74,259 Mcf per day for the contract year commencing November 1, 1991, in accordance with the provisions of its contract No. 1, as amended. The maximum annual contract quantity shall be 74,000 MMcf through October 31, 1990, 49,284 MMcf from November 1, 1990, through October 31, 1991, and 24,644 MMcf from November 1, 1991, through October 31, 1992.

C. The orders referenced in ordering paragraphs A and B above are further amended to incorporate Midwestern's October 31, 1984, and November 16, 1984, agreements revising its gas purchase contract Nos. 1, 2, and 3 with TransCanada PipeLines Limited.

D. With respect to the natural gas authorized to be imported, Midwestern shall file with the ERA in the month following each calendar quarter, quarterly reports showing, by month, the quantities of gas imported and the average price paid per MMBtu for both the demand and commodity components.

Issued in Washington, D.C., April 18, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85–9979 Filed 4–24–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–85–005; OFP Case No. 61052–9267–21, 22, 23–22]

Cogeneration Technology and Development Co.; Acceptance of Petition for Exemption and Availability of Certification

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Cogeneration Technology and Development Company.

SUMMARY: On March 11, 1985, Cogeneration Technology and Development Company (CTDC), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent exemption for a proposed electric powerplant to be located in Rifle (Garfield County), Colorado, from the prohibitions of Title II of the Powerplant

[4] 15 U.S.C. 717b.

[5] *See supra* note 3.

[4] 15 U.S.C. 717b.

[5] *See supra* note 3.

and Industrial Fuel Use of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982).

The proposed powerplant for which the petition was filed will be three natural-gas-fired combustion turbine generators, one condensing steam turbine-generator and a dual fuel engine, which together will produce 76 megawatts (76 MW) net of electricity. Using exhaust from the gas turbines, the waste heat boilers will generate both the high pressure steam for the condensing steam turbine and the hot water for the year-round heating of a greenhouse complex for the production of greenhouse crops. The greenhouse complex will be owned and operated by CTDC or leased to another entity. It will be on the same site as the powerplant. The electricity produced will be sold to the Public Service Company of Colorado.

The proposed facility is a qualifying cogeneration facility within the terms of section 210 of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), 16 U.S.C. 824a–3 and is a "powerplant" within the terms of the regulations promulgated under the Powerplant and Industrial Fuel Use Act of 1978 (10 CFR 500.2). However, CTDC is petitioning for an exemption based on 10 CFR 503.32 "Lack of alternative fuel supply at a cost which does not substantially exceed the cost of using imported petroleum."

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register**.

DATES: Written comments are due on or before June 10, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585. Docket No. ERA–FC–85–005 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, Room GA–045, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202)252–1251

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Telephone (202)252–6947.

SUPPLEMENTARY INFORMATION: Section 212(a)(1)(A)(ii) of the Act provides for a permanent exemption due to lack of an alternate fuel supply at a cost which does not substantially exceed the cost of using imported petroleum. To qualify the petitioner must certify that:

(1) A good faith effort has been made to obtain an adequate and reliable supply of an alternate fuel for use as a primary energy source of the quality and quantity necessary to conform with the design and operational requirements of the proposed unit;

(2) The cost of using such a supply would substantially exceed the cost of using imported petroleum as a primary energy source during the useful life of the proposed unit as defined in § 503.6 (cost calculation) of the regulations;

(3) No alternate power supply exists, as required under § 503.8 of the regulations;

(4) Use of mixtures is not feasible, as required under § 503.9 of the regulations; and

(5) Alternative sites are not available, as required under § 503.11 of the regulations.

In accordance with the evidentiary requirements of § 503.32(b) (and in addition to the certifications discussed above), CTDC has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact analysis, as required under 10 CFR 503.13.

In processing this exemption request, ERA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a determination that CTDC is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, D.C. on April 18, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–9984 Filed 4–24–85; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefits; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the forms; and (9) A brief abstract describing the proposed collection.

DATE: Last Notice published Friday, April 5, 1985 (50 FR 13649).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection Servcies Division, (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Deparment of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-7313.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C. April 19, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
FERC-510	Application for the Surrender of Electric License.	Extension	On occasion	Mandatory	Holders of Hydroelectric Licenses.	10	100	To carry out the requirements of Part 1, Sections 4(e), and 13 of the Federal Power Act. This section directs that a preliminary permit license may be surrendered or terminated upon application and where agreement exists between the FERC and the licensees.
FERC-537	Gas Pipeline Certificates.	do	do	do	Interstate Pipelines.	50	147,300	Information collection is required to obtain Commission Certification of interstate pipelines engaged in the transportation and sale of natural gas and the construction and operations of facilities to be used in these activities, as well as authorization for abandonment of facilities and service.
FERC-549	NGPA Title III Transactions.	do	do	do	Natural Gas Pipeline Companies.	253	14,572.8	The purpose of this application filing requirement is to ensure that fair and equitable rates are charged for certain transportation and sales transactions in accordance with Title III of the Natural Gas Policy Act.
FERC-556	Cogeneration and Small Power Production.	do	do	Required to obtain or retain a benefit.	Owner/operators of small power cogeneration facilities.	530	4,240	The information is required from owners or operators of small power production or cogeneration facilities in order to (a) furnish notice of self-certification, or (b) make application for FERC certification that their facility is a qualifying facility under PURPA.
CE-189P, C and S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization.	Reinstatement.	Annually	Mandatory	Corporations using at least one trillion Btu's of energy.	15,204	157,760	CE-189P, C and S collect data on energy efficiency improvement and on recovered materials utilization. Data are aggregated, analyzed and organized into the Annual Report to Congress and the President.

[FR Doc. 85-9985 Filed 4-24-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER 85-341-000]

Vermont Yankee Nuclear Power Corp.; Filing

April 23, 1985

Take notice that on March 5, 1985, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) tendered for filing, pursuant to the terms of a settlement approved by the Commission in Docket Nos. ER83-342-000 and ER83-343-000, a revised schedule for collections of charges relating to the decommissioning of the Vermont Yankee nuclear facility.

Vermont Yankee states that under the terms of the settlement it proposes to adjust its schedule of annual collections to accumulate a fund to cover the expenses of decommissioning the Vermont Yankee nuclear generating facility. Vermont Yankee states that the revised schedule is based upon differences in inflation and fund earnings from those projected at the time the level of annual collections was established. Vermont Yankee states that

under the revised schedule annual collections from its customers will be reduced by $185,000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before May 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-10193 Filed 4-24-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180674; FRL-2824-4]

Arkansas and Tennessee; Receipt of Applications for Specific Exemptions To Use Imazaquin To Control Sicklepod on Soybeans; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Arkansas State Plant Board and the Tennessee Department of Agriculture (hereafter referred to individually by state name or collectively as "Applicants") for use of the unregistered product Scepter to control sicklepod in soybeans. Scepter, manufactured by the American Cyanamid Company, contains the unregistered active ingredient imazaquin. EPA is soliciting comment before making the decision whether or not to grant these specific exemptions.

DATE: Comments must be received on or before April 29, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180674," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

FOR FURTHER INFORMATION:

By mail: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of unregistered herbicide, imazaquin, manufactured as Sceptor, to control sicklepod in soybeans. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

The Applicants have requested a maximum of two applications of Sceptor; one as a preplant incorporated or preemergence treatment and one as an early post-emergence over-the-top treatment. A maximum of 0.125 pound of active ingredient is proposed to be applied per acre per application. A 90-day pre-harvest interval is proposed and no treated plants or straw will be fed to livestock. Applications are proposed to commence immediately continue through July.

Arkansas has requested authorization to treat a maximum of 400,000 acres of soybeans with a maximum of 66,600 gallons of Sceptor. Tennessee expects that no more than 150,000 acres of soybeans will require treatment. Applications are proposed to be made using either air or ground equipment.

The Applicants anticipate yield losses averaging 20 to 30 percent due to sicklepod infestations. Losses as high as 50 percent were reported in some research trials. Both of the Applicants anticipate substantial yield losses resulting in significant economic losses without the proposed use of Scepter.

Arkansas and Tennessee claim that emergency conditions will exist due to the unavailability of a registered pesticide which will adequately control sicklepod in soybeans. Although a number of registered herbicides are currently available (including metribuzin, vernolate, alachlor, norflurazon, 2,4-DB and linuron) for this use, the Applicants claim that they are not effective on certain soil types, are dependent on adequate moisture for activation, or cannot be applied when no-till or conservation tillage is employed or when fields are solid-seeded. Toxaphene is effective for this use on these soil types and has been used in the past to control sicklepod under section 24(c) registrations. However, stocks of toxaphene are not adequate to deal with the situation this year. [The use of toxaphene on soybeans for sicklepod control was cancelled, however, an existing stock provision allows use to continue until December 31, 1986. However, stocks have already been depleted.] If there were adequate supplies of toxaphene, the use of Scepter would not be necessary.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before April 29, 1985 and should bear the identifying notation "OPP-180674." All written comments filed pursuant to this will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The comment period has been shortened in order to allow the Agency to make a decision regarding the applications prior to the time use of Scepter is needed to commence (May 1).

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Arkansas State Plant Board and the Tennessee Department of Agriculture.

Dated: April 17, 1985.

Robert V. Brown,

Acting Director, Registration Division.

[FR Doc. 85-9995 Filed 4-24-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59187A; FRL-2824-2]

Certain Chemicals; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for a test marketing exemption (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME-85-29. The test marketing conditions are described below.

EFFECTIVE DATE: April 17, 1985.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-613B, 401 M St., SW., Washington, DC. 20460, (202-382-2260).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import a new chemical substances for test purposes if the Agency finds that the manufacture, processing, distribution in commerce, use, and disposal of the substance for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury.

EPA hereby approves TME-85-29. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions (if any) specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restrictions apply to TME-85-29. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME. In addition, the Company shall maintain the following records until five years after the dates they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantity of the TME substance produced and must make these records available to EPA upon request.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

3. The applicant must maintain a copy of the bill of lading that accompanies each shipment of the TME substance.

T85-29

Date of Receipt: March 8, 1985.

Notice of Receipt: March 22, 1985 (50 FR 11559).

Applicant: Confidential.

Chemical: (G) Sodium salt of a lower alkynol sulfonic acid.

Use: (G) Metal finishing.

Production Volume: 1000 kg/yr.

Number of Customers: Confidential.

Worker Exposure: Confidential.

Test Marketing Period: One year. *Commencing on:* April 17, 1985.

Risk Assessment: EPA identified no significant health or environmental concerns. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its findings that the marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: April 17, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-9996 Filed 4-24-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180675; FRL-2824-5]

South Dakota Department of Agriculture; Receipt of Application for Emergency Exemption To Use 2-Methoxy-N-(2-Oxo-1,3-Oxazolin-3-Yl)-Acet-2',6'-Xylidine; Solicitation of Public Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the South Dakota Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient 2-methoxy-N-(2-oxo-1,3-oxazolin-3-yl)-acet-2',6'-xylidine, (Oxadixyl, ISO Approved; formulated by Gustafson Corp. as Anchor 25% Dust Fungicide) to control downy mildew on 140,000 acres of sunflowers in South Dakota. It is the Agency's poilicy to solicit public comment on applications involving active ingredients which have no registered end uses. Accordingly, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before May 9, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP-180675," should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Libby Welch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716A, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (17 U.S.C. 136p), the Administrator may, at his discretion, except a State agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of 2-methoxy-N-(2-oxo-1,3-oxazolin-3-yl)-acet-2', 6'-xylidine), available as Anchor 25% Dust Fungicide from Gustafson Corp., to control downy mildew caused by the *Plasmopara halstedii* on 140,000 acres of sunflowers grown in South Dakota. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant indicates that downy mildew is not adequately controlled by existing cultural methods or registered pesticides, and all commercial sunflower hybrids are susceptible to the new races of downy mildew.

The Applicant indicates that the only two fungicides which are curently registered for use on sunflowers, Maneb and Captan, are not effective as downy mildew control agents. The Applicant estimates the crop value of 140,000 acres of sunflowers to be $18,480,000. The Applicant states that yield reductions caused by downy mildew will reach 0.5%. Thus the economic benefit, based on information provided by the Applicant, from the use of Anchor would be a total of $924,000.

Anchor will be applied at a maximum rate of 1.0 ounce of active ingredient per hundred weight of seed. A maximum of one application will be made. A total of 96,250 pounds of active ingredient will be required to treat the seed necessary to plant 140,000 acres of sunflowers. Anchor will be applied primarily by individual growers at time of planting. Applications would be made from May 1 through July 1, 1985.

This notice does not constitute a decision by EPA on the application itself. Interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before May 9, 1985 and should bear the identifying notation "OPP/80675." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2 at the address given above, from 8 a.m. to 4 p.m., Monday through Firday, except legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by South Dakota.

Dated: April 16, 1985.

Robert V. Brown,

Acting Director, Registration Division.

[FR Doc. 85-9993 Filed 4-24-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

[Docket No. 85-12]

Application of the Loyalty Contract Provisions of the Shipping Act of 1984 to a Proposed Tariff Rule on Refunds; Filing of Petition for Declaratory Order

Notice is given that a petition for declaratory order has been filed by the Trans-Pacific Freight Conference of Japan/Korea and Japan/Korea-Atlantic & Gulf Freight Conference, and their member lines, seeking that the Commission determine that a rule for tariff refunds as described in their petition, would not constitute a "loyalty contract" within the meaning of section 3(14) of the Shipping Act of 1984.

Interested persons may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101. Interested persons may submit replies to the Acting Secretary, Federal Maritime Commission, Washington, D.C. 20573 on or before May 24, 1985. An original and fifteen copies of such replies shall be submitted and a copy thereof served on the filing party, Charles F. Warren, Warren & Associates, P.C., Suite 525, 1100 Connecticut Avenue, NW., Washington, D.C. 20573. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-9962 Filed 4-24-85; 8:45 am]

BILLING CODE 6730-01-M

Irish Shipping, Ltd. and Reardon Smith Line, Ltd.; Notice of Cancellation

Agreement No.: 207-010035.

Title: Celtic Bulk Carriers Joint Service Agreement.

Parties: Irish Shipping, Ltd.

Reardon Smith Line, Ltd.

Synopsis: The parties to the referenced agreement have provided notice of the cancellation of the agreement. Therefore, the Commission gives notice that it will terminate its prior approval of Agreement No. 207-010035 effective April 3, 1985, the date the parties' cancellation notice was received.

Dated: April 22, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-9980 Filed 4-24-85; 8:45 am]

BILLING CODE 6730-01-M

Compagnie Generale Maritime and Intercontinental Transport Joint Marketing Agreement; Intent To Terminate Approval of Agreement

Agreement No.: 203-010266.

Title: Compagnie Generale Maritime and Intercontinental Transport Joint Marketing Agreement.

Parties:

Compagnie Generale Maritime

Intercontinental Transport

Synopsis: By letter dated March 29, 1985, the Commission was advised that Agreement No. 203-010266 has been superseded by Agreement No. 217-010635, which became effective on October 11, 1984. Therefore, the Commission gives notice that it will terminate its prior approval of Agreement No. 203-010266 effective October 11, 1984, the date Agreement No. 217-010635 became effective.

Dated: April 22, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-9981 Filed 4-24-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

April 19, 1985.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Cynthia Glassman—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–3829)

OMB Desk Officer—Robert Neal—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503 (202–395–6880).

Proposal to approve under OMB delegated authority the extension with revision of the following reports:

1. Report title: Regulations K reporting requirements

Agency form number: FR K–1

OMB Docket number: 7100–0107

Frequency: On occasion

Reporters: Member banks, bank holding companies, Edge corporations

Small businesses are not affected.

General description of report:

This information collection is mandatory (12 U.S.C. 601–604(a); 611–631; 1843(c)(13); 1843(c)(14); and 1844(c)) and is given confidential treatment if the applying organization believes the information will qualify for a FOIA exemption.

The FR K–1 is a compilation of all the applications and prior notification requirements in Regulation K that pertain to the formation of Edge and Agreement Corporations and the international and foreign activities of U.S. banking organizations, including those of national banks, Agreement Corporations, Edge Corporations and bank holding companies.

Board of Governors of the Federal Reserve System, April 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–9938 Filed 4–24–85; 8:45 am]

BILLING CODE 6210–01–M

Bankers Trust New York Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediately inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Bankers Trust New York Corporation*, New York, New York; to engage *de novo* through its subsidiary, BT USA, Inc., New York, New York, in making or acquiring, for its own account or for the account others, loans and other extensions of credit, secured and unsecured, to individuals and businesses including but not limited to consumer lending, residential and non-residential real estate lending and commercial lending; servicing loans and other extensions of credits; and the sale of credit-related life and accident and health insurance by licensed agents or brokers, as required, and the sale of mortgage life and mortgage disability insurance directly related to the extension of mortgage loans.

Board of Governors of the Federal Reserve System, April 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–9939 Filed 4–24–85; 8:45 am]

BILLING CODE 6210–01–M

Vernon Bank Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 17, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Vernon Bank Corporation*, Vernon, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Vernon, Vernon, New York. Comments on this application must be received not later than May 15, 1985.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W. Atlanta, Georgia 30303:

1. *St. Martin Bancshares, Inc.*, St. Martinville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of St. Martin Bank and Trust Company, St. Martinville, Louisiana.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *St. Charles Bancshares, Inc.*, St. Charles, Minnesota; to acquire 99.5 percent of the voting shares of First National Bank of Blooming Prairie, Blooming Prairie, Minnesota.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President)

400 South Akard Street, Dallas, Texas 75222:

1. *Lee County Bancshares, Inc.*, Giddings, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of Lee County National Bank, Giddings, Texas.

2. *The Plains Corporation*, Lubbock, Texas; to acquire 100 percent of the voting shares of Lockney Bancshares, Inc., Lockney, Texas, thereby indirectly acquiring First National Bank in Lockney, Lockney, Texas.

Board of Governors of the Federal Reserve System, April 19, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-9940 Filed 4-24-85; 8:45 am]

BILLING CODE 6210-01-M

CBT Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 17, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *CBT Corporation*, Hartford, Connecticut; to engage *de novo* through its subsidiary, Constitution Capital Management Co., Hartford, Connecticut, in providing portfolio investment advice to others, furnishing general economic information and advice, general economic statistical forecasting services and industry studies and serving as investment advisor as defined in section 2(a)(20) of the Investment Company Act of 1940 to investment companies registered under the Act, but not as sponsor, organizer or manager of open-end investment companies.

Board of Governors of the Federal Reserve System, April 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10068 Filed 4-24-85; 8:45 am]

BILLING CODE 6210-01-M

Elston Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. 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 is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. 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.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 20, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Elston Corporation*, Crawfordsville, Indiana; to acquire 24.9 percent of the voting shares or assets of Lizton Financial Corporation, Lizton, Indiana, thereby indirectly acquiring State Bank of Lizton, Lizton, Indiana.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Salem Community Bancorp, Inc.*, Salem, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of Community State Bank, Salem, Illinois.

Board of Governors of the Federal Reserve System, April 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10067 Filed 4-24-85; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Information Collection Trade Practices; Advertising Automobiles

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*) for review of a voluntary consumer survey.

SUMMARY: The FTC is requesting OMB review under 5 CFR 1320.14 of a questionnaire to be used to obtain information about consumers' interpretation of certan advertising and promotional materials. After preliminary screening, 600 consumers will be asked to review and respond to questions about a portfolio of six print ads.

DATES: Comments on this request for OMB review must be submitted on or before May 28, 1985.

ADDRESSES: Send comments to Mr. Don Arbuckle, Office of Information Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. Copies of the application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas J. Maronick, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 523-4810.

Dated: April 19, 1985.

John H. Carley,

General Counsel.

[FR Doc. 85-9959 Filed 4-24-85; 8:45 am]

BILLING CODE 6750-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 85D-0108]

Draft Guideline for Submitting Supporting Documentation in Drug Applications for the Manufacture of Drug Substances

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline for the submission of supporting documentation in drug applications for the manufacture of drug substances. FDA is making the draft guideline available for public comment to assist it in developing a final guideline. The draft guideline is intended to furnish pharmaceutical manufacturers with guidance in submitting to FDA adequate information on the production and control of new drug substances.

The guideline, when issued in final form, may be relied on by pharmaceutical manufacturers when submitting supporting documentation on the preparation of the new drug substance in investigational new drug applications (IND's), abbreviated new drug applications (ANDA's), and new drug applications (NDA's). The draft guideline was prepared by FDA's Center for Drugs and Biologics.

DATE: Comments by July 24, 1985.

ADDRESSES: Requests for a copy of the draft guideline and written comments regarding the draft guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Buford L. Poet, Center for Drugs and Biologics (HFN-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4330.

SUPPLEMENTARY INFORMATION: In the final rule revising the procedures governing the review and approval of new drug and antibiotic marketing applications, published in the **Federal Register** of February 22, 1985 (50 FR 7452), and in the proposed revisions of the investigational new drug regulations, published in the **Federal Register** of June 9, 1983 (48 FR 26720), FDA stated that it intended to expand the use of guidelines to provide assistance in implementing those regulations.

In this notice, FDA is announcing the availability of the fifth of the new draft guidelines. The notice of availability for the first draft guideline, the submission of supporting documentation for packaging of human drugs and biologics, was published in the **Federal Register** of February 1, 1984 (49 FR 4040). The notices of availability of the second and third draft guidelines, the submission of supporting documentation for stability studies of human drugs and biologics and the submission of supportive analytical data for methods validation in new drug applications, were published in the **Federal Register** of May 7, 1984 (49 FR 19412, 19413). The notice of availability of the fourth draft guideline, the submission of supportive documentation for the manufacture of finished dosage forms is published elsewhere in this issue of the **Federal Register**.

This draft guideline is intended to provide pharmaceutical manufacturers with guidance in submitting supporting documentation in drug applications on the method of preparation of the drug substance and on the control testing used to monitor the drug substance's identity, strength, quality, and purity. A description of the methods of preparation and process controls is required to be included in IND's, ANDA's, and NDA's.

FDA is making this draft guideline available for public comment before making it the formal position of the agency. If, following the receipt of comments, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in submitting supporting documentation in drug applications for the manufacture of drug substances, the guideline will be made final, and FDA will announce its availability under 21 CFR 10.90(b).

Section 10.90(b) provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline can be 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. A person who chooses to do so may discuss the matter further with the agency to prevent an expenditure of money and effort for work that the agency may later determine to be unacceptable. Therefore, interested persons are encouraged to use this opportunity to submit comments on the draft guideline if they have suggestions for its revision.

The proposed investigational new drug regulations incorporated the policy objective of limiting FDA regulation of Phase 1 investigations primarily to safety concerns to ensure that research subjects are not exposed to unreasonable risk. In the proposal, the agency stated that it intended to limit the scope of chemistry-related submissions to that which is necessary to support the scope and duration of the proposed human testing. In keeping with these goals, FDA specifically solicits comments on the nature and extent of supportive documentation for the manufacture of drug substances needed to support Phase 1 investigations.

Interested persons may, on or before July 24, 1985, submit written comments on the draft guideline to the Dockets Management Branch (address above). These comments will be considered in determining whether amendments to, or revisions of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch Between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: April 19, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-9953 Filed 4-24-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85D-0078]

Draft Guideline for Submitting Supporting Documentation for the Manufacture of Finished Dosage Forms

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline for the submission of supporting documentation for the manufacture of finished dosage forms. FDA is making the draft guideline available for public comment to assist it in developing a final guideline. The guideline is intended to furnish pharmaceutical manufacturers with guidance in submitting to FDA

supporting documentation on the manufacturing and testing of finished dosage forms. The guideline, when issued in final form, may be relied on by manufacturers when submitting supporting documentation for the manufacture of finished dosage forms in investigational and new drug applications. The draft guideline was prepared by FDA's Center for Drugs and Biologics.

DATE: Comments by July 23, 1985.

ADDRESS: Requests for a copy of the draft guideline and written comments regarding the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Buford L. Poet, Center for Drugs and Biologics (HFN–102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4330.

SUPPLEMENTARY INFORMATION: In the revisions of the new drug and antibiotic regulations, published in the **Federal Register** of February 22, 1985 (50 FR 7452), and in the proposed revisions of the investigational new drug regulations, published in the **Federal Register** of June 9, 1983 (48 FR 26720), FDA stated that it intended to expand the use of guidelines to provide assistance in implementing those regulations.

In this notice, FDA is announcing the availability of the fourth of the new draft guidelines. The notice of availability for the first draft guideline, the submission of supporting documentation for packaging of human drugs and biologics, was published in the **Federal Register** on February 1, 1984 (49 FR 4040). The notices of availability of the second and third draft guidelines, the submission of supporting documentation for stability studies of human drugs and biologics and the submission of supportive analytical data for methods validation in new drug application, were published in the **Federal Register** of May 7, 1984 (49 FR 19412, 19413). A notice of availability of a fifth draft guideline, submitting supporting documentation in drug application for the manufacture of drug substances, is published elsewhere in this issue of the **Federal Register**.

This draft guideline is intended to provide pharmaceutical manufacturers with guidance in submitting to FDA supporting documentation on the manufacturing process and the accompanying quality control system for raw materials, in-process materials, and the finished dosage form suitable for administration. The supporting documentation relates to the identity, strength, quality, and purity of the dosage form and the procedures for assuring that all batches manufactured conform to the appropriate specifications.

FDA is making the draft guideline available for public comment before making it the formal position of the agency. If, following the receipt of comments, the agency concludes that the draft guideline, as revised, reflects acceptable criteria for use in submitting supporting documentation for the manufacture of finished dosage forms, the guideline will be made final, and FDA will announce its availability under 21 CFR 10.90(b).

Section 10.90(b) provides for the use of guidelines to establish procedures of general applicability that are not legal requirements but are acceptable to the agency. A person who follows a guideline can be 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. A person who chooses to do so may discuss the matter further with the agency to prevent expenditures of money and effort for work that the agency may later determine to be unacceptable.

The proposed investigational new drug regulations incorporated the policy objective of limiting FDA regulations of Phase 1 investigations primarily to safety concerns to ensure that research subjects are not exposed to unreasonable risk. In the proposal, the agency stated that it intended to limit the scope of chemistry related submissions to that which is necessary to support the scope and duration of the proposed human testing. In keeping with these goals, FDA specifically solicits comments on the nature and extent of supporting documentation for the manufacture of finished dosage forms needed to support Phase 1 investigations.

Interested persons may, on or before July 23, 1985, submit written comments on the draft guidelines to the Dockets Management Branch (address above). These comments will be considered in determining whether amendments to, or revisions of, the draft guideline are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the draft guideline should be sent to the Dockets Management Branch.

Dated: April 19, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–9954 Filed 4–24–85; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84N–0358]

Preservative-Free Morphine Preparation for Epidural Use for Treatment of Severe Chronic Pain; Invitation To Submit a New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has established the Office of Orphan Products Development to identify and facilitate the availability of products useful in treating or diagnosing uncommon diseases. This office promotes the availability of products for common diseases where commercial sponsorship of the products is either lacking or is not totally committed to obtaining marketing approval. By this notice, the Office of Orphan Products Development invites submission of a new drug application (NDA) for a preservative-free morphine preparation in a concentration of 50 milligrams per milliliter (mg/mL) for epidural use for treatment of severe chronic pain which responds inadequately to systemic analgesic therapy or when epidural administration is considered preferable to systemic administration.

FOR FURTHER INFORMATION CONTACT: Roger Gregorio, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4903.

SUPPLEMENTARY INFORMATION:

Preservative-Free Morphine for Intraspinal Use

The doses of systemically administered analgesics required for amelioration of severe chronic pain frequently leave the patient somnolent and unable to interact with the environment; moreover, the development of tolerance may result in inadequate pain relief even with very high dose levels.

In the past decade the presence of spinal cord opiate receptors was demonstrated in animals, and microgram doses of intraspinally administered morphine were shown to

inhibit nociceptive neurons, increase the pain threshold, and produce spinal segmental analgesia. Clinical investigations have demonstrated that intraspinal (epidural or intrathecal) administration of morphine produces marked and long lasting relief in patients suffering from severe chronic pain, and at much smaller dosage than that required for systemic use. Additional advantages of the intraspinal route are lack of depression of cognitive, sensory, and motor functions, so that the patients were frequently able to live independently with minimal health care supervision and to participate in normal activities within the limits of their underlying disease. Pharmacokinetic studies and dose-response studies in normal subjects with experimental pain and in patients with acute and chronic pain have provided a scientific approach to individual dosing needs and to avoidance of adverse respiratory, cardiovascular, and neurological effects of morphine.

Several medication systems involving partially or completely implanted intraspinal catheters with or without attachment to reservoirs or microinfusion pumps have been developed to facilitate optimum intermittent or continuous intraspinal infusion of morphine. FDA believes that preservative-free high concentration morphine preparations suitable for long-term intraspinal infusion may be beneficial for certain patients with severe chronic pain. FDA has also been requested by clinical investigators and medical device manufacturers to facilitate the development and marketing of such morphine preparations.

The proposed morphine 50 mg/mL for epidural use in severe chronic pain is considered a product for treatment of an uncommon condition: There were 440,620 total deaths due to cancer in 1983 in the United States, of which 179,100 were due to types of cancer most commonly associated with pain below the diaphragm (cancer of digestive organs, peritoneum—112,910; cancer of reproductive organs—47,880; urinary tract cancers—18,310)—NCHS, Monthly Vital Statistics Report 32, September 21, 1984. Available published and unpublished data indicate that the target subpopulation of patients with chronic pain expected to benefit from epidural morphine is primarily patients with malignancies in these areas. Patients with chronic pain of nonmalignant origin would comprise only a small additional fraction of the target population. Of the approximately 200,000 patients with lower region chronic pain, only a fraction would be candidates for continuous administration of morphine by the intraspinal route.

FDA advises that if orphan drug designation for the specific indication described in this notice is requested by a sponsor and granted under section 526 of the Orphan Drug Act, the sponsor would be eligible for benefits under the Act. Interim guidelines concerning requesting orphan designation are available from Roger Gregorio at the Office of Orphan Products Development (address above).

Morphine for Intrathecal Administration

FDA's Anesthetic and Life Support Drugs Advisory Committee met on April 10, 1985, to consider use of intrathecal administration of morphine in concentrations greater than the currently marketed 1 mg/mL preservative-free morphine. Based upon the results of clinical experience presented by several experts in the field, the Committee recommended that an NDA be considered for a 25 mg/mL concentration for intrathecal use in patients with refractory pain due to malignancy. FDA will entertain submission of such an NDA but it has not itself had an opportunity to review the data supporting the aforementioned concentration and use.

Morphine for Epidural Administration

FDA finds that there are sufficient data available in the published literature to invite submission of an NDA for preservative-free morphine in a concentration of 50 mg/mL (2 mL/ampule and 10 mL/ampule) for epidural use for treatment of severe chronic pain. It should be noted that the proposed 50 mg/mL morphine preparation should not be injected directly into the epidural space. The preparation is intended for dilution prior to administration, in accord with the patient's dosage requirement and the nature of the delivery system to be used. Direct clinical administration of a 50 mg/mL concentration in the epidural space would be considered investigational, and would require submission of an investigational exemption to assess its safety, including the reliability and chemical compatibility of any delivery system that might be designed for use with this high concentration of morphine.

The effectiveness of morphine for relief of pain is well known. The purpose of the requested NDA submission is to provide (1) data on appropriate dosage for safe and effective use by the epidural route in treatment of chronic pain and (2) manufacturing information on the dosage form intended for marketing.

Examples of published preclinical data that would support approval of an NDA for preservative-free morphine for epidural administration in treatment of chronic pain are as follows:

Yaksh (Ref. 1) published a comprehensive review of the principles of drug action involved in spinal opiate analgesia. In addition to reports of basic research in opiate receptors, the 230 published references listed in this paper include extensive data on pharmacology and toxicology of intraspinal morphine as well as interaction with opiate antagonists in several species including primates. Review and analysis of pertinent individual reports of such data would help support an NDA for use of epidural morphine in chronic pain.

Examples of published clinical data that would help support approval of an NDA for preservative-free morphine for epidural administration in treatment of severe chronic pain are as follows:

Effective Dosage

Behar et al. (Ref. 2) treated 10 patients (6 chronic, 4 acute pain) with epidural morphine 2 mg given one to three times daily for 2 to 3 days, interspersed with injections of bupivacaine or saline placebo. All patients experienced decreased pain within 2 to 3 minutes, maximum relief in 1 to 15 minutes, and duration of relief of 6 to 24 hours following morphine injection. Of the six patients with chronic pain, three reported 100 percent pain relief and three 50 percent relief. Two of three patients had slight pain relief, only at rest, after saline injection. Magora et al. (Ref. 3) treated 98 patients with severe pain (medical, surgical, obstetrical), including 16 cancer patients, with morphine 2 mg by repeat epidural injection (30 patients) and by indwelling epidural catheter (68 patients) for periods up to 8 days. Onset of effect occurred in 8 to 10 minutes, became maximal in 15 to 20 minutes and persisted 4 to 36 (average 8) hours. Overall effect was good in 56 percent (complete pain relief); fair in 23.5 percent (partial relief); poor in 20 percent (little or no relief). Twelve good and 4 fair results occurred in the 16 cancer patients. Effects were similar in patients with similar pain disorders, but differed widely between groups with different disorders. Coombs et al. (Ref. 4) treated seven cancer patients with refractory pain with morphine via implanted epidural catheter and microinfusion pump. Results included a trend toward increasing doses for adequate pain relief, e.g., mean 4 ±4.3

mg/day at 6 weeks increased to 8.9 ±10.8 mg/day at 12 weeks, with two of seven patients requiring 30 mg/day. There were no adverse effects reported. The patients characteristically slept and ate better. Crawford et al. (Ref. 5) reported the results of a retrospective survey of 105 patients with chronic pain in 8 major anesthesia departments in Denmark. The patients were treated with extradural opiates (morphine in 90; buprenorphine in 12; both drugs in 3) for 7 to 283 (mean 65) days, primarily as outpatients. Morphine 4 to 30 mg (mean 12.6 ±4.8 mg) per day, usually in 3 divided doses, was administered via implanted epidural catheter to 90 patients. Satisfactory pain relief with epidural opiates alone was reported by 70 patients; and an additional 21 patients required supplementary analgesics. Transient side effects in 62 patients receiving only epidural morphine included: Urinary retention in 3, nausea and vomiting in 6, dizziness in 2, constipation in 2, tolerance in 11. Postmortem histopathology of the dura mater in 10 patients treated for 14 to 182 days showed no treatment-related abnormalities.

Examples of studies providing supportive evidence of appropriate dosage include: Howard et al. (Ref. 6), Findler et al. (Ref. 7), Poletti et al. (Ref. 8), Zenz et al. (Ref. 9), Chrubasik (Ref 10), and Delhaas (Ref. 11).

Adverse Effects

The papers listed under *Effective Dosage* (above) and *Pharmacokinetics* (below) contain information about side effects experienced by some patients. The following papers primarily involve reports of severe adverse reactions that emphasize the need for careful dosage adjustment and prolonged monitoring; in addition, they describe treatment of these reactions. The most serious side effects have included respiratory depression (Christensen (Ref. 12)) and urinary retention (Peterson (Ref. 13)). The incidence of these and other adverse effects has been described in Reiz et al. (Ref. 14) and Gustafson et al. (Ref. 15). In addition, Reiz et al. compared the incidence of adverse effects following epidural and intravenous morphine.

Pharmacokinetics/Clinical Pharmacology

Bromage et al. (Ref. 16) compared effects of morphine, 10 mg I.V. and epidurally, in six male volunteers. Nordberg et al. (Ref. 17) compared dose-response effects and plasma and CSF pharmacokinetics of epidural morphine, 2, 4, and 6 mg in 20 postoperative patients. Jorgensen et al. (Ref. 18) compared cerebrospinal fluid and plasma levels of epidural and intrathecal morphine in six surgical patients. Useful supportive information may be found in Chauvin et al. (Ref. 19), Thompson et al. (Ref. 20), and Torda et al. (Ref. 21).

The following information should be submitted in an NDA:

1. Manufacturing controls information.

2. Pertinent published or unpublished reports of the effects of epidural morphine in animals.

3. Pertinent published and unpublished reports, with appropriate summary and analysis, of the effects of epidural morphine in patients with severe chronic pain. Published and unpublished reports concerning pharmacokinetic studies and dose-response effects should be included.

4. Draft labeling to include appropriate warning information, methods of treatment of adverse effects, detailed information on the technique of epidural administration, and appropriate dilution methods.

5. For purposes of providing adequate labeling, information on the chemical and functional compatibility and appropriateness of the NDA sponsor's morphine preparation with various solutions used for dilution and with several pumps and catheters available for epidural administration.

Pharmacokinetic studies of the applicant's drug are not required if the drug is labeled with instructions for appropriate dilution for bolus use and use by continuous epidural infusion when such instructions are based upon published and unpublished data supporting safe and effective use at the recommended concentrations. Use of the product at higher concentrations for treatment of chronic pain would be considered investigational and may require appropriate studies to establish both plasma and CSF profiles of morphine in conjunction with the specific delivery system to be used.

Bioavailability studies of the applicant's drug are not required for the following reasons:

Dosage titration is used in each patient to obtain optimum analgesia.

Under 21 CFR 320.22(e) FDA may waive a requirement for submission of in vivo bioavailability data when such action is compatible with the public health. The product to be marketed must meet existing manufacturing standards, and products of this nature have been tested in patients with severe chronic pain and found to be sufficiently bioavailable to provide effective pain relief. This relief occurs with doses that are lower when given epidurally than when given parenterally.

Special Packaging Requirement

Because of the potential dangers of administration of the 50 mg/mL product undiluted, FDA will require that the product be packaged in such a way as to emphasize the need for dilution.

FDA will be pleased to meet with potential sponsors to discuss the data and requirements. Manufacturers interested in submitting an NDA should contact Roger Gregorio (address above).

References

Copies of references cited above are on display in the Documents Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Pharmacology

1. Yaksh, T. L., *Pain*, 11:293-346, 1981.

Effective Dosage

2. Behar, M., et al., *Lancet*, 1:527-528, 1979.

3. Magora, F., et al., *British Journal of Anesthesia*, 52:247-251, 1980.

4. Coombs, et al., *Anesthesiology*, 56:469-473, 1982; *Lancet*, 2:425-426, 1981; and *Journal of Neurosurgery*, 56:803-806, 1982.

5. Crawford, M. E., et al., *Pain*, 16:41-47, 1983.

6. Howard, R. P., et al., *Anesthesia*, 36:51-53, 1981.

7. Findler, G., et al., *Pain*, 14:311-315, 1982.

8. Poletti, C. E., et al., *Journal of Neurosurgery*, 55:581-584, 1981.

9. Zenz, M., et al., *Lancet*, 1:91, 1981.

10. Chrubasik, J., *Lancet*, 1:107, 738, and 793, 1984.

11. Delhaas, E. M., *Lancet*, 1:690, 1984.

Adverse Effects

12. Christensen, V., *British Journal of Anesthesia*, 52:841, 1980.

13. Peterson, T. K., et al., *British Journal of Anesthesia*, 54:1175, 1982.

14. Reiz, S., et al., *Lancet*, 2:203-204, 1980.

15. Gustafson, L. L., et al., *British Journal of Anesthesia*, 54:479-485, 1982.

Pharmacokinetics/Clinical Pharmacology

16. Bromage, P. R., et al., *Anesthesiology*, 55:A149, 1981.

17. Nordberg, G., et al., *Anesthesiology*, 58:545–551, 1983.

18. Jorgensen, B. C., et al., *Anesthesiology*, 55:714, 1981.

19. Chauvin, M., et al., *British Journal of Anesthesia*, 53:911–913, 1981.

20. Thomspon, W. R., et al., *Canadian Anesthetists' Society Journal*, 28:530–536, 1981.

21. Torda, T. A., et al., *British Journal of Anesthesia*, 52:930–943, 1980.

Dated: April 19, 1985.

Marion J. Finkel,

Director, Orphan Products Development.

[FR Doc. 85–9957 Filed 4–24–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Public Lands in Lake County, OR

Correction

In FR Doc. 85–8359 beginning on page 13882 in the issue of Monday, April 8, 1985, make the following correction:

The table appearing on page 13882 and on the top of page 13883 was inaccurate and is corrected and set forth in its entirety below:

Serial and parcel No.	Legal description/acreage, Willamette Meridian, OR.	Acres	Minimum bid	Bid deposit
OR 34957C	T.27S., R.17E.	40	$3,400	$1,020
Parcel #1	Sec. 15: SW¼ SW¼.			
OR 34957D	T.27S., R.17E.	100	8,500	2,550
Parcel #2	Sec. 14: SE¼ SW¼.			
	Sec. 23: NE¼ NW¼, S½NW¼NW¼.			
OR 34957E	T.27S., R.17E.	160	13,600	2,720
Parcel #3	Sec. 23: S½ NW¼, N½ SW¼.			
OR 36015	T.25S., R.18E.	40	3,200	960
Parcel #4	Sec. 5: SE¼ SE¼.			
OR 36016	T.25S., R.18E.	40	3,200	960
Parcel #5	Sec. 17: NE¼ NE¼.			
OR 36017	T.26S., R.19E.	34.52	3,000	900
Parcel #6	Sec. 6: Lot 5.			
OR 36018	T.26S., R.18E.	160	13,600	2,720
Parcel #7	Sec. 25: SW¼.			
OR 36019	T.27S., R.17E.	237.46	19,000	3,800
Parcel #8	Sec. 31: SE¼ NE¼, E½SE¼. Sec. 32: S½ NW¼.			
	T.28S., R.17E.			
	Sec. 6: Lot 1.			
OR 36020	T.28S., R.18E.	80	6,400	1,920
Parcel #9	Sec. 11: SW¼ NW¼, NW¼ SW¼.			
OR 36263	T.25S., R.19E.	40	3,200	960
Parcel #10	Sec. 29: SW¼ SW¼.			
OR 36284	T.25S., R.19E.	120	9,600	2,880
Parcel #11	Sec. 29: E½ SE¼ SW¼SE¼.			
OR 36285	T.25S., R.19E.	160	12,800	2,560
Parcel #12	Sec. 28: NE¼.			
OR 36286	T.26S., R.18E.	320	27,200	5,440
Parcel #13	Sec. 13: S½.			
OR 36287	T.28S., R.16E.	199.49	16,000	3,200
Parcel #14	Sec. 1: lots 1 thru 4, SW¼ NE¼ S½ NW¼.			
	Sec. 2: lot 1.			
OR 36857B	T.27S., R.17E.	80	6,000	1,800
Parcel #15	Sec. 27: SW¼ SW¼.			
	Sec. 28: SE¼ SE¼.			

BILLING CODE 1505–01–M

Arizona Strip District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Arizona Strip District Grazing Advisory Board will be held at 9 a.m. on Monday, May 13, 1985 at the Sugar Loaf Restaurant, 290 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 196 East Tabernacle, St. George, Utah 84770 (801/673–3545).

SUPPLEMENTARY INFORMATION: Primary topics on the agenda will be rangeland projects, implementation, and project maintenance. The meeting is open to the public. Interested persons may make oral statements at 3 p.m. or file written statements for the Board's consideration. Those wishing to make statements should contact the district manager by May 10, 1985.

Raymond D. Mapston,

Acting Arizona Strip District Manager.

April 18, 1985.

[FR Doc. 85–10042 Filed 4–24–85; 8:45 am]

BILLING CODE 4310–84–M

Arizona; Yuma District Advisory Council Public Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Yuma (Arizona) District Advisory Council Meeting.

SUMMARY: The Bureau of Land Management, Yuma District Advisory Council will meet from 9:00 a.m. to 3:00 p.m., May 17, 1985, at the City Council Chambers, 1314 11th Street, Parker, Arizona.

The agenda for the meeting includes:

1. District Manager's Update
2. Resource Management Plan
3. Concession Management
4. Advisory Council Initiated Topics

The public is invited to attend. Public comments will be received by the Council at 2:00 p.m. and at appropriate times during the meeting. Individuals wishing to make statements should advise the District Manager by 4:00 p.m., May 16, 1985, so that time may be reserved.

Minutes of the meeting will be made available for review and reproduction with in 30 days following the meeting.

Dated: April 18, 1985.

J. Darwin Snell,

District Manager.

[FR Doc. 85–10043 Filed 4–24–85; 8:45 am]

BILLING CODE 4310–32–M

[Group 811]

California; Filing of Plat of Survey

April 19, 1985.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Shasta County

T. 37 N., R. 3 W.
T. 38 N., R. 3 W.

2. These plats, representing the dependent resurvey of a portion of the west and north boundaries, of Township 36 North, Range 2 West, the dependent resurvey of the east boundary, and a portion of the north boundary, of Township 36 North, Range 4 West, the dependent resurvey of the south, east, and west boundaries, of Township 37 North, Range 3 West, and the dependent resurvey of the south boundary and a portion of the east boundary, of Township 38 North, Range 3 West, Mount Diablo Meridian, under Group No. 811, California, were accepted March 11, 1985.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management, Department of Agriculture, U.S. Forest Service, and the Southern Pacific Land Company.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR Doc. 85–10054 Filed 4–24–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 831]

California; Filing of Plat of Survey

April 18, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Inyo County

T. 14 S., R. 38 E.

2. This plat, representing the dependent resurvey of portions of the east boundary and subdivisional lines, and the survey of the subdivision of sections 11, 13, 14, 15, 16, 22, 23, 26, and 27, Township 14 South, Range 38 East, Mount Diablo Meridian, under Group No. 831, California, was accepted March 12, 1895.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–10062 Filed 4–24–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 762]

California; Filing of Plat of Survey

April 18, 1985.

1. These plats of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Humboldt Meridian, Siskiyou County

T. 15 N., R. 6 E.
T. 15 N., R. 7 E.
T. 15 N., R. 8 E.
T. 16 N., R. 6 E.
T. 16 N., R. 7 E.

2. These plats, representing the dependent resurvey of a portion of the west boundary, subdivisional lines, subdivision of section 7, certain Mineral Surveys, Homestead Entry Surveys and Indian Allotment Surveys, the survey of the subdivision of section 7, and the metes-and-bounds survey of Tracts 43–52, Township 15 North, Range 7 East, in six (6) sheets, the metes-and-bounds survey of Tracts 37A, 37B, 38, and 39, Township 15 North, Range 6 East, the dependent resurvey of Homestead Entry Survey Nos. 156 and 222, and the metes-and-bounds survey of Tract 37, Township 15 North, Range 8 East, and the dependent resurvey of the Third Standard Parallel North, on a portion of the south boundaries of Tps. 16 N., Rs. 6 and 7 E., and the metes-and-bounds survey of Tract 61, Township 16 North, Range 7 East, Humboldt Meridian, under Group No. 762, California, were accepted March 29, 1985.

3. These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

4. These plats were executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–10063 Filed 4–24–85; 8:45 am]

BILLING CODE 4310–40–M

[Group 890]

California; Filing of Plat of Survey

April 18, 1985.

1. This plat of survey of the following described land will be officially filed in the California State Office, Sacramento, California, immediately:

Mount Diablo Meridian, Inyo County

T. 5 S., R. 37 E.

2. This plat, representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 28, Township 5 South, Range 37 East, Mount Diablo Meridian, under Group No. 890, California, was accepted March 20, 1985.

3. This plat will immediately become the basic record for describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E–2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Records & Information Section.

[FR Doc. 85–10064 Filed 4–24–85; 8:45 am]

BILLING CODE 4310–40–M

Colorado; Craig District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92–463, that a meeting of the Craig District Grazing Advisory Board will be held June 13 and 14, 1985 at the White River Resource Area office of the Bureau of Land Management, P.O. Box 928, Highway 64, Meeker, Colorado. The meeting will convene at 10:00 a.m.

The meeting will consist of a short discussion of old business and any other concerns brought forth by the public, followed by a tour of range improvement work in the White River Resource Area.

The meeting is open to the public. Interested persons may make oral statements to the board between 10:00 a.m. and 11:00 a.m., June 13, 1985, or file written statements for the board's consideration. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Dated: April 16, 1985.

William J. Pulford,

District Manager.

[FR Doc. 10059 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-JB-M

Montana; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub.L. 97-451, a petition for reinstatement of oil and gas lease M 44406, Lewis & Clark County, Montana was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in Sec. 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: April 12, 1985.

Judith I. Reed,

Acting Chief, Fluids Adjudication Section.

[FR Doc. 85-10041 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-85-M

Wyoming; Rawlins District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior, Rawlins District Office, Rawlins, Wyoming.

ACTION: Notice of Meeting of the Rawlins District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 that a meeting of the Rawlins District Advisory Council will be held.

DATE: May 23, 1985.

ADDRESS: The Bel Air Inn, 23rd and Spruce Streets, Rawlins, Wyoming.

FOR FURTHER INFORMATION CONTACT: Beverly Kolkman, Public Information Officer, or Mike Karbs, Associate District Manager, Rawlins District, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301 (307) 324-7171.

SUPPLEMENTARY INFORMATION: The meeting will begin at 10 a.m. at the Bel Air. The agenda for this meeting will include:

1. BLM/Forest Service Interchange Program.
2. Lander Resource Management Plan.
3. Operation Respect and Hunter Access Program.
4. Cooperative Management Agreement.
5. Update on Wild Horse Program.
6. Election of Officers.

The meeting is open to the public. Interested persons may make oral statements to the council at 2:00 p.m. or file wirtten statements for the council's consideration. Anyone wishing to make an oral statement should notify the District Manager on or before May 16, 1985. Depending on the number of persons who want to make a statement, a time limit may be established.

Summary minutes will be available for review within 30 days after the meeting at the Rawlins District office. Copies of the minutes may be obtained for the cost of duplication.

Richard Bastin,

District Manager.

[FR Doc. 85-10040 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-22-M

Planning Activity; Amendment to Great Falls Resource Area

AGENCY: Lewistown District Office, Great Falls Resource Area Office.

ACTION: Notice of Planning Activity—Amendment to Great Falls Resource Area Portion of the Headwaters Resource Area Resource Management Plan.

SUMMARY: 1. The proposed planning action will pursue a category 1 planning amendment to the Great Falls Resource Area portion of the Headwaters Resource Management Plan (RMP). This amendment is for the purpose of considering a special designation for an area of critical environmental concern (ACEC) for approximately 1,000 acres of public land obtained through a land exchange (Realty Action M-59763) which was consummated after completion of the final Headwaters RMP (October, 1983) and subsequent Record of Decision (July, 1984). This amendment is modest in nature as it will involve only one issue and will address only a portion of the resource area.

The acreage acquired through this land exchange contains significant scenic, recreational, and wildlife resources that are of special worth and involve more than local significance. The criteria for an ACEC designation specifies (1) *relevance* and (2) *importance* as found in 43 CFR 1610.7-2 appears to be met.

2. The geographic area to be planned is located on the Rocky Mountain Front, Teton County, Montana. Specifically, the land under consideration is located in PMM T. 24 N., R. 8 W., Section 5, 6, 7, and 8 in management unit 01 of the existing resource management plan.

3. The main issue involved in this amendment is related to special designations and how the land should be managed with regard to a special designation. Principal considerations include the effects that a special designation would have in providing additional management emphasis for the protection of important surface resources (principally wildlife and recreation) and resource development opportunities. The decisions needed include:

a. Should all, portions, or none of the acquired acreage receive special designation?

b. How should the area be managed once given special designation of if given special designation?

c. Given the special designations available to the BLM, which type of special designation would be most appropriate under the ACEC concept?

4. The disciplines to be represented on the interdisciplinary team for the environmental analysis are:

a. Wildlife Biologist
b. Range Conservationist
c. Recreation/Cultural Specialists
d. Geologist

5. The public will be invited to participate in selection of planning criteria, scoping, defining alternatives, and reviewing the environmental assessment.

6. No meetings are scheduled at this time, as meetings are set, they will be announced in the local media.

7. For further information on this planning action contact: Nancy Cotner, Area Manager, USDI Bureau of Land Management, Great Falls Resource Area, P.O. Box 2865, Great Falls, MT 59403.

8. All relevant planning documents are located at the above address and are available for public inspection and information at the same address during normal working hours (7:45 a.m.-4:30 p.m.).

Dated: April 18, 1985.

Glenn W. Freeman,

District Manager.

[FR Doc. 85-10061 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-85-M

[A-20347]

Realty Action; Designation of Public Lands To Be Included in State Exchange in Cochise, Graham, and Greenlee Counties, AZ

AGENCY: Bureau of Land Management, Safford District, Interior.

ACTION: Designation of public lands for transfer out of federal ownership in exchange for lands owned by the State of Arizona.

SUMMARY: BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Gila and Salt River Meridian

(Gila Box Group)

T. 4 S., R. 30 E.
Sec. 33: Lots 4, 5.
T. 5 S., R. 30 E.
Sec. 1: lots 1–4, S½N½, S½;
Sec. 3: lots 1–4, S½N½, S½;
Sec. 4: lots 1, 2, 5–10, S½NE¼, SW¼SW¼, SE¼;
Sec. 5: lots 1–4, SE¼NE¼, SW¼NW¼, W½SW¼, SE¼SW¼, SE¼;
Sec. 8: NW¼, NE¼SW¼;
Sec. 10: E½.
T. 5 S., R. 31 E.
Sec. 7: lot 8, SW¼NE¼.

The lands described above comprise 3060.68 acres, more or less, in Greenlee County.

(Hackberry Group)

T. 8 S., R. 29 E.
Sec. 22: S½N½, S½;
Sec. 23: S½N½, S½;
Sec. 24: S½N½, S½;
Sec. 25: all;
Sec. 26: all;
Sec. 27: all;
Sec. 34: all;
Sec. 35: all.
T. 9 S., R. 29 E.
Sec. 4: lot 1, SE¼NE¼, E½SE¼;
Sec. 9: all;
Sec. 21: N½, N½S½.
T. 10 S., R. 29 E.
Sec. 1: lots 1–4, S½N½, S½;
Sec. 2: lots 1–4, S½N½, S½ (no U.S. minerals);
Sec. 3: SE¼NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 9: E½NE¼;
Sec. 10: all;
Sec. 11: all;
Sec. 12: all;
Sec. 13: N½;
Sec. 14: N½, SW¼;
Sec. 15: E½;
Sec. 23: W½;
Sec. 25: all;
Sec. 26: all;
Sec. 34: SE¼;
Sec. 35: all;
Sec. 36: lots 1–4, W½NE¼, NW¼, N½SW¼, W½SE¼.
T. 8 S., R. 30 E.
Sec. 20: S½SW¼, SW¼SE¼;
Sec. 27: SW¼SW¼;
Sec. 30: lots 1–4, E½W½, SE¼.
T. 9 S., R. 30 E.
Sec. 1: lots 3, 4, SW¼NW¼, SW¼, S½SE¼;
Sec. 12: all;
Sec. 13: all;
Sec. 14: all;
Sec. 23: all;
Sec. 24: all;
Sec. 25: all;
Sec. 26: all;
Sec. 35: all.
T. 10 S., R. 30 E.
Sec. 11: all;
Sec. 13: SE¼NE¼, NW¼, NW¼SW¼, E½SE¼;
Sec. 14: all;
Sec. 22: S½S½;
Sec. 23: all;
Sec. 24: N½N½, SW¼NW¼, W½SW¼;
Sec. 26: N½N½, SW¼NW¼, SW¼;
Sec. 27: NW¼.
T. 9 S., R. 31 E.
Sec. 7: lots 1–4;
Sec. 18: lots 1–4, E½W½;
Sec. 19: lots 1–4, W½NE¼, E½W½, NW¼SE¼;
Sec. 30: lots 1–4;
Sec. 31: lots 1, 4.
T. 10 S., R. 31 E.
Sec. 6: lots 4–7, E½SW¼;
Sec. 7: lots 1–4, E½W½;
Sec. 18: lots 1, 2.
T. 11 S., R. 31 E.
Sec. 6: lots 3, 4.

The lands described above comprise 184 acres, more or less, in Greenlee County and 24,576.81 acres, more or less, in Graham County.

(Pima/Thatcher Group)

T. 6 S., R. 24 E.
Sec. 20: E½, E½W½;
Sec. 21: N½NW¼, SW¼NW¼, NW¼SW¼;
Sec. 25: NW¼NW¼;
Sec. 28: SW¼, NW¼SE¼;
Sec. 27: all;
Sec. 28: all;
Sec. 29: E½, E½W½;
Sec. 30: lot 2;
Sec. 31: lots 2–4, S½NE¼, SE¼NW¼, SE¼;
Sec. 32: W½, E½NE¼ (no U.S. minerals);
Sec. 33: all;
Sec. 34: NE¼, W½, N½SE¼, SW¼SE¼;
Sec. 35: E½NE¼, NW¼, N½SW¼, NE¼SE¼, S½NE¼.
T. 7 S., R. 24 E.
Sec. 1: lots 3, 4;
Sec. 2: lots 1–3, S½N½, S½;
Sec. 3: lot 4, SW¼NW¼;
Sec. 4: lots 1–4, SE¼NE¼, SW¼NW¼, NW¼SW¼;
Sec. 5: lots 1–4, S½NE¼, S½NW¼, N½SW¼, SW¼SW¼, S½SE¼;
Sec. 6: lots 1–6, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7: lots 1–4, N½NE¼, SW¼NE¼, E½W½, S½SE¼;
Sec. 8: NW¼NW¼, W½SW¼, S½SE¼;
Sec. 9: S½NE¼, W½;
Sec. 10: S½NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 11: all;
Sec. 12: W½SW¼;
Sec. 13: NW¼NW¼;
Sec. 14: N½N½, S½NW¼, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 15: N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 17: NE¼, SE¼;
Sec. 19: lots 2–4, W½NE¼, E½W½, SE¼;
Sec. 20: NW¼SW¼;
Sec. 22: all;
Sec. 23: lots 1, 2, W½NW¼.
T. 7 S., R. 25 E.
Sec. 5: lots 1, 4, SE¼NE¼, E½SW¼, N½SE¼;
Sec. 7: SW¼SE¼;
Sec. 8: E½NE¼, E½NW¼, SW¼NW¼, E½SW¼, SE¼;
Sec. 17: all;
Sec. 18: SE¼NE¼;
Sec. 19: lots 1–4, E½, E½W½;
Sec. 20: W½NE¼, NW¼, N½SW¼, SW¼SW¼;
Sec. 30: lots 1–4, N½NE¼, E½W½.

The lands described above comprise 15,041.24 acres, more or less, in Graham County.

(Cochise Group)

T. 17 S., R. 20 E.
Sec. 21: SE¼NW¼, SE¼SE¼;
Sec. 22: NE¼NW¼, NW¼SW¼.
T. 18 S., R. 20 E.
Sec. 13: lot 1, W½NE¼, S½NE¼, SW¼, NW¼SE¼;
Sec. 23: NE¼, E½NW¼;
Sec. 24: lots 1, 2, W½NE¼, NW¼.
T. 19 S., R. 20 E.
Sec. 5: lots 1–4, S½N½, N½S½, S½SW¼, SW¼SE¼.
T. 20 S., R. 20 E.
Sec. 13: NE¼, NE¼SW¼, NW¼SE¼;
Sec. 22: lot 2;
Sec. 23: NW¼NE¼;
Sec. 24: E½NE¼, SW½NE¼, E½SW¼, SE¼;
Sec. 26: SE¼NW¼;
T. 17 S., R. 21 E.
Sec. 13: all.
T. 18 S., R. 21 E.
Sec. 32: lots 5, 6.
T. 19 S., R. 21 E.
Sec. 14: W½NE¼, NW¼;
Sec. 15: N½.
T. 20 S., R. 21 E.
Sec. 18: SE¼SE¼, S½NE¼, NE¼SW¼, W½NW¼.
T. 19 S., R. 22 E.
Sec. 5: lots 1–4, S½N½, S½;
Sec. 6: lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 9: NE¼, NE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 19: Lots 1–4, S½SE¼, E½NE¼, E½W½, SE¼;
Sec. 21: S½S½;
Sec. 22: all;
Sec. 23: N½, N½SW¼, NW¼SE¼;
Sec. 25: SE¼NE¼;
Sec. 26: NW¼SW¼;
Sec. 27: N½N½;
Sec. 28: N½N½.

T. 19 S., R. 23 E.
Sec. 30: Lots 2–4, E½, E½W½.
T. 21 S., R. 23 E.
Sec. 22: all;
Sec. 23: SW¼NE¼, W½, E½SE¼;
Sec. 26: W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 27: E½.
T. 22 S., R. 24 E.
Sec. 20: NE¼, E½NW¼, NW¼NW¼, NW¼SE¼;
Sec. 22: N½NW¼, SE¼NW¼;
Sec. 24: lot 1, NW¼NE¼, NE¼NW¼;
Sec. 25: lots 2–4, SW¼NE¼, W½NW¼, SE¼NW¼, SW¼, W½SE¼.
T. 21 S., R. 25 E.
Sec. 29: all;
Sec. 31: Lots 1–7, NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 33: Lots 1–4, N½, W½SW¼.
T. 22 S., R. 25 E.
Sec. 5: lots 1–4, S½N½, S½;
Sec. 19: E½E½;
Sec. 28: S½SW¼, W½SE¼;
Sec. 29: W½, W½E½;
Sec. 30: Lots 1, 2, E½NW¼.
T. 19 S., R. 26 E.
Sec. 16: S½ (no U.S. minerals).
T. 21 S., R. 26 E.
Sec. 31: Lot 4, SE¼SW¼.
T. 19 S., R. 27 E.
Sec. 17: SW¼SW¼.
T. 20 S., R. 27 E.
Sec. 24: S½N½, NW¼NW¼, S½;
Sec. 25: N½, SE¼;
Sec. 22: SE¼SE¼;
Sec. 27: NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 28: S½;
Sec. 34: N½, SW¼.
T. 13 S., R. 28 E.
Sec. 1: lots 1–4, S½N½, S½;
Sec. 5: SW¼, W½SE¼ (those portions south of old State Highway 86);
Sec. 6: SE¼SE¼;
Sec. 8: E½NW¼NE¼, SW¼NW¼NE¼, SE¼NE¼NW¼, NW¼NW¼;
Sec. 12: N½.
T. 20 S., R. 28 E.
Sec. 6: lot 1;
Sec. 7: lot 4;
Sec. 18: lot 1;
Sec. 19: lot 4, SE¼SW¼;
Sec. 30: lot 1, NW¼NW¼;
Sec. 31: lot 4, SE¼SW¼.
T. 21 S., R. 28 E.
Sec. 5: lots 1–4, S½N½;
Sec. 6: lots 1–11, S½NE¼, SE¼NW¼, E½SW¼;
Sec. 7: N½NE¼, SE¼NE¼;
Sec. 8: N½NW¼, SW¼NW¼, SE¼SW¼, S½SE¼, NE¼SE¼;
Sec. 18: NW¼NE¼, NE¼NW¼, NE¼SE¼;
Sec. 19: lot 2, NE¼, E½NW¼, N½SE¼;
Sec. 20: NW¼SW¼;
Sec. 30: Lots 1, 2, NE¼NW¼, S½SE¼;
Sec. 35: NE¼, E½SE¼.
T. 22 S., R. 28 E.
Sec. 6: lots 1–5, S½SE¼;
Sec. 7: W½E½;
Sec. 18: NW¼NE¼;
Sec. 23: SW¼NW¼;
Sec. 30: lot 5;
Sec. 34: S½S½.
T. 23 S., R. 28 E.
Sec. 3: lots 1, 2, 4, SW¼NW¼, NW¼SW¼;
Sec. 10: SE¼NE¼;
Sec. 11: N½NW¼.
T. 24 S., R. 28 E.
Sec. 11: SE¼NE¼, N½NW¼NW¼, W½SW¼;
Sec. 13: E½NW¼.
T. 13 S., R. 29 E.
Sec. 7: lots 1, 2, E½NW¼.
T. 22 S., R. 29 E.
Sec. 15: W½E½, E½SW¼;
Sec. 24: NW¼NE¼;
Sec. 25: SW¼SE¼NE¼, SE¼SW¼NE¼, NE¼NW¼SE¼, NW¼NE¼SE¼;
Sec. 31: SE¼SE¼.
T. 24 S., R. 29 E.
Sec. 1: SW¼NE¼;
Sec. 5: SE¼SW¼, SE¼SE¼;
Sec. 6: E½NE¼;
Sec. 15: W½;
Sec. 17: E½SW¼, SE¼.
T. 15 S., R. 30 E.
Sec. 1: lots 1–7, SW¼NE¼, S½NW¼, SW¼, W½NE¼;
Sec. 12: lots 1–4, W½E½, W½;
Sec. 25: N½SW¼.
T. 16 S., R. 30 E.
Sec. 1: lots 1–11, SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 11: NE¼, N¼SE¼;
Sec. 12: lots 1–4, W½E½, E½NW¼, NE¼SW¼;
Sec. 13: lots 1–4, W½E½;
Sec. 14: SW¼NE¼;
Sec. 23: S½SE¼;
Sec. 24: lots 1–4, W½E½, SE¼NE¼, NE¼SW¼, S½SW¼;
Sec. 25: lots 1, 2, W½NE¼, NE¼NW¼.
T. 21 S., R. 30 E.
Sec. 18: lots 3, E½SW¼, SE¼;
Sec. 19: NE¼, NE¼NW¼ E½SE¼;
Sec. 30: E½.
T. 15 S., R. 31 E.
Sec. 1: SW¼;
Sec. 3: Lots 3, 4, SW¼ NE¼, S½ NW¼, SW¼, W½ SE¼;
Sec. 4: Lots 1–4, S½ N½, S½;
Sec. 8: all;
Sec. 9: all;
Sec. 10: W½ NE¼, W½;
Sec. 13: all; (E½ no U.S. minerals);
Sec. 15: W½, W½ SE¼;
Sec. 16: all;
Sec. 17: all;
Sec. 20: all;
Sec. 21: all;
Sec. 22: all;
Sec. 23: all;
Sec. 25: all;
Sec. 26: E½, NW¼, N½ SW¼;
Sec. 27: all;
T. 16 S., R. 31 E.
Sec. 1: S½;
Sec. 4: Lots 5–9, SW¼ NE¼, S½ NW¼, NW¼ SE¼;
Sec. 5: Lots 1–4, S½ N½, S½;
Sec. 6: Lots 1–3, 8–20;
Sec. 7: Lots 5–18, S½ SE¼;
Sec. 8: all;
Sec. 11: all;
Sec. 12: all;
Sec. 13: all;
Sec. 17: lots 1–5, NW¼ NW¼, SW¼;
Sec. 18: lots 4–11, E½;
Sec. 19: lots 1–3, 5–13, N½ NE¼, E½ NW¼;
Sec. 20: Lots 1–10, N½ NE¼, S½ SW¼, E½ SE¼;
Sec. 21: W½ NW¼;
Sec. 28: lots 1–4;
Sec. 29: lots 5, 6;
Sec. 30: lots 5, 6, W½ NE¼, S½ NW¼ (outside mineral survey);
Sec. 33: lots 3–6;
Sec. 34: NW¼ SE¼.
T. 17 S., R. 31 E.
Sec. 22: Lots 4, 5, 8–14.
T. 15 S., R. 32 E.
Sec. 3: lots 1–4, S½ N½, S½
Sec. 4: lots 1, 2, S½ NE¼, E½ SW¼, SE¼
Sec. 5: lots 1, 2, S½ NE¼ (No U.S. Minerals) SW¼, W½ SE¼;
Sec. 6: lots 6, 7, E½ SW¼;
Sec. 7: lots 1, 2, NE¼, E½ NW¼, SE¼ SW¼, SE¼;
Sec. 8: NW¼, SE¼;
Sec. 9: lots 1–4, N½ N½, NE¼ NE¼, SW¼ NW¼, NW¼ SW¼, NE¼ SE¼;
Sec. 10: lot 1, N½, SW¼, N½ SE¼, SW¼ SE¼;
Sec. 11: lots 5–8;
Sec. 14: lot 1;
Sec. 15: lots 1–3, NW¼ NW¼;
Sec. 17: N½;
Sec. 18: lots 1–4, E½W½, E½;
Sec. 19: lots 1–4, E½ W½, E½;
Sec. 30: lots 1–3, 5, E½ W½, E½;
Sec. 31: lots 3–8, E½, E½ SW¼;
T. 17 S., R. 32 E.
Sec. 6: NW¼ NE¼;
Sec. 10: S½ NE¼, NW¼ SE¼;
Sec. 11: lots 1, 2;
Sec. 15: NW¼ NW¼, S½ N½, W½ SW¼;
Sec. 21: N½, N½ SE¼;
Sec. 22: N½ NE¼, W½ NW¼, SW¼, S½ SE¼;
Sec. 23: lots 1, 2, 4;
Sec. 26: lots 1–4;
Sec. 27: E½, E½ W½.
T. 18 S., R. 32 E.
Sec. 8: SW¼ NW¼.
T. 22 S., R. 32 E.
Sec. 17: NW¼, N½ SW¼, SE¼ SW¼;
Sec. 20: NE¼ NW¼, S½ NW¼, SW¼.

The lands described above comprise 58,680.27 acres, more or less, in Cochise County.

The above described lands will be segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent to the State of Arizona or upon expiration of two years from the effective date, or by publiction of a Notice of Termination by the Authorized Officer, whichever comes first.

Final determination on disposal will await completion of an environmental analysis.

DATE: For a period of 45 days from date of publiction in the **Federal Register** interested parties may submit comments to the Safford District Manager, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: Detailed informtion concerning the exchange is available at the Safford District Office.

Dated: April 16, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-10046 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-32-M

[A-9272]

Realty Action, Public Land Sale; Coconino County, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action—Sale, Public Lands in Coconino County, Arizona.

SUMMARY: The following described public land has been identified as suitable for disposal under sections 203(a) and 209(a) of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 90 Stat. 2757, 43 U.S.C. 1719). The land will be offered for sale at not less than the appraised fair market value indicated below.

Gila and Salt River Meridian, Coconino County, Arizona

T. 27 N., R. 9 E.,
Sec. 6, lots 3 thru 10, inclusive, SE¼NW¼, E½SW¼, N½SE¼, and SE¼SE¼.

Containing 463.46 acres, more or less, at a Fair Market Value of $93,000.00.

A mineral report has indicated that the federal minerals, with the exception of oil and gas, have no known mineral value. The declared high bidder will therefore be required to submit a $50.00 non-returnable filing fee for the acquisition of the mineral estate. Oil and gas will be reserved to the United States.

The method of sale will be by sealed bid. Sealed bids must be received in the BLM Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401, not later than 4:30 p.m. on Monday, June 24, 1985. Bids must be accompanied by not less than ten percent (10%) of the bid price. Should the land not be sold by close of business June 24, 1985, it will be available for purchase over-the-counter at the above location and at the BLM Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The land will be patented subject to the following terms and conditions:

1. Reserving to the United States a right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

2. Reserving to the United States all the oil and gas in the land, and to it or persons authorized by it, the right to prospect for, mine, and remove the same.

3. Reserving to the United States a right-of-way for highway purposes as provided under the authority of the Act of November 9, 1921 (PHX-086841).

4. Reserving to the United States a right-of-way for electric transmission line purposes as provided under the authority of the Act of October 21, 1976 (AR-012874).

5. Subject to such rights for road right-of-way purposes as provided under the authority of the Act of October 21, 1976 (A-17505).

6. Subject to such rights for electric line right-of-way purposes as provided under the authority of the Act of October 21, 1976 (AR-032475).

7. Subject to such rights for telephone line right-of-way purposes as provided under the authority of the Act of October 21, 1976 (AR-034623).

8. Subject to such rights for pipeline and oxidation pond right-of-ways as provided under the authority of the Act of October 21, 1976 (A-10861).

As provided in 43 CFR 2711.1-2(d), the public lands described herein shall be segregated to the extent that they will not be subject to appropriation under the public land laws, including the mining laws, but not the mineral leasing laws. Any subsequent application shall not be accepted, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

Additional information concerning these parcels, terms and conditions of the sale, and bidding instructions may be obtained by calling the Kingman Resource Area Manager at (602) 757-3161, or by writing the BLM Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401.

For a period of forty-five (45) days from the date of this Notice, interested parties may submit comments regarding the proposed action to the Phoenix District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027. Objections will be reviewed by the District Manager who may sustain, vacate, or modify this Realty Action. In the absence of any objections, this Realty Action will become the final determination of the Department of Interior.

Dated: April 19, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-10053 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-32-M

Carson City District Advisory Council; Cancellation of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Cancellation of meeting.

SUMMARY: The Carson City District Advisory Council meeting scheduled for May 2, 1985, has been cancelled.

FOR FURTHER INFORMATION CONTACT: Steve Weiss, Public Affairs Officer, Bureau of Land Management, 1050 E. William St., Suite 335, Carson City, NV 89701, (702) 882-1631.

Dated: April 17, 1985.

Thomas J. Owen,

District Manager.

[FR Doc. 85-10048 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-HC-M

Realty Action; Recreation and Public Purpose Sale; Public Land in Gulf County, FL

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action—R & PP Sale; Public Lands Gulf County, Florida.

SUMMARY: The following described lands have been examined and are classified as suitable for sale under the Recreation and Public Purpose Act of 1926 (44 Stat. 741), as amended.

Tallahassee Meridian, Florida

T. 6 S., R. 11 W.,
Sec. 31: Lot 10 (40.00).

The Gulf County, Board of County Commissioners proposes to use this 40-acre tract for a recreational park and historic memorial. They will construct a fishing pier, parking lot, restrooms, picnic pavillion, hiking trail and a memorial to Le Moyn de Chateauque and Fort Creve Coeur, the southernmost outpost of New France.

It has been determined that the proposed use is in the pubiic's best interest, and is consistent with the policy of the Bureau of Land Management.

The patent will be subject to all valid existing rights and reservation of record.

Publication of this Notice will segregate the subject land from all appropriation under the public land laws; but not the mineral leasing laws. This segregation will terminate upon

issuance of patent, or 270 days from the date of this Notice or upon publication of a Notice of Termination. Detailed information concerning the sale including the environmental assessment and land report, is available for review at the BLM office listed below.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the District Manager, Jackson District Office, P.O. Box 1148, Jackson, Mississippi 39213. Comments will be evaluated by the District Manager, who may vacate or modify this Realty Action. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Douglas Jones (601) 960–4405.

Donald L. Libbey,

District Manager

[FR Doc. 85–10049 Filed 4–24–85; 8:45 am]

BILLING CODE 4310-GJ-M

[W-8465]

Wyoming; Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a)(b)(1), a petition for reinstatement of oil and gas lease W–48465 for lands in Sweetwater County, Wyoming was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500.00 administrative fee and $106.25 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–48465 effective January 1, 1985, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 85–10047 Filed 4–24–85; 8:45 am]

BILLING CODE 4310-22-M

[A–20346–D]

Realty Action; Exchange of Public Lands, Apache County, AZ

BLM proposes to exchange public land with the State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of 1976; surface conveyance according to section 206(a) (90 Stat. 2756, 43 U.S.C. 1716) and mineral conveyance per section 209(b) (90 Stat. 2757, 43 U.S.C. 1719).

Gila and Salt River Meridian, Arizona

T. 10 N., R. 29 E.,
Sec. 18, E½.
T. 11 N., R. 25 E.,
Sec. 12, W½E½, SW¼.
T. 11 N., R. 26 E.,
Sec. 4, lots 1–4, S½N½, S½;
Sec. 8, all;
Sec. 10, all;
Sec. 12, all;
Sec. 14, all;
Sec. 18, lots 2–4, E½, E½W½;
Sec. 20, all;
Sec. 22, all;
Sec. 24, all;
Sec. 25, all;
T. 11 N., R. 27 E.,
Sec. 4, lots 1–3, S½NE¼, SE¼;
Sec. 24, N½;
Sec. 26, S½NW¼, SW¼, W½SE¼, SE¼SE¼;
Sec. 27, all;
Sec. 29, lots 1–4, NE¼, S½;
Sec. 30, lots 1–8, NE¼, E½W½;
Sec. 33, W½E½, W¼;
Sec. 34, E½;
Sec. 35, lots 1–4, NE¼, W½.
T. 11 N., R. 28 E.,
Sec. 17, all;
Sec. 18, lots 3, NW¼SW¼, N½SE¼;
Sec. 19, lot 1, NE¼, E½NW¼, E½SE¼;
Sec. 20, all;
Sec. 26, W½NE¼, NW¼, E½SE¼, SW¼SE¼;
Sec. 27, NW¼NE¼, W½, SW¼SE¼;
Sec. 28, all;
Sec. 29, E½, W½W½;
Sec. 33, all;
Sec. 34, NW¼NW¼, S½SW¼, SW¼SE¼.
T. 12 N., R. 27 E.,
Sec. 28, SW¼NW¼, N½SW¼, SW¼SW¼.
T. 12 N., 28 E.,
Sec. 10, NW¼SE¼;
Sec. 12, NW¼NE¼, NE¼NW¼, W½SW¼;
Sec. 14, N½NE¼, SE¼NE¼, W½NW¼, NW¼SW¼, E½SE¼, SE¼SE¼;
Sec. 30, lots 1 and 2, SE¼NW¼, NE¼SW¼.
T. 12 N., R., 29 E.
Sec. 4, lots 4, 5, 12, 13, SW¼;
Sec. 12, N½NE¼, SW¼NE¼, W½NW¼, SE¼SE¼, S½SE¼;
Sec. 18, lots 2–4, SW¼NE¼, E½SW¼, SE¼;
Sec. 20, SE¼SE¼;
Sec. 21, E½, E½W½, NW¼NW¼, W½SE¼;
Sec. 27, all;
Sec. 28, all;
Sec. 32, E½E½.
T. 12 N., R. 30 E.,
Sec. 1, lots 1–16, SW¼;
Sec. 3, lots 1–12;
Sec. 4, lots 1–12;
Sec. 5, lots 1, 2, 5, 6, 7, 8;
Sec. 8, S½S½;
Sec. 9, E½;
Sec. 10, all;
Sec. 11, lots 1–16;
Sec. 12, NW¼;
Sec. 13, S½;
Sec. 14, all;
Sec. 17, N½N½;
Sec. 18, lot 1, N½NE¼, NE¼NW¼;
Sec. 21, all;
Sec. 23, all;
Sec. 26, NE¼, N½NW¼, S½SW¼;
Sec. 28, all;
Sec. 29, all;
Sec. 34, all;
Sec. 35, W½, SE¼.
T. 12 N. R. 31 E.,
Sec. 3, lots 1–18, W½SE¼, SW¼;
Sec. 10, lots 1–4, W½E½, W½;
Sec. 15, lots 1–4, W½E½, W½;
Sec. 21, all;
Sec. 22, lots 1–4, W½E½, W½;
Sec. 27, lots 1–4, W½E½, W½;
Sec. 28, all;
Sec. 33, all;
Sec. 34, lots 1–4, W½E½, W½.
T. 13 N. R. 30 E.,
Sec. 6, lots 1–7, S½NE¼, SE¼SW¼, SE¼;
Sec. 8, all;
Sec. 10, all;
Sec. 12, W½;
Sec. 14, all;
Sec. 18, lots 1–4, E½W½, E½;
Sec. 20, all;
Sec. 22, E½NE¼, SE¼;
Sec. 24, E½;
Sec. 26, all;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 34, all.
T. 13 N. R. 31 E.,
Sec. 4, lots 1–4, S½N½, S½;
Sec. 6, lots 1–7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 8, NE¼, E½NW¼;
Sec. 10, lots 1–4;
Sec. 19, lots 1 and 2, NE¼, E½NW¼;
Sec. 21, N½NE¼;
Sec. 27, lot 4;
Sec. 28, S½S½;
Sec. 29, S½N½, S½;
Sec. 30, lots 1–4, E½, E½W½;
Sec. 33, all;
Sec. 34, lots 1–4.
T. 14 N. R. 27 E.,
Sec. 34, E½E½, NW¼NE¼.
T. 14 N. R. 31 E.,
Sec. 18, lots 1–4, E½, E½W½;
Sec. 20, all;
Sec. 22, lots 1–4;
Sec. 28, all;
Sec. 30, lots 1–4, NE¼, E½W½, N½SE¼;
Sec. 34, lots 1–4.

Containing 48,459.51 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In exchange for these lands the United States will acquire presently undescribed lands throughout the State.

In accordance with the regulations of 43 CFR 2201.1(b) publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date shown below interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 19, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-10051 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-32-M

[A-20346-E]

Realty Action: Exchange of Public Lands, Pinal County, AZ

BLM proposes to exchange public land with State of Arizona in order to achieve more efficient management of the public land through consolidation of ownership.

The following public land is being considered for disposal by exchange pursuant to the Federal Land Policy and Management Act of 1976, surface conveyance according to section 206(a) (90 Stat. 2756, 43 U.S.C. 1716) and mineral conveyance per section 209(b) (90 Stat. 2757, 43 U.S.C. 1719).

Gila and Salt River Meridian, Arizona

T. 4 S., R. 10 E.,
Sec. 8, SE¼;
Sec. 9, all;
Sec. 17, NE¼NE¼, W½NE¼, NW¼;
Sec. 18, SE¼;
Sec. 19, lots 2, 3, N½NE¼, E½NW¼, NE¼SW¼;
Sec. 33, SE¼SW¼, SW¼SE¼, E½SE¼;
T. 5 S., R. 10 E.,
Sec. 3, Lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½, S½;
Sec. 6, NE¼;
Sec. 8, NE¼;
Sec. 9, N½, SE¼;
Sec. 10, W½NE¼, NW¼, S½;
Sec. 11, N½NW¼, S½S½;
Sec. 13, NW¼;
Sec. 14, all;
Sec. 15, NW¼, S½;
Sec. 20, E½;
Sec. 21, E½, SW¼;
Sec. 22, SE¼;
Sec. 23, E½, SW¼;
Sec. 25, NW¼, SE¼;
Sec. 26, N½NE¼, SW¼NE¼, NW¼.
T. 5 S., R. 11 E.,
Sec. 1, lots 1–4, S½N½, S½;
Sec. 3, lots 1–4, S½N½, S½;
Sec. 4, lots 1–4, S½N½, S½;
Sec. 5, lots 1–4, S½N½, S½;
Sec. 6, lots 1–6, S½NE¼, SE¼;
Sec. 7, lots 1–4, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 16, SW¼;
Sec. 17, all;
Sec. 18, lots 1–4, E½;
Sec. 19, lots 1–4, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1–4, E½;
Sec. 31, lots 1–4, E½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;

Containing 27,465.72 acres, more or less.

Final determination on disposal will await completion of an environmental analysis.

In exchange for these lands the United States will acquire presently undescribed lands throughout the State.

In accordance with the regulations of 43 CFR 2201.1(b), publication of this Notice will segregate the public lands, as described in this Notice, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws or Geothermal Steam Act.

The segregation of the above-described lands shall terminate upon issuance of a document conveying such lands or upon publication in the Federal Register of a notice of termination of the segregation; or the expiration of two years from the date of publication, whichever occurs first.

For a period of forty-five (45) days from the date shown below interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: April 19, 1985.

Marlyn V. Jones,

District Manager.

[FR Doc. 85-10052 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-32-M

Bureau of Reclamation

Quarterly Status Tabulation of Water Service and Repayment Contract Negotiations; Proposed Contractual Actions Pending Through June 1985

Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273), and to § 426.20 of the rules and regulations published in the Federal Register December 6, 1983, Vol. 48, page 54785, the Bureau of Reclamation will publish notice of proposed or amendatory repayment contract actions or any contract for the delivery of irrigation water in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

Pursuant to the "Final Revised Public Participation Procedures" for water service and repayment contract negotiations, published in the Federal Register February 22, 1982, Vol. 47, page 7763, a tabulation is provided below of all proposed contractual actions in each of the seven Reclamation regions. Each proposed action listed is, or is expected to be, in some stage of the contract negotiation process during April, May, or June of 1985. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary, or pursuant to delegated or redelegated

authority, the Commissioner of Reclamation or one of the Regional Directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved. The identity of the approving officer and other information pertaining to a specified contract proposed may be obtained by calling or writing the appropriate regional office at the addresses and telephone numbers given for each region.

This notice is one of a variety of means being used to inform the public about proposed contractual actions. Individual notice of intent to negotiate, and other appropriate announcements, are made in the **Federal Register** for those actions found to have widespread public interest. When this is the case, the date of publication is given.

Acronym Definitions Used Herein

(FR) Federal Register
(ID) Irrigation District
(IDD) Irrigation and Drainage District
(M&I) Municipal and Industrial
(D&MC) Drainage and Minor Construction
(R&B) Rehabilitation and Betterment
(O&M) Operation and Maintenance
(CAP) Central Arizona Project
(CVP) Central Valley Project
(P-SMBP) Pick-Sloan Missouri Basin Program
(CRSP) Colorado River Storage Project
(SRPA) Small Reclamation Projects Act

PACIFIC NORTHWEST REGION: Bureau of Reclamation, 550 West Fort Street, Box 043, Boise, ID 83724, telephone (208) 334–9011.

1. Boise Cascade Corporation, Columbia Basin Project, Washington; Industrial water service contract; 250 acre-feet; FR notice published April 7, 1980, Vol. 45, page 23531.

2. Boise Project Board of Control, Boise Project, Idaho-Oregon; Irrigation repayment contract; 22,800 acre-feet of stored water in Arrowrock Reservoir.

3. Brewster Flat ID, Chief Joseph Dam Project, Washington; Amendatory repayment contract; Land reclassification of approximately 360 acres to irrigable; Repayment obligation to increase by $189,000.

4. Individual irrigators, M&I, and miscellaneous water users, Pacific Northwest Region, Idaho, Oregon and Washington; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Rogue River Basin water users, Rogue River Basin Project, Oregon; Water service contracts; $5 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water per contractor for terms up to 40 years.

6. Willamette Basin water users, Willamette Basin Project, Oregon; Water service contracts; $1.25 per acre-foot or $20 minimum per annum, not to exceed 320 acres or 1,000 acre-feet of water annually per contractor for terms up to 40 years.

7. Washington Water Power Company, Inc., Columbia Basin Project, Washington; Industrial water service contract; 32,000 acre-feet of water per year from Franklin D. Roosevelt Lake for the proposed Creston Powerplant; FR notice published December 11, 1982, Vol. 46, page 60658.

8. Cascade Reservoir water users, Boise Project, Idaho; Irrigation repayment contracts; 57,251 acre-feet of stored water in Cascade Reservoir.

9. Boise Water Corporation, Boise Project, Idaho; Short-term (2 years) M&I water service contract; up to 5,000 acre-feet annually from stored water in Lucky Peak Reservoir.

10. Thirty-one Jackson Lake Dam Spaceholders, Minidoka Project, Idaho-Wyoming; Repayment of costs associated with Safety-of-Dams modifications to Jackson Lake Dam.

11. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

12. Greater Wenatchee ID, Chief Joseph Dam Project Washington; SRPA loan repayment contract; $6,669,000 proposed obligation.

MID-PACIFIC REGION: Bureau of Reclamation, (Federal Office Building) 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 484–4680.

1. 2047 Drain Water Users Association, CVP, California; Water right settlement contract.

2. Tuolumne Regional Water District, CVP, California; Water service contract; 3,200 acre-feet from New Melones Reservoir.

3. Calaveras County Water District, CVP, California; Water service contract; 500 acre-feet from New Melones Reservoir; FR notice published February 5, 1982, Vol. 47, page 5473.

4. Individual irrigators, M&I, and miscellaneous water users, Mid-Pacific Region, California, Oregon, and Nevada; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

5. Mountain Gate Community Services District, CVP, California; Amendatory water service contract providing for increased M&I use to the community of Mountain Gate.

6. Pacheco Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

7. El Dorado ID, Sly Park Unit, CVP, California; D&MC contract to allow the District to accomplish the construction work with the remaining funds from the distribution system contract.

8. South San Joaquin ID and Oakdale ID, CVP, California; Operating agreement for conjunctive operation of New Melones Dam and Reservoir on the Stanislaus River; FR notice published June 6, 1979, Vol. 44 page 32483.

9. San Luis Water District, CVP, California; Amendatory water service contract providing for a change in point of delivery from Delta-Mendota Canal to the San Luis Canal.

10. Mid-Valley Water Authority, CVP, California; Temporary water supplies up to 100,000 acre-feet.

11. Solano ID, Solano Project, California; Amendatory loan repayment contract providing for reconveyance and M&I water supply delivery.

12. City of Avenal, CVP, California; Amendment of existing water service contract to provide for furnishing project power to city canalside relift facilities and change the point of diversion.

13. Yuba County Water Agency, South County Irrigation Project, SRPA, California; Loan repayment contract, $18,500,000 proposed obligation.

14. ID's and similar water user entities; Amendatory repayment and water service contracts, including the amending of approximately ten SRPA contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

15. United Water Conservation District, SRPA, California; Loan repayment contract, $18,730,000 proposed obligation.

16. State of Hawaii, Molokai Project, SRPA; Contract amendment to provide for use of facilities for M&I purposes.

17. Shasta Dam Area Public Utility District, CVP, California; Amendatory water service contract providing for increased M&I use to the district.

18. State of California, CVP, California, contract(s) for, (1) sale of interim water to the Department of Water Resources for use by the State Water Project Contractors, and (2) acquisition of conveyance capacity in the California Aqueduct for use by the CVP, as comtemplated in the current

draft of the Coordinated Operations Agreement.

19. City of Lindsay, Friant Division, CVP, California; M&I water service contract for 2,500 acre-feet of class 1 water.

20. Pixley ID, SRPA, California; Loan repayment contract, $12,300,000 proposed obligation.

21. Century Ranch Water Company, Inc., CVP, California; Orland exchange, M&I, and water right settlement contract.

22. Kaiser Development Company, CVP, California; Sacramento River water right contract; Suspension of agricultural contract and execution of M&I contract.

23. El Dorado ID, Sly Park Unit, CVP, California; Amend the Unit 4 portion of its existing repayment contract to pay interest on actual M&I use.

UPPER COLORADO REGION: Bureau of Reclamation, P.O. Box 11568 (125 South State Street), Salt Lake City, UT 84147, telephone (801) 524–5435.

1. Individual irrigators, M&I, and miscellaneous water users, Upper Colorado Region, Utah, Wyoming, Colorado, and New Mexico; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Fontenelle Dam (Chevron) State of Wyoming, Seedskadee Project, Wyoming; Water sales contract for 22,500 acre-feet per year for industrial use. Environmental Impact Statement under preparation; approval pending outcome and compliance with Section 7, Endangered Species Act.

3. Animas-La Plata Conservancy District, Animas-La Plata Project, Colorado; Water service contract; 9,200 acre-feet per year for M&I use; 72,200 acre-feet per year for irrigation.

4. La Plata Conservancy District, Animas-La Plata Project, New Mexico; Water service contract; 16,000 acre-feet per year for irrigation.

5. City of Farmington, Animas-La Plata Project, New Mexico; M&I water service contract; 19,700 acre-feet per year.

6. City of Aztec, Animas-La Plata Project, New Mexico; M&I water service contract; 5,800 acre-feet per year.

7. City of Bloomfield, Animas-La Plata Project, New Mexico; M&I water service contract; 5,300 acre-feet per year.

8. Central Utah Project, Bonneville Unit, Utah; Supplemental M&I repayment contract for 94,100 acre-feet per year; FR notice published August 22, 1980, Vol. 45, No. 165, page 56199.

9. Central Utah Project, Bonneville Unit, Utah; $34,000,000 D&MC Contract—Duchesne River Area Canals rehabilitation to meet 1987 construction commitment. Repayment covered under executed repayment contract and by CRSP power revenues.

10. Dorchester Coal Company, Blue Mesa Reservoir, Colorado, Colorado River Storage Project; M&I water service contract, 400 acre-feet per year, for 40 years.

11. South Weber Water Improvement District, Weber Basin Project, Utah; Amendatory SRPA contract to extend payout period from 21 years to 40 years.

12. State of Wyoming, Seedskadee Project, Wyoming; Contract for repayment of reimbursable cost associated with the modification of Fontenelle Dam pursuant to the Reclamation Safety of Dams Amendments of 1984 (Pub. L. 98–404).

13. Miscellaneous water users, Upper Colorado Region, Blue Mesa Reservoir, Colorado River Storage Project, Colorado, M&I uses, 20-acre feet and less for 20–40 years.

14. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

15. M&I water users, Navajo Unit, Colorado River Storage Project, New Mexico; Negotiable repayment of reimbursable costs associated with the modification of Navajo Dam pursuant to the Reclamation Safety of Dam Act Amendment of 1984 (Pub. L. 98–404).

16. Bonneville Unit, Central Utah Project, Utah; Two repayment contracts for repayment of Jordan Aqueduct with Salt Lake County Water Conservancy District and the Metropolitan Water District.

LOWER COLORADO REGION: Bureau of Reclamation, P.O. Box 427 (Nevada Highway and Park Street), Boulder City, NV 89005, telephone (702) 293–8536.

1. Wellton-Mohawk Irrigation and Drainage District, Gila Project, Arizona; Amendatory D&MC contract for improvement for the Gila River within the district's boundaries; $6,000,000 of Federal funds to be utilized on a nonreimbursable basis pursuant to Pub. L. 98–396, August 21, 1984.

2. Agricultural and M&I water users, CAP, Arizona; Water service subcontracts; A certain percent of available supply for irrigation entities and up to 640,000 acre-feet per year for M&I use.

3. Elsinore Valley Municipal Water District, Elsinore, California; Contract for the repayment of a $7,158,000 SRPA loan.

4. Agricultural and M&I water users, CAP, Arizona; Contracts for repayment of Federal expenditures for construciton of distribution systems.

5. Contracts with 5 agricultural entities located near the Colorado River in Arizona; Boulder Canyon Project; Water service contracts for up to 1,920 acre-feet per year total.

6. Gila River Indian Community, CAP, Arizona; Water service contract; Contract for delivery of up to 173,100 acre-feet per year.

7. Yuma-Mesa IDD, North Gila Valley ID, and Yuma ID, Gila Project, Arizona; Amendatory and supplemental contracts to conform to the provisions of Pub. L. 98–530.

8. Hillander "C" ID, Colorado River Basin Salinity Control Project, Yuma, Arizona; 5-year contract for 4,000 acre-feet per year from the Protective and Regulatory Pumping Unit.

9. Sunset Mobile Home Park, Boulder Canyon Project, Arizona; M&I water service contract for delivery of 30 acre-feet of water per year pursuant to recommendation of Arizona Department of Water Resources.

10. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

11. Rancho California Water District, Temecula, California; Contract for the repayment of a $20,940,000 SRPA loan.

12. Yuma County Water Users' Association, Valley Division, Yuma Project, Arizona; Amendatory contract for the advancement of $1,500,000 to the association by the United States on a nonreimbursement basis for the construction of new headquarters facilities and accompanying relocation costs.

13. Ak-Chin Indian Community, Maricopa, Arizona; Supplemental contract in accordance with the provisions of Pub. L. 98–530.

14. City of Needles, Needles, California; Contract for up to 2,000 acre-feet per year of surplus water from the Colorado River, permanent contract to be activated only during periods when surplus flows are available.

SOUTHWEST REGION: Bureau of Reclamation, Commerce Building, Suite 201, 714 South Tyler, Amarillo, TX 79101, telephone (806) 378–5430.

1. Fort Cobb Reservoir Master Conservancy District, Washita Basin Project, Oklahoma; Amendatory repayment contract to convert 4,700 acre-feet of irrigation water to M&I use.

2. Foss Reservoir Master Conservancy District, Washita Basin Project,

Oklahoma; Amendatory repayment contract for remedial work.

3. Vermejo Conservancy District, Vermejo Project, New Mexico; Amendatory contract to relieve the district of further repayment obligation, presently exceeding $2 million, pursuant to Pub. L. 96–550).

4. Lavaca-Navidad River Authority, Palmetto Bend Project, Texas; Amendatory repayment contract to provide for increased payment for recreation.

5. Tom Green County Water Improvement District No. 1, San Angelo Project, Texas; Amendatory repayment contract to defer payment of construction charges associated with the 1984 crop year due to the nonavailability of irrigation water for use by the District's water users.

6. Hidalgo County Irrigation District No. 1, Lower Rio Grande Valley, Texas; Supplemental SRPA loan contract for approximately $13,205,000. The contracting process is dependent upon final approval of the supplemental loan report.

7. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform with the Reclamation Reform Act of 1982 (Pub. L. 97–293).

UPPER MISSOURI REGION: Bureau of Reclamation, P.O. Box 2553, Federal Building, 316 North 26th Street, Billings, Montana 59103, Telephone (406) 657–6413.

1. Individual irrigators, M&I, and miscellaneous water users, Upper Missouri Region, Montana, Wyoming, North Dakota, and South Dakota; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Nokota Company, Lake Sakakawea, P-SMBP, North Dakota; Industrial water service contract; Up to 16,800 acre-feet of water annually; FR notice published May 5, 1982,Vol. 47, Page 19472.

3. Fort Shaw ID, Sun River Project, Montana; R&B loan repayment contract; Up to $1.5 million.

4. ID's and similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

5. Oahe Unit, P-SMBP, South Dakota; Cancellation of master contract and participating and security contracts in accordance with Pub. L. 97–273 with South Dakota Board of Water and Natural Resources, Spink County and West Brown Irrigation Districts.

LOWER MISSOURI REGION: Bureau of Reclamation, P.O. Box 25247 (Building 20, Denver Federal Center), Denver, Colorado 80225, telephone (303) 234–3327.

1. H&RW ID, Frenchman-Cambridge Unit, P-SMBP, Nebraska; Amendatory water service contract; $1,200,000 outstanding.

2. Almena ID No. 5, Almena Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

3. Purgatoire River Water Conservancy District, Trinidad Project, Colorado; Amendatory repayment contract for extension of the development period and revision of the repayment determination methodology; FR notice published August 6, 1982, Vol. 47, page 34206.

4. Corn Creek ID, Earl Michael, Glendo Unit, P-SMBP Wyoming, and Nebraska; Irrigation water service contracts.

5. Webster ID No. 4, Webster Unit, P-SMBP, Kansas; Irrigation water service and repayment contract amendment to adjust payment due to reduced water supply, $970,816 outstanding.

6. Green Mountain Reservoir, Colorado-Big Thompson Project; Proposed contract negotiations for sale of water from the marketable yield to water users within the Colorado River drainage of western Colorado.

7. Individual irrigators, M&I, and miscellaneous water users, Lower Missouri Region, Southeastern Wyoming, Colorado, Nebraska, and northern Kansas; Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; Long-term contracts for similar service for up to 1,000 acre-feet of water annually.

8. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado; Second round of proposed contract negotiations for sale of water from the regulatory capacity of Ruedi Reservoir.

9. ID's similar water user entities; Amendatory repayment and water service contracts; Purpose is to conform to the Reclamation Reform Act of 1982 (Pub. L. 97–293).

10. Lower South Platte Water Conservancy District, Central Colorado Water Conservancy District, and the Colorado Water Resources and Power Development Authority, P-SMBP, Narrows Unit, Colorado; Water service contracts for repayment of costs and cost sharing agreement.

11. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

12. Amity Mutual Irrigation Company, Colorado; SRPA loan repayment contract; $4,223,000 proposed loan obligation.

13. Kirwin ID No. 1, Kirwin Unit, P-SMBP, Kansas; Irrigation water service and repayment contract and Emergency Drought Act loan contract amendment to adjust payments due to reduced water supply, $866,231 outstanding.

14. Cedar Bluff ID No. 6, Cedar Bluff Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

15. Webster ID No. 4, Webster Unit, P-SMBP, Kansas; Deferment of repayment obligation for 1985.

16. Fryingpan-Arkansas Project, Colorado; East Slope Storage system consisting of Pueblo, Twin Lakes, and Turquoise Reservoir; Contract negotiations for long term storage contracts.

17. Twin Loups Reclamation District, P-SMBP; D&MC contract for correction of initial construction deficiencies and monitoring during initial filling, priming and puddling activities of the project. Proposed contract to be $500,000.

18. Farwell Irrigation District, Nebraska; Request for deferment of repayment obligation for 1985.

Opportunity for public participation and receipt of comments on contract proposals will be facilitated by a adherence to the following procedures:

(1) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(2) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(3) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383) as amended.

(4) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(5) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(6) Copies of specific proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(7) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary.

Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

Dated: April 19, 1985.

Robert A. Olson,

Acting Commissioner of Reclamation.

[FR Doc. 85-9975 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Application for Permit

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Harold D. Taylor, Norman, OK, PRT-692109.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from a ranch in South Africa for the purpose of enhancement of propagation of the herd.

Applicant: Joe Bills Reynolds, Oklahoma City, OK, PRT-692113.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from a ranch in South Africa for the purpose of enhancement of propagation of the herd.

Applicant: Francisco Jose Vilella, Baton Rouge, LA, PRT-692143.

The applicant requests a permit to take (capture, handle, mark, radio-tag and release) up to 24 adults and eggs from up to 40 nests of the Puerto Rican whip-poor-will (*Caprimulgus noctitherius*) for the purpose of scientific research.

Applicant: Horst Schmudde, Colt's Neck, NJ, PRT-692139.

The applicant requests a permit to purchase in interstate commerce one pair of Hawaiian geese [*Nesochen (=Branta) sandvicensis*] from Charles Nugent, Kimbolton, OH, for the purpose of enhancement of propagation.

Applicant: Ken Wilson, Tarzana, CA, PRT-692303.

The applicant requests a permit to import the personal sport-hunted trophy of a bontebok (*Damaliscus dorcas dorcas*) culled from a ranch in South Africa for the purpose of enhancement of propagation of the herd.

Applicant: Pohnpei Marine Resources Department, Pohnpei, Micronesia, PRT-692627.

The applicant requests a permit to tag 50 adult female hawksbill turtles (*Eretmochelys imbricata*) on Oroluk Atoll, for the purpose of scientific research.

Applicant: San Diego Zoo, San Diego, CA, PRT-692596.

The applicant requests a permit to import a captive-born male Przewalski's horse (*Equus przewalskii*) from the Tierpark Hellabrumm, Munich, West Germany, for the purpose of enhancement of propagation.

Applicant: International Animal Exchange, Ferndale, MI, PRT-692775.

The applicant requests a permits to purchase in interstate commerce 2 captive-born Siamese crocodiles (*Crocodylus siamensis*) from the Sedgwick County Zoo, Wichita, KS and export them to Seoul Grand Park Zoo, Seoul, Korea, for enhancement of propagation.

Applicant: International Animal Exchange, Ferndale, MI, PRT-692717.

The applicant requests a permit to purchase in interstate commerce one pair of captive-born ocelots (*Felis pardalis*) from the Central Florida Zoological Park, Lake Monroe, FL and export them to the Chiba Zoological Park, Japan, for enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: April 19, 1985.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 85-10006 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Advisory Committee on Water Data for Public Use; Renewal

The Secretary of the Interior has approved the renewal of the Charter of the Advisory Committee on Water Data for Public Use.

The Committee, representing the interests of the non-Federal community, advises the Department of the Interior, through the Geological Survey, on (a) plans, policies, and procedures related to water data acquisition activities and related programs, on (b) the effectiveness of those programs in meeting the national water data needs, and on (c) activities pursuant to the implementation of Office of Management and Budget Circular A-67.

Further information regarding this renewal may be obtained from Porter Ward, Chief, Office of Water Data Coordination, Reston, Virginia 22092, (703) 860-6931.

Dated: April 17, 1984.

Dallas L. Peck,

Director.

[FR. Doc. 85-10035 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-31-M

Minerals Management Service

Development Operations Coordination Document, ODECO Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that ODECO Oil and Gas Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 074, Block 20, South Pelto Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Dulac, Louisiana.

DATE: The subject DOCD was deemed submitted on April 15, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals Management Service; Gulf of Mexico

OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Units; Phone (504) 838-0876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 15, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10034 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Sonat Exploration Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Sonat Exploration Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4064, Block 739, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Harbor Island, Texas.

DATE: The subject DOCD was deemed submitted on April 19, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 19, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10071 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Tenneco Oil Exploration and Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Tenneco Oil Exploration and Production has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 6006, 6007, 6010, and 6011, Blocks 834, 835, 846, and 847, respectively, Mustang Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Harbor Island, Texas.

DATE: The subject DOCD was deemed submitted on April 18, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: April 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10033 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-MR-M

Environmental Documents Prepared for Proposed Oil and Gas Operations on the Alaska Outer Continental Shelf

ACTION: Notice of availability of environmental documents prepared for Outer Continental Shelf (OCS) mineral prelease and exploration proposals on the Alaska OCS.

SUMMARY: The Minerals Management Service (MMS), in accordance with Federal regulations (40 CFR 1501.4 and 1506.6) that implement the National Environmental Policy Act (NEPA), announces the availability of NEPA-related environmental assessments (EA's) and findings of no significant impact (FONSI's) prepared by the MMS for the following oil and gas prelease and exploration activities proposed on the Alaska OCS. The listing includes all proposals for which environmental documents were prepared by the Alaska OCS Region in the 3-month period preceding this notice.

Activity/Operator

Exploration Drilling Program for Bering Sea, Navarin Basin (Sale 83 area) ARCO Alaska, Inc. as operator for itself and others.

Location

ARCO is proposing to drill up to 23 exploratory wells. Subsequent wells will depend upon the results of drilling, testing, and evaluation of the initial well. The location of ARCO's leases is described as follows:

LEASE AND BLOCK NUMBERS

Lease	Block
0578	594
0586	637
0587	638
0588	639
0596	681
0597	682
0608	959

LEASE AND BLOCK NUMBERS—Continued

Lease	Block
0621	145
0631	188
0632	189
0643	232
0644	233
0654	491
0655	492
0712	460
0656	493
0661	882
0663	925
0664	926
0666	969
0667	970
0669	2
0690	3
0696	332
0697	333
0704	376
0705	377
0710	458
0711	459

Environmental Assessment

No. AK 85-01.

FONSI Date

January 23, 1985.

Activity/Operator

Exploration Drilling Program for Beaufort Sea, Diapir Field (Sales 71 and 87) Tenneco Oil Company, as operator for itself and others.

Location

Tenneco is proposing to drill up to 13 exploratory wells. Subsequent wells will depend upon the results of drilling, testing, and evaluation of the initial well. The location of Tenneco's leases is described as follows:

LEASE AND BLOCK NUMBERS

Lease	Block	Sale No.
Y0315	189	71
0338	284	71
0339	285	71
0348	329	71
0349	330	71
0811	232	87
0812	236	87
0813	241	87
0814	242	87
0815	286	87
0816	287	87
0817	374	87

Environmental Assessment

No. AK 85-02.

FONSI Date

March 6, 1985.

Activity/Operator

Exploration Drilling Program for Bering Sea, St. George Basin (Sale 70) Marathon Oil Company, as operator for itself and others.

Location

Marathon is proposing to drill up to 15 exploratory wells. Subsequent wells will depend upon the results of drilling, testing, and evaluation of the initial well. The location of Marathon's leases is described as follows:

LEASE AND BLOCK NUMBERS

Lease	Block
Y 0486	366
0488	431
0498	535
0499	536
0521	721
0525	760

Environmental Assessment

No. AK 85-03.

Fonsi Date

March 21, 1985.

SUPPLEMENTARY INFORMATION: The MMS prepares Environmental Assessments (EA's) and FONSI's for proposals which related to exploration for oil and gas resources on the Alaska Outer Continental Shelf (OCS).

The EA's examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EA's are used as a basis for determining whether or not approval of the proposals constitute major Federal actions that significantly affect the quality of the human environment in the sense of NEPA section 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis of that finding and includes a summary or copy of the EA.

The FONSI and associated EA for the activity listed above are available for public inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region Library, 949 East 36th Avenue, Room 502, Anchorage, Alaska 99508, Phone: (907) 261-4435.

Persons interested in reviwing specific environmental documents, or obtaining information about EA's and FONSI's prepared for activities on the Alaska OCS, are encouraged to contact the above listed MMS office.

This notice constitutes the public notice of availability of environmental document required under the NEPA regulations.

Rodney A. Smith,

Acting Regional Director, Alaska OCS Region.

[FR Doc. 85-10055 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the South Bay Marchand Federal Unit Agreement No. 14-08-001-3915, submitted on March 28, 1985, a proposed Development Operations Coordination Document describing the activities it proposes to conduct on the South Bay Marchand Federal unit.

The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Records Management Section, Room 143, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in the proposed development operations coordination document available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: April 18, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-10060 Filed 4-24-85; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulfur Operations on the Outer Continental Shelf; Receipt of Proposed Development and Production Plan; Cities Service Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Cities Service Oil and Gas Corporation has submitted a Development and Production Plan describing the activities it proposes to conduct as operator of Lease OCS–P 0409, offshore California. The purpose of this Notice is to inform the public that the Minerals Management Service (MMS) is considering approval of the plan and that it is available for public review and comment.

DATES: The plan may be reviewed weekdays, 8:00 a.m. to 3:00 p.m. Written comments must be received or postmarked by June 21, 1985.

ADDRESSES: The plan is available for public review at the Office of the Regional Director, Pacific OCS Region, Minerals Management Service, Room 160, 1340 West Sixth Street, Los Angeles, California 90017. Written comments may be mailed or hand-delivered to the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas W. Dunaway, Regional Supervisor, Office of Field Operations, Pacific OCS Region, (213) 688–2083.

SUPPLEMENTARY INFORMATION: Section 25 of the Outer Continental Shelf Lands Act, 43 U.S.C. 1351, requires the MMS to make any development and production plans available for public review. Regulation 30 CFR 250.34 provides for the publication of a Notice that such a plan is available for review.

William E. Grant,

Regional Director, Pacific OSC Region.

[FR Doc. 85–10065 Filed 4–24–85; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Upper Delaware Citizens Advisory Council; Meeting

AGENCY: National Park Service; Upper Delaware Citizens Advisory Council, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Upper Delaware Citizens Advisory Council. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: April 26, 1985, 7:00 p.m.

ADDRESS: Town of Tusten, Narrowsburg, New York.

FOR FURTHER INFORMATION CONTACT: John T. Hutzky, Superintendent, Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159, (717) 729–7135.

SUPPLEMENTARY INFORMATION: The Advisory Council was established under section 704(f) of the National Parks and Recreation Act of 1978, Pub. L. 95–625, 16 U.S.C. 1274 note, to encourage maximum public involvement in the development and implementation of the plans and programs authorized by the Act. The Council is to meet and report to the Delaware River Basin Commission, the Secretary of the Interior, and the Governors of New York and Pennsylvania in the preparation of a management plan and on programs which relate to land and water use in the Upper Delaware region. The agenda for the meeting will include items regarding continuance of discussion of requirements for a river management plan. The meeting will be open to the public. Any member of the public may file with the Council a written statement concerning agenda items. The statement should be addressed to the Council c/o Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, N.Y. 12764–0159. Minutes of meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Upper Delaware National and Recreational River, River Road, 1¾ miles north of Narrowsburg, N.Y., Damascus Township, Pennsylvania.

Dated: April 18, 1985.

Anthony M. Corbisiero,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 85–10086 Filed 4–24–85; 8:45 am]

BILLING CODE 4310-70-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[Application No. D–5108 et al.]

Proposed Exemptions; Bartlemay & Associates, Inc., Money Purchase Pension Plan and Trust, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code)

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. 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.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or 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, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the

proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Bartlemay & Associates, Inc., Money Purchase Pension Plan and Trust (the Plan) Located in Richmond, Indiana

[Application Nos. D-5108 and D-5968]

Proposed Exemption

The Department is considering granting an 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) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, effective January 13, 1975, to the purchase by the Plan of an interest in a land holding real estate partnership (BCJ Realty Interest) from Louis M. Jaffe (Jaffe) for $39,000 and the sale of the BCJ Realty Interest to I.V. Bartlemay (Bartlemay) on December 29, 1984 for $69,340 in cash, provided that the amounts paid and received by the Plan were not greater than or less than (respectively) the fair market values on the respective dates of acquisition and sale.

Effective Date: If the exemption is granted, the effective date will be January 13, 1975.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan established by Bartlemay & Associates Inc. (the Employer) effective December 31, 1969. The Second National Bank of Richmond, Indiana (Second National) was designated as trustee. Second National served as trustee of the Plan until January 13, 1975, at which time the assets were transferred to the First National Bank of Richmond, Indiana (First National). First National served as trustee of the Plan until October 15, 1980, at which time it was succeeded by Robbin Myers an employee and stockholder of the Employer. The Plan was terminated effective December 31, 1981; however, the trust continues to exist for the payment of benefits. No plan presently exists to terminate the trust. The Plan has three participants: Bartlemay, the principal shareholder of the Employer, his brother and son-in-law. Since the Plan has been terminated there will be no additional participants.

2. From the Plan's inception investments had been made in equity securities in which the investment performance had been less than satisfactory. Accordingly, it was decided in the fall of 1974 that the Plan should seek out alternative forms of investment. During September of 1974 the Plan agreed to purchase a 50% interest in a parcel of developed real estate, which was subject to a long term commercial lease, from Jaffe an unrelated party. Second National analyzed the investment and purchased it on behalf of the Plan on October 4, 1974. At about the same time Jaffe approached the Plan about the purchase of another real estate investment, namely the BCJ Realty Interest which was currently on the market for $39,000. Jaffe had first offered to sell the BCJ Realty Interest to his partners who declined to accept his offer. While the Plan was considering Jaffe's offer, the Board of Directors of the Employer decided to change the trustee of the Plan and contacted First National about assuming that responsibility. Investment in the BCJ Realty Interest was presented to First National who advised that it appeared to be a prudent investment for the Plan. First National agreed that, when formally appointed, it would purchase the BCJ Realty Interest for the Plan.

3. BCJ Realty, an Indiana general partnership, was established for the purpose of acquiring real estate, constructing improvements thereon and leasing the same. The partnership agreement was executed June 25, 1971 and its assets on the date of sale consisted of a parcel of real estate, located in Richmond, Indiana, subject to long term net commercial leases with Goodyear Tire and Rubber Co. and a franchise of Long John Silver restaurants. Both tenants were deemed to be stable and both were unrelated to Jaffe, the Employer or any shareholder of the Employer. The purchase price of $39,000 was determined to be reasonable on the basis of several generally recognized economic indicators: (a) Projected cash return on investment after debt service and expenses, using an anticipated 8.7% return as being an acceptable rate of return at the time of purchase; (b) equity in the underlying real estate by referencing the original construction costs less mortgage debt at the time of purchase and by capitalizing anticipated rents; and (c) residual values of the properties through 1989 when the mortgage debt will be retired. In conjunction with the transfer of assets to the successor trustee, First National, counsel was employed to draft a memorandum of agreement (the Agreement) evidencing the deal that had been struck between Jaffe and the Plan. A draft of the Agreement was completed on December 8, 1974. Jaffe signed the Agreement and obtained the approval of his partners in BCJ Realty but administrative delays in the transfer of plan assets to the successor trustee-First National delayed the execution of the Agreement by First National on behalf of the Plan until January 13, 1975 (the 1975 Transaction).

4. Between the date that the parties reached an understanding as to the terms of the sale of BCJ Realty Interest and the final execution of the Agreement, two events intervened which resulted in the need to file the subject application for administrative relief. On November 16, 1974, Jaffe married Bartlemay's daughter and thus became a party in interest with respect to the Plan on January 1, 1975, the effective date of the prohibited transaction provisions of the Act. Jaffe, although a son-in-law of Bartlemay (and a party in interest under section 3(14)(F) of the Act), was an independent businessman who dealt with the Plan in an arm's-length manner. The price paid by the Plan for the BCJ Realty Interest was the same price at which the investment had been offered to third parties. None of the parties to the transaction had any reason to believe that such transaction was a violation of any federal or state statute. The Employer is a manufacturer's representative and looked to its attorneys, CPA's and bank trust departments to handle the legal and tax implications of operating its retirement plans.

5. On March 2, 1982, an application for determination with respect to the termination of the Plan was filed with the Internal Revenue Service (the IRS) in Cincinnati, Ohio. After an exchange of correspondence between the IRS and the Employer involving the real estate holdings of the Plan, the IRS notified the Employer by a letter dated August 10, 1983, indicating that the 1975 Transaction ". . . appears to be a prohibited transaction." The Employer retained counsel to develop an exemption application which was submitted to the Department on December 29, 1983.

6. In December of 1984, fiduciaries of the Plan determined it in the best interests of the participants to diversify the assets of the Plan by selling some of its existing real estate holdings. Because of the current problems surrounding the acquisition of the BCJ Realty Interest,

the unsettled outcome of the pending exemption application and the potential tax liability to Jaffe, the BCJ Realty Interest was selected as the most appropriate asset to be disposed of. An appraisal of BCJ Realty was made by Mr. Jay Allardt (Allardt) of the American United Appraisal Company. Allardt, who represents himself to be independent of and unrelated to Bartlemay, the Employer or the Plan, has given an opinion that as of December 26, 1984 BCJ Realty had a market value of $290,000 subject to an outstanding mortgage of $81,981. Based on this valuation the BCJ Realty Interest was determined to have a fair market value of $69,340. In that the BCJ Realty Interest was a minority interest, it was first offered to the other partners in BCJ Realty who declined to purchase the Plan's interest at the appraised price but agreed to consent to the sale if a purchaser could be found. It was the opinion of the Plan fiduciaries that seeking a prospective purchaser on the open market would be a time consuming process. To resolve the Plan's dilemma Bartlemay offered to purchase the BCJ Realty Interest for cash. The Plan accepted the offer and sold the BCJ Realty Interest to Bartlemay on December 29, 1984 (the 1984 Transaction) for $69,340 cash.

7. In summary, the applicant represents that the subject transaction meet the criteria of section 408(a) of the Act because: (a)(1) The 1975 Transaction was a written affirmation of an agreement reached between unrelated parties in 1974 and based on a price represented to be fair market value, (2) First National, a fiduciary of the Plan and not subject to influence by any party to the sale, reviewed the proposed transaction and agreed to execute the required documents on behalf of the Plan, (3) BCJ Realty has as assets two long-term commercial leases with unrelated parties which produced a positive income stream for any investor; and (b) the 1984 Transaction was a sale transaction for cash based on an independent appraisal intended to provide the Plan with a better diversified portfolio and permit a final resolution of the problems created by the Plan acquisition of the BCJ Realty Interest by the 1975 Transaction.

For Further Information Contact: Mr. Paul Antsen of the Department, telephone (202) 523-8753. (This is not a toll-free number.)

Ted McWilliams, Inc., Profit Sharing Plan (the Plan) Located in Pittsburgh, Pennsylvania

[Application No. D-5236]

Proposed Exemption

The Department is considering granting an 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) 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 sections 4975(c)(1) (A) through (E) of the Code shall not apply to the lease of certain real property by the Plan to Ted McWilliams, Inc. (the Plan Sponsor) for a ten-year period beginning July 1, 1984, provided that the terms of the lease are as favorable to the Plan as those the Plan could obtain in a similar transaction with an unrelated party.

Effective Date: If the proposed exemption is granted, it will be effective on July 1, 1984.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 76 participants. The Plan had total assets of $8,675,216 as of December 31, 1983. The trustees of the Plan (the Trustees) are Theodore McWilliams (McWilliams) the principal stockholder, director and officer of the Plan Sponsor, and Eugene F.P. Kelly, a director and officer of the Plan Sponsor. The Plan Sponsor is an automobile dealership.

2. There are three parcels of real property involved in the proposed exemption:

Parcel I—Parcel I is owned by the Plan. It is located at 3475 Penn Highway, Pittsburgh, Pennsylvania. Parcel I was purchased by McWilliams on February 21, 1963 from Mr. and Mrs. George Beech (the Beeches), who are unrelated parties. Parcel I was then subleased to the Plan Sponsor. On June 27, 1967, McWilliams conveyed Parcel I to Potter Investment Company (Potter), a Pennsylvania corporation whose sole shareholder was the Plan. Potter leased Parcel I to the Plan Sponsor by lease dated December 31, 1969 for a 12-year period beginning on January 1, 1970 and ending on December 31, 1982. Potter then liquidated and pursuant to the Plan of Liquidation, conveyed Parcel I to its sole shareholder, the Plan on June 1, 1976. Parcel I continues to be leased to the Plan Sponsor pursuant to a lease renewal which became effective on January 1, 1983 between the Plan and the Plan Sponsor.

Parcel II—Parcel II is located at 3499 Penn Highway, Pittsburgh, Pennsylvania and consists of approximately 12 acres. Parcel II is improved with a showroom, a trailer and garage. It was leased to McWilliams from the Beeches pursuant to a lease which was dated May 13, 1964. The original term of this lease was ten years, but it has subsequently been renewed. This lease has been assigned by McWilliams to the Plan pursuant to an assignment which was dated November 29, 1968. Under the terms of the assignment, McWilliams assigned all of his rights, title and interest in Parcel II to the Plan. Rental payments are made from the Plan directly to the Beeches. The Plan then subleased Parcel II to the Plan Sponsor pursuant to a sublease which became effective January 1, 1970.

Parcel III—Parcel III is located at 3601 Penn Highway, Pittsburgh, Pennsylvania, and consists of approximately 1½ acres. It was leased to McWilliams from the Beeches on September 15, 1965. Parcel III was then assigned to the Plan pursuant to an assignment dated November 29, 1968. The Plan subleased Parcel III to the Plan Sponsor pursuant to a lease which became effective on January 1, 1970. The original term of this lease was 9½ years, but has been subsequently renewed.

The applicant represents the leases of Parcels I, II, and III were covered by the statutory exemption contained in section 414 of the Act.[1]

3. Parcels I, II, and III (collectively, the Property) are now being used by the Plan Sponsor for its business operations. An independent appraisal of the Property performed by Kelly-Reilly Associates (the Appraiser), an independent real estate appraisal firm located in Monroeville, Pennsylvania, has established the fair market value of the Property at $2,700,000 as of December 31, 1983. The appraiser has determined that the fair market rental value of the Property is $283,000 per annum as of December 31, 1983. The Property represents approximately 31 percent of the total assets of the Plan. The applicant represents that before June 30, 1987, the value of the Property will equal 25 percent or less of the Plan's total investment portfolio.

4. The applicant proposes that the Plan lease the Property to the Plan Sponsor (the Lease) for a term of 10 years, beginning July 1, 1984, with rental adjustments every two years to reflect the then fair market rental value of the

[1] The Department expresses no opinion as to the applicability of section 414 in this instance.

Property. The proposed rental rate for the Property is $300,000 per annum. This proposed rental rate exceeds the fair market rental value of the Property as determined by the Appraiser. The Plan Sponsor will pay all utilities and services related to the Property during the term of the Lease. The Plan Sponsor will also maintain policies of public liability insurance against claims for personal injury, death or property damage for the Property during the Lease term.

5. In May of 1984 Commercial Realty Marketing, Inc. (Commercial Realty) was appointed as the independent Fiduciary for one Plan. Commercial Realty, a corporation which has no association with the Plan Sponsor, reviewed the Lease and the Plan's investment portfolio and determined that it was in the best interests of the Plan and its participants and beneficiaries. On December 6, 1984, Richard R. Carr, Esquire, was appointed to serve as the independent fiduciary for the Lease (the Independent Fiduciary), replacing Commercial Realty. The Independent Fiduciary represents that he is not associated in any manner with the Plan or the Plan Sponsor. He is licensed as a real estate broker and is licensed to practice law in the Commonwealth of Pennsylvania. He represents that he has specialized in pension matters and is familiar with the fiduciary standards set forth in the Act. The Independent Fiduciary represents that he has reviewed the Lease and the Plan's investment portfolio and that as a result of his review, has determined that the Lease is in the best interests of the Plan and compliments the Plan's investment portfolio.

6. The Independent Fiduciary represents that the Lease is in the best interests of the Plan because:

(a) The Lease generates an 11 percent return each year for the Plan, with a small risk factor involved;

(b) There is enough cash in the Plan to pay any reasonably anticipated distribution for the next five years; and

(c) The rent to be received by the Plan is in excess of the fair market rental value of the Property.

7. The Independent Fiduciary further represents that he will enforce all of the terms of the Lease including the rental adjustments every two years to reflect the fair market value of the Property. He will also assure the collection of all the rents and the enforcement of all of the convenants and conditions as set forth in the Lease.

8. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(1) The fair market rental value of the Property has been established by an independent appraisal;

(2) The Plan will receive in excess of the fair market rental value of the Property during the Lease;

(3) The Independent Fiduciary will collect rents and enforce the covenants and conditions of the Lease; and

(4) The Independent Fiduciary has determined that all of the terms of the Lease are in the interests of and protective of the Plan and its participants and beneficiaries.

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.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Neurosurgical Associates of Roanoke, Inc. Defined Benefit Plan A (the Plan) Located in Roanoke, Virginia

[Application No. D-5702]

Proposed Exemption

The Department is considering granting an exemption under the authority of 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 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 by the Plan of a certain parcel of improved real property and personal property (the Property) to Dr. Ward W. Stevens (Dr. Stevens), a disqualified person with respect to the Plan, for cash in the amount of $232,587.39 provided that this amount is the fair market value of the Property at the time of sale.[2]

[2] Since Dr. Stevens owns 100% of the beneficial interest of the sponsor of the Plan and is the only Plan participant there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510 3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

For Further Information Contact: Ms. Linda Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Summary of Facts and Representations

1. The Plan is a defined benefit plan which as of November 30, 1984, had total assets of approximately $677,945. The trustees of the Plan are Dr. Stevens and his wife, Mrs. Stevens. As a part of its assets, the Plan owns the Property which consists of a mountain resort home and the fixtures and furnishings therein.

2. Dr. Stevens is requesting an exemption which will permit the sale of the Property by the Plan to himself for cash in the amount of $232,587.39. It is represented that the Plan purchased the improved real property on March 31, 1983, at an original cost of $199,540.79. Mr. Samuel B. Wells, an independent appraiser with twenty years experience and with no connections to either Dr. Stevens, Neurosurgical Associates of Roanoke, Inc., the sponsor of the Plan, the Wintergreen Company, or the Plan, represents that as of February 8, 1984, the improved real property had a fair market value of $212,500. In addition, the applicant states that Dr. Stevens will pay an additional amount of $20,087.39 which represents the original cost to the Plan for the fixtures and furnishings. It is represented that the sale of the Property to Dr. Stevens will permit the Plan to diversify its investments and allow the Plan to liquidate the real property holding of the Plan which comprises approximately 40% of the Plan's assets. All closing costs and fees will be paid by the purchaser. In addition, the applicant asserts that denial of the request for exemption would result in the Plan's suffering an economic loss because of the "soft" rental market existing in the area. The applicant indicates that since the Property was placed in service, the Property has generated approximately $800 to $1,000 per month of net rental income which represents a 5% per annum return on the Plan's ownership interest in the Property.[3]

[3] There have been only two weekends in 1984 of personal use by Dr. Stevens since the Property was placed in service. Dr. Stevens represents both trips were mainly for the purpose of checking on the condition of the Property. Dr. Stevens did not pay rent to the Plan on those two occasions. Dr. Stevens represents that as a condition of this exemption he will file the applicable 5330 forms with the Internal Revenue Service and will pay all applicable excise tax, fair market rent, and interest on such rent with regard to Dr. Stevens' use of the Property on the two weekends in 1984.

3. In summary, the applicant represents that the transaction satisfies the criteria of section 4975(c)(2) of the Code as follows: (1) The sales price of the Property consists of the greater of the actual construction cost of the Property or the appraised value on the date of sale as established by an independent appraiser plus the original cost to the Plan of the fixtures and furnishings; (2) the Plan will be able to diversify its investments and liquidate its real estate holdings; (3) the Plan will pay no commission on the sale of the Property; (4) Dr. Stevens is the only participant in the Plan.

For Further Information Contact: Ms. Angelena C. Le Blanc of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

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/or 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/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or 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.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 19th day of April, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-9925 Filed 4-24-85; 8:45 am]

BILLING CODE 4510-29-M

LIBRARY OF CONGRESS

American Folklife Center, Board of Trustees; Meeting

In accordance with Pub. L. 94-463, the Board of Trustees of the American Folklife Center announces its meeting to be held in Washington, D.C. on Wednesday, May 29, from 9:30 a.m. to 4:30 p.m. in the Whittall Room of the Library of Congress. The meeting will be open to the public. It is suggested that persons planning to attend this meeting as observers contact Ray Dockstader, American Folklife Center (202) 287-6590.

The American Folklife Center was created by the U.S. Congress with passage of Pub. L 94-201, the American Folklife Preservation Act, in 1976. The Center is directed to "Preserve and present American folklife" through programs of research, documentation, archival preservation, live presentation, exhibition, publications, dissemination, training, and other activities involving the many folk cultural traditions of the United States. The Center is under the general guidance of a Board of Trustees composed of members from Federal agencies and private life widely recognized for their interest in American folk traditions and arts.

The Center is structured with a small core group of versatile professionals who both carry out programs themselves and oversee projects done by contract by others. In the brief period of the Center's operation it has energetically carried out its mandate with programs that provide coordination, assistance, and model projects for the field of American folklife.

Raymond L. Dockstader,

Deputy Director, American Folklife Center.

[FR Doc. 85-10031 Filed 4-24-85; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days after date of this notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, (202) 786-0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3208, Washington, D.C. 20503, (202) 395-6880.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, (202) 786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries is subject to 44 U.S.C. 3504(h).

Category: Revision of currently approved collection
Title: NEH Standard Project Budget Form and Instructions
Form Number: 3136-0071
Frequency of Collection: Occasional, with each NEH Grant Application
Respondents: All NEH applicants
Use: Provide financial plan for expenditure of funds for projected activities
Estimated Number of Respondents: 2,700

Estimated Hours of Respondents to Provide Information: 3.

Bruce Carnes,

Acting Director of Administration.

[FR Doc. 85-9969 Filed 4-24-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application" please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. Copies of the applications are on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission, and the Executive Secretary, U.S. Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 18th day of April 1985 at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James Y. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International programs.

NRC EXPORT APPLICATIONS

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Transnuclear, Inc., Mar. 25, 1985, Mar. 25, 1985, XSNM02204.	93 percent enriched uranium	32.6	30.3	HEU for use as fuel in Orphee Reactor	France.
Transnuclear, Inc., Mar. 25, 1985, Mar. 25, 1985, XSNM02205.	do	59.1	55.0	HEU for use as fuel in Siloe Reactor	Do.

[FR Doc. 85-10066 Filed 4-24-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Resident Fish Substitutions Advisory Committee; Meeting

AGENCY: Resident Fish Substitutions Advisory Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Summary of losses and goals work plan.
- Role of committee, format, minutes.
- Resident fish productivity information.
- Other.
- Public comment.

Status: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Resident Fish Substitutions Advisory Committee.

DATE: May 1, 1985, 9:00 a.m.

ADDRESS: The meeting will be held at the Council Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-10038 Filed 4-24-85; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23666; 70-7098]

Columbus and Southern Ohio Electric Co.; Proposed Issuance and Sale of First Mortgage Bonds

April 19, 1985.

Columbus and Southern Ohio Electric Company ("CSO"), a subsidiary of American Electric Power Company, Inc. ("AEP"), a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 thereunder.

CSO proposes to issue and sell prior to December 31, 1985, up to $60 million aggregate principal amount of its First Mortgage Bonds ("Bonds"), in one or more new series, each such series having a maturity of not less than 5 years and not more than 30 years. The interest rate and the price to be paid to CSO for the Bonds (which shall not be less than 99 percent, and not more than 102.75 percent of the principal amount) will be determined at the time of the sale or sales by competitive bidding in accordance with Rule 50 of the Act. CSO may employ alternative competitive bidding procedures in accordance with the Commission's statement of policy set forth in HCAR No. 22623, September 2, 1982.

If market conditions should not be propitious for the sale of the Bonds on a competitive bidding basis, CSO proposes, subject to further authorization by the Commission, either to place the Bonds privately with institutional investors or to negotiate with underwriters for the sale of the Bonds. The interest rate and price, if authorized by the Commission, would be determined by negotiation in each such instance with institutional investors or with underwriters for the sale of the Bonds. If CSO determines to issue the Bonds in more than one series, CSO may wish to sell one or more series on a competitive bidding basis and one or more series on a negotiated basis, with variable maturity dates to be determined at that time.

It is expected that the terms of the Bonds will preclude CSO from redeeming any such Bond at a regular redemption price prior to five years subsequent to the first day of the month in which the Bonds of that series are first authenticated and delivered, if such redemption is for the purpose of refunding such Bond through the use, directly or indirectly, of borrowed funds

at an effective interest cost of less than the effective interest cost to the Company of such Bonds.

The proceeds from the sale of the Bonds will be deposited with the Trustee under the Mortgage, to be used to repay, on July 1, 1985, CSO's maturing $45 million principal amount of First Morgage Bonds, 7⅝% Series, and to repay short term indebtedness.

The declaration and any further amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by May 15, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the proposal, as filed or as it may be amended, may be authorized.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9970 Filed 4-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-14477; 812-6057]

Gotabanken and Gotabanken Inc.; Application

April 19, 1985.

Notice is hereby given that Gotabanken ("Bank"), a commercial bank organized under the laws of Sweden, and its wholly-owned subsidiary Gotabanken Inc. ("Issuer") (collectively, "Applicants"), Milbank, Tweed, Hadely & McCloy, One Chase Manhattan Plaza, New York, New York 10005, filed an application on February 12, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act in connection with the proposed issuance and sale of commercial paper in the United States. 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, and to the Act for the text of the pertinent statutory provisions.

Applicants state that the Bank's registered office is located at Ostra Hamngatan 16, Goteburg, Sweden, and that it is one of the larger commercial banks in Sweden. The Bank operates on an international scale: it maintains 166 branches in Sweden, has representative offices in Hong Kong and Singapore, and has subsidiary banks in Luxembourg and London and an owneship interest in a bank in Paris. The Bank is a privately-owned banking institution with its capital shares distributed among 16,000 shareholders. At December 31, 1983, total consolidated assets of the Bank were just over $4.1 billion; deposits, certificates of deposit and amounts due to Swedish and foreign banks were $2.84 billion, and shareholder equity was $70.6 million.

As a commercial bank, the Bank is active in corporate business domestically and overseas while also extensively involved in retail banking at home. The Bank's principal business consists of making loans and receiving deposits, but through subsidiaries it also engages in real estate financing and provides factoring and leasing services.

The Bank represents that it is subject to detailed regulation by Swedish banking authorities pursuant to a regulatory framework that is comparable in many respects to the regulation of United States commercial banks. In general, Swedish bank regulation is primarily supervised by the Bank Inspection Board ("Board") pursuant to the Swedish Banking Companies Act (1955), and regulated by Sveriges Riksbank (the "Riksbank"), the Central Bank of Sweden. Among other things, the Swedish Banking Act imposes minimal capital requirements and prohibits subordinated loans and unsecured investments in real estate. Compliance with the Swedish Banking Act is supervised by the Board, which prescribes accounting principles to be followed by banks, requires them to submit monthly statements of financial condition, and conduct periodic inspections. Further, under the Swedish Banking Act, the Board is granted various enforcement powers and may in exceptional cases actively intervene in management decisions if deemed necessary to enforce the Swedish Banking Act or to preserve the solvency of a bank. The Riksbank supervises banking activities in Sweden; it determines liquidity and cash-reserve requirements, imposes restrictions on interest rates charged, establishes general and specific investment requirements, and imposes limitations on the issuance of securities.

Applicants further state that the Issuer was organized under the laws of Delaware on January 28, 1985, to serve as a financial vehicle for the Bank and will issue commercial paper guaranteed by the Bank. It is represented that the only business to be conducted by the Issuer will be the issuance of commercial paper notes, the proceeds of which will be placed on short-term deposit with, or loaned to, the Bank and its other subsidiaries. These deposits, or loans, with interest, would be withdrawn by, or repaid to, the Issuer, as the case may be, to the extent necessary to pay maturing commercial paper notes. Payment of principal and interest on these securities will be guaranteed by the Bank. Since the sole business of the Issuer will be the issuance of commercial paper and the making of loans to the Bank and its other subsidiaries, substantially all of the Issuer's assets will consist of bank deposits with, or amounts receivable from, the Bank.

The Issuer proposes to offer, issue and sell in the United States guaranteed commercial paper ("Notes") in bearer form and denominated in United States dollars. It is intended that the Notes will be sold without registration under the Securities Act of 1933 ("Securities Act") in reliance upon an opinion of the Bank's United States counsel that the Notes and guarantees will qualify for the exemption from the registration requirements of the Securities Act provided for certain short-term commercial paper by section 3(a)(3) thereof. The Notes will not be issued or sold until the Bank has received such an opinion letter. The Bank does not request Commission review or approval of the aforementioned opinion letter. The Notes will be issued in minimum denominations of $100,000, will mature not more than 270 days from the date of issuance, and will not be payable on demand or include any provisions for extensions, renewal, or automatic "roll-over" at the option of either the holders, the Issuer, or the Bank. The Notes will rank *pari passu* among themselves and equally with all other unsecured indebtedness of the Issuer and superior to the rights of shareholders. The Notes are intended to be of prime quality and of the type eligible for discounting by a Federal Reserve Bank. The presently proposed, and any future, issuance of Notes by the Issuer will be conditioned upon the receipt of, prior to issuance, of one of the three highest investment grade ratings from at least one of the nationally-recognized statistical rating organizations, and the Bank's United

States counsel will have certified that such a rating has been received.

It is further stated that the Notes will have the unconditional guarantee of the Bank, endorsed on the Notes. As a result, a holder or the Notes of the Issuer will be the holder of obligations of the Bank, i.e., guarantees which will rank *pari passu* with all other unsecured indebtedness of the Bank, including liability to depositors, and ahead of shareholders and holders of subordinated debt. The proceeds of the sale of the Notes (to the extent not applied to the repayment of maturing Notes or to the payment of current expenses) will be placed on short-term deposit with, or loaned to the Bank and its subsidiaries, and will thus be made available to the Bank and its subsidiaries to be used for "current transactions" within the meaning of section 3(a)(3) of the Securities Act. These deposits, or loans, with interest, would be withdrawn by, or repaid to, the Issuer, as the case may be, as required to make timely payment on maturing Notes.

The Notes will be placed by one or more dealers, or placement agents, in the above minimum denominations, with institutional investors and other entities and individuals in the United States who regularly purchase commercial paper. While an announcement of the issuance of the Notes may be made as a matter of public record, the Notes will not be advertised or otherwise offered for sale to the general public. The Bank represents that the aggregate principal amount of the Notes to be outstanding at any time is not expected to exceed $150,000,000.

The Bank agrees to secure an undertaking from the dealer, or dealers, or placement agent, or agents that it will provide each offeree who has indicated an interest in the Notes then being offered, and prior to any sale of such Notes to such offeree, with (i) a memorandum describing the business of the Bank and the Issuer, and (ii) the most recent publicly available fiscal year-end balance sheet and income statement. Such memoranda will be updated as promptly as practicable to reflect material changes in the Bank's and the Issuer's financial status, and will be at least as comprehensive as those customarily used in offering prime quality commercial paper in the United States.

The Bank further represents that any future offerings of the Issuer's or the Bank's securities in the United States will be done on the basis of disclosure documents at least as comprehensive in their description of the Bank and the Issuer as those used in the presently proposed offering. The Bank consents to any order granting the relief requested being expressly conditioned upon the Bank's compliance with the above undertakings regarding disclosure documents. The Bank further represents that any such future offering in the United States will be made pursuant to either a registration statement under the Securities Act, or an applicable exemption from registration under the Securities Act. In any such offering for which no registration is required pursuant to the Securities Act, disclosure documents will be provided to each offeree who has indicated an interest in the securities then being offered prior to any sale of such securities to such offeree.

The Bank states that it will appoint, and will cause the Issue to appoint, one or more banks in the United States as authorized agent for itself and the Issuer, to issuer and pay the Notes from time to time on behalf of the Bank and the Issuer. The Bank will also appoint an agent to accept any process which may be served in any action based on the Notes, or the guarantee, and instituted in any state or federal court in New York City by the holder of any Notes. The Bank represents that it will expressly accept and cause the Issuer to expressly accept the jurisdiction of any state or federal court in the City and State of New York in respect of any such action. Such appointment of an authorized agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in repect of the Notes have been paid by the Issuer or the Bank.

The Bank represents that it will similarly consent, and will cause the Issuer to consent, to jurisdiction of state and federal courts in New York City and the Bank will appoint, and will cause the Issuer to appoint, an agent for service of process in suits arising from any future offerings of securities that it or the Issuer may make in the United States, which offerings the Bank states will be limited to debt securities. The Bank represents that it and the Issuer will be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the Notes or otherwise. In such instances, the authorized agent will neither be a trustee for the Noteholders, nor will it have any responsibility or duty to act for such holders as would a trustee.

The Bank and the Issuer further represent that prior to any future offering of their debt securities, such securities will have received one of the three highest investment grade ratings from at lease one nationally-recognized United States firm engaging in statistical rating and that the United States counsel to such offeror of debt securities shall have certified that such rating has been so received; provided, however, that no such rating shall be required to be obtained if in the opinion of such counsel, after taking into account the doctrine of integration for the purpose thereof, an exemption from registration is available with respect to such issue under section 4(2) of the Securities Act.

Applicants state that absent an exemption the Bank would be denied ready access to the credit markets in the United States, a result both inequitable and indirect conflict with the objectives of the International Banking Act of 1978. The Bank asserts that an exemptive order is both necessary and appropriate because it would afford foreign banks access to a source of U.S. dollars which is necessary in view of their activities in the Eurodollar market, and because it would benefit U.S. investors by making available additional opportunities for investment in short-term, prime quality securities.

Applicants further assert that the rationale for granting an exemptive order pursuant to section 6(c) of the Act to the Bank extends to the Issuer as well because of the direct-subsidiary relationship between them. It is stated that the purchase of the Issuer's Notes will be the equivalent of the purchase of obligations of the Bank because of the Bank's unconditional guarantee.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his/her interest, the reasons for the request, and the specific issues of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Divisio of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-9971 Filed 4-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21963; File No. S7-820]

Options Price Reporting Plan; Immediate Effectiveness of Amendment

On April 1, 1985, the participants in the "Options Price Reporting Authority" ("OPRA") submitted to the Commission, pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), an amendment to the "Plan for Reporting for Consolidated Options Last Sale Reports and Quotation Information,"[1] which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act ("OPRA Plan").[2]

I. Description of the Amendment

OPRA proposes to establish a non-professional subscriber information fee which will permit individual investors to receive current options last sale and quotation information via vendor-provided information services at a much lower access charge than the current OPRA subscriber fee. OPRA indicates that the new fee will be available only to individual investors who use the information for personal, non-business, investment activities and who are not employed in securities or commodities-related businesses. OPRA indicates that subscribers who do not qualify for the non-professional subscriber fee will continue to have access to current options information upon payment of OPRA's regular Subscriber Fee. The proposed non-professional subscriber fee is a flat monthly rate of $2.00. Although the Amendment is intended to become effective upon filing, OPRA does not intend to implement its non-professional subscriber arrangements until May 1, 1985, with the intervening time period to be devoted to obtaining signatures of vendors on revised forms of vendor agreements, and distributing the new non-professional subscriber agreements.

II Purpose of the Amendment

OPRA indicates that the purpose of the proposed Non-professional Subscriber Information Fee is to broaden the dissemination of current options last sale and quotation information by permitting individual investors to become OPRA subscribers at a special, low monthly charge. Further, OPRA states that the new fee is available only to those who qualify, as described above, in order to protect the revenues that OPRA collects from its professional subscribers and that are necessary to defray a portion of the exchanges' costs of collecting, consolidating, processing, and disseminating options information.

III. Manner of Implementation of the Amendment

The proposed new fee will be implemented by adopting a new Non-professional Subscriber Application and Agreement,[3] and by amending the OPRA Vendor Agreement to permit Vendors to provide current options information to approve non-professional subscribers.[4] The amendments to the Vendor Agreement also impose upon vendors responsibility for obtaining and approving completed Non-professional Subcriber Applications and Agreements and for paying the Non-professional Subscriber Information Fee to OPRA on behalf of their customers who qualify for this fee. Billing and collection of the new fee from individual investors will also be the responsibility of vendors.

IV. Request for Comment

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to John Wheeler, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549, within 21 days from the date of publication of this notice in the **Federal Register**. All communications should refer to File No. S7-820.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(27).

Dated: April 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10074 Filed 4-24-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-21966; SR-NYSE-85-16]

Self-Regulatory Organizations; New York Stock Exchange, Inc., Filing of and Order Approving Proposed Rule Change on an Accelerated Basis; Relating to Proposed Changes in NYSE Rules 451 and 455 Concerning a Surcharge, Which May Be Charged by Member Organizations of Issuers, in Connection With Proxy Solicitations, for the Purpose of Recouping Direct and Indirect Expenses Associated With Start-up Costs.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 18, 1985, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission the proposed rules changes described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rules changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rules Changes

The proposed rules changes amend Supplementary Material to Rule 451 and Supplementary Material to Rule 465 of the Exchange Rules concerning a proxy solicitation surcharge payable by issuers in connection with Rules 14b-1(c) and 17a-3(a)(9)(ii) under the Securities Exchange Act of 1934. The surcharge will be 20¢ for each set of proxy material, i.e., proxy statement and form of proxy (not including follow-up mailings), mailed in connection with the issuer's next annual meeting held after March 28, 1985.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Changes

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rules and discussed any comments it received on the proposed rules changes. The text of these statements may be examined at

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[1] *See Securities Exchange Act Release No. 17638 (March 18, 1981).*

[2] The Commission previously, by order, granted registration to OPRA as a securities information processor. At that time, OPRA's functions were limited to the collection and dissemination of options last sale reports. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4369. In order to comply with the procedures of Rule 11Aa3-2 applicable to the establishment of fees of exclusive securities processors, OPRA has filed this fee as a Plan amendment under the Rule.

[3] *See* Exhibit A of OPRA's submission filed April 1, 1985, ("Plan Amendment").

[4] *Id.* Exhibit B.

the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant of such statements.

(A) Self-regulatory Organization's Statement of the Purpose of and, Statutory Basis for, the Proposed Rules Changes

(1) Purpose

The purpose of this rules filing is to revise the text of the Supplementary Material to Rule 451 and the Supplementary Material to Rule 465 to: (a) Conform to the rules changes establishing the proxy surcharge as approved by the Commission on March 28, 1985 (see Release No. 34–21900); and (b) clarify the date of applicability of the proxy surcharge.

The Board of Directors of the Exchange at its January 3, 1985 meeting approved the proposed rules changes to establish a proxy surcharge of $.20 per proxy to be charged for ". . . each of the next two annual meeting proxy solicitations. . .", subject to approval by the Commission. The amendments were intended to recoup direct and indirect expenses associated with start-up costs to be incurred by member organizations to comply with Rules 14b–1(c) and 17a–3(a)(9)(ii) under the Securities Exchange Act of 1934. Further, the recouping of member organizations' costs is a primary consideration in the establishment and implementation of the new system to improve the process by which issuers may identify and communicate with their security holders whose securities are held in nominee name through broker-dealers envisioned by Rule 14b–1(C). At the time the Board acted, January 3, 1985, the annual meeting proxy season had not actively commenced and it was anticipated that the proposed rules changes would receive approval by the Commission in time to apply to the millions of proxies traditionally forwarded during March for annual meetings to be held during the peak of the proxy season, April and May. On January 17, 1985, the Exchange Filed a Form 19b–4 (File No. SR–NYSE–85–2) concerning those rules changes.

On March 14, 1985, as the result of a request from the staff of the Securities and Exchange Commission for further supporting evidence of anticipated start-up costs required before acting upon the second stage of the proposed surcharge and in view of the need to begin instituting the surcharge as soon as possible, the Exchange urged that the Commission approve the first stage of the surcharge and agreed to amend Rules 451 and 465 as necessary prior to the implementation of the second stage in order to reflect the Commission's final decision.[1]

By March 28, 1985, the date the Commission approved the rules changes to cover the first stage $.20 surcharge, broker-dealers had already passed a peak mailing period, the latter two weeks of March. As a result, the amount reimbursed to broker-dealers would be significantly reduced unless the surcharge is assessed on the basis of annual meetings held after March 28, 1985, rather than on the basis of proxies mailed after that date. Representatives of both the issuer group and the broker-dealer community agree that the annual meeting date was intended to govern the billing of the surcharge.

(2) Basis

The statutory basis for the proposed rules changes is section 6(b)(5) of the Securities Exchange Act of 1934 as amended ("the Act") which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

In addition, the rules changes are intended to enhance the requirements of Rules 17a–3(a)(9)(ii) and 14b–1(c) under the Securities Exchange Act of 1934 concerning the reimbursement to brokers of costs associated with those rules, including start-up and overhead costs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rules changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Any burden on competition is offset by the benefits of making available information as to non-objecting beneficial owners in compliance with SEC Rules.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rules Changes Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments concerning these rules changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the peak of the annual meeting season commences in April and accelerated approval will allow orderly billing and collection of the surcharge.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and in particular, the requirements of Section 6 and the rules and regulations thereunder.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that the purpose of the proposed rule change is to permit broker-dealers to recoup expenses associated with start-up costs incurred by NYSE member organizations to comply with Rules 14b–1(c) and 17a–3(a)(9)(ii) under the Act, and that such recoupment for the 1985 "proxy season" would be significantly reduced if broker-dealers could not impose the $.20 surcharge for proxy materials mailed prior to March 28, 1985 (the date of Commission approval of the proxy surcharge)[2] for meetings to be held after March 28, 1985. The proposed rule change is primarily technical in nature, and would permit NYSE member organizations to more fully recoup expenses incurred in connection with 1985 proxy solicitations. In addition, accelerated approval of the proposed rule change will permit more timely billing and collection procedures by NYSE member organizations with respect to the proxy surcharge.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW.,

[1] *See* letter from James E. Buck, Secretary, NYSE, to Michael Cavalier, Branch Chief, Division of Market Regulation, SEC, dated March 14, 1985.

[2] Securities Exchange Act Release No. 21900, March 28, 1985; 50 FR 13297, April 3, 1985 (File No. SR–NYSE–85–2).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules changes that are filed with the Commission, and all written communication relating to the proposed rules changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Branch, 450 5th Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the NYSE.

All submissions should refer to the file number in the caption above and should be submitted by May 16, 1985.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 19, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-10073 Filed 4-24-85; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-5484]

Capital Circulation Corp.; Issuance of License To Operate as a Small Business Investment Company

On December 12, 1984 a notice was published in the **Federal Register** (49 FR 48405) stating that an application had been filed by Capital Circulation Corporation, with the Small Business Administration (SBA), pursuant to § 107.102 of the Regulations governing small business investment companies [13 CFR 107.102 (1985)] for a license as a small business investment company (SBIC) under section 301(d) of the Act.

Interested parties were given until the close of business January 12, 1985 to submit their comments to the SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 02/02-5484 to Capital Circulation. Corporation to operate as a SBIC.

Dated: April 12, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-9962 Filed 4-24-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[CM-8/847]

OES Advisory Committee; Partially Closed Meeting

The OES Advisory Committee will meet on May 15, 1985 at the National Academy of Sciences, 2101 Constitution Ave., NW., from 9:00 a.m. until 3:30 p.m. to discuss the Vienna Ozone Convention, acid rain studies, early warning systems for famine, international health strategies, the OES Action Plan, funding for UNFPA, the U.S. MAB program, and foreign policy implications of the space station. The sessions from 9:00 a.m. to 10:30 a.m. and from 1:30 p.m. to 3:30 p.m. will be open to the public.

That portion of the OES Advisory Committee meeting from 10:45 a.m. to 11:45 a.m. will not be open to the public inasmuch as the discussion will involve classified material. Accordingly, the determination has been made to close this session pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. I, S10(d) and 5 U.S.C. 552b (c)(1) and (c)(9).

Requests for further information on the meeting should be directed to Mr. Clement, U.S. Department of State, Washington, D.C. 20520. Mr. Clement can be reached by telephone on (202) 632-2764.

Dated: April 19, 1985.

Harry R. Marshall, Jr.,

Deputy Assistant Secretary for Oceans and International Environmental and Scientific Affairs.

[FR Doc. 85-10007 Filed 4-24-85; 8:45 am]

BILLING CODE 4710-09-M

[CM-8/844]

Shipping Coordinating Committee; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on June 19, 1985, in room 2415, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C.

The purpose of the meeting is to finalize preparations for the 54th Session of the Council of the International Maritime Organization (IMO) which is scheduled for 24-28 June 1985 in London. In particular, the SHC will discuss the development of the U.S. position dealing with, among others, the following topics:

—Reports of the various Committees
—Financial and Personnel Matters
—1986/87 Work program and budget

Members of the public may attend up to the seating capacity of the room.

Intersted persons may seek information by writing: Mr. G. P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street, S.W., Washington, D.C. 20593, or by calling: 202-426-2280.

Dated: April 11, 1985.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 85-10008 Filed 4-24-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/845]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on May 14, 1985 at 9:30 a.m. in the first floor Theater, Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, D.C.

Study Group 4 deals with matters relating to systems of radiocommunications for the fixed service using satellites. The purpose of the meeting will be to discuss preparations for the international meeting of Study Group 4 in September/October, 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520, telephone (202) 632-2592.

Dated: April 16, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 56-10009 Filed 4-24-85; 8:45 am]

BILLING CODE 4710-07-M

[CM-8/846]

Study Group 1 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 1 of the U.S.

Organization for the International Radio Consultative Committee (CCIR) will meet on May 16, 1985 at 9:30 a.m. in Conference Room B841, Department of Commerce, 14th and Constitution Avenue NW., Washington, D.C.

Study Group 1 deals with matters relating to efficient use of the radio frequency spectrum, and in particular, with problems of frequency sharing, taking into account the attainable characteristics of radio equipment and systems; principles for classifying emissions; and the measurement of emission characteristics and spectrum occupancy. The purpose of the meeting is to review progress to date in the preparations for the meeting of international Study Group 1 November 4–15, 1985.

Members of the general public may attend the meeting and join in the discussion subject to instructions of the Chairman. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, D.C. 20520; telephone (202) 632–2592.

Dated: April 17, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85–10010 Filed 4–24–85; 8:45 am]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980; Forms Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Forms under review by the Office of Management and Budget.

SUMMARY: The Tennesee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the forms proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Tennessee Valley Authority, 395–7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2524, FTS 858–2524.

Type of Request: Regular Submission

Title of Information Collection: Storage Water Heater Program Specification and Work Completion Form

Frequency of Use: On Occasion

Type of Affected Public: Individuals

Small Businesses or Organizations Affected: No

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 1,000

Estimated Total Annual Burden Hours: 217

Need For and Use of Information:

The Storage Water Heater Program is designed to encourage installation of storage water heaters to reduce TVA's future peak demand for electricity.

This collection is the minimum information required to administer the Storage Water Heater Program, provide for quality assurance, develop marketing data and strategy, and maintain program checks and balances.

Dated: April 15, 1985.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 85–10057 Filed 4–24–84; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 85–031]

Rules of the Road Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Rules of the Road Advisory Council. The meeting will be held on Thursday and Friday, June 6 and 7, 1985, at the Marriot Copley Hotel/Copley Place, 110 Huntington Avenue, Boston, Massachusetts. On both days the meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. The agenda for the meeting consists of the following items:

1. International Maritime Organization and COLREG Matters.

2. Coast Guard Status Reports and Information Items:

(a) Amendment of Inland Rule 24(i) and Rule 14.

(b) Bridge-to-Bridge Radiotelephone on the Great Lakes, exemption to the Bridge-to-Bridge Radiotelephone Act and amendment to the U.S./Canadian Great Lakes Agreement.

(c) Divers Flag.

(d) Enforcement of Channel 16 Requirements and FCC changes.

(e) Operation of Channel 22 in U.S. ports.

(f) Amendment of Rule 3(g)(v), 27(b), and 27(f).

(g) Demarcation Line update.

(h) Written warnings for violation of 33 CFR 88.05.

(i) Fishing Vessel Safety Guide.

3. Discussion of the term "efficient sound signal" (Rule 33(b)).

4. Revision of Inlkand Rule 24.

5. Warning signals for vessels leaking dangerous substances.

6. Vertical sector light requirements for unmanned barges.

7. Western Rivers/Specificed waters by the Secretary—

(a) To include rew Rule 14(d) on specified waters as published in 33 CFR 89.25.

(b) Discussion on amending the definition of "Western Rivers" to include the waters specified in 33 CFR 89.25.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Acting Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the council at any time.

Additional information may be obtained from: Lieutenant Commander Charles K. Bell, Acting Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G–NSR–3/14), Washington, D.C. 20593, Telephone (202) 245–0108.

Dated: April 17, 1985

H.H. Kothe,

Acting Chief, Office of Navigation.

[FR Doc. 85–10015 Filed 4–24–85; 8:45 am]

BILLING CODE 4910–14–M

Federal Highway Administration

Environmental Impact Statement; Fulton-DeKalb Counties, Georgia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fulton and DeKalb Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, Development Engineer, Federal Highway Administration, Suite 300, 1720 Peachtree Street NW., Atlanta, Georgia 30367, telephone (404) 881–4750, or Peter Malphurs, State Environmental/

Location Engineer, Georgia Department of Transportation, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to widen the existing I-20 in Atlanta from Hill Street eastward through the Columbia Drive interchange, for an approximate distance of 8.7 miles.

Presently I-20 within the project limits has three travel lanes in each direction. The median consists of concrete curb and gutter with guardrail down the center. All of the cross streets pass over I-20. There are interchanges at Hill Street, Boulevard, Moreland Avenue, Maynard Terrace, Glenwood Avenue, Flat Shoals Road (2), Gresham Road, Candler Road, and Columbia Drive. There are overpasses for Cherokee Avenue, A & WP Railroad and Lloyd Road.

The proposed project would add two 12-foot concrete travel lanes, paved shoulders and median barrier in each direction for the entire lentth of the projet. All overpass bridges would have to be replaced to provide minimum clearance.

Alternatives under consideration include: (1) Taking no action; and (2) constructing the two additional 12-foot travel lanes and shoulders in each direction for the length of the project area.

Letter describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Formal scoping meetings on the proposed project have been held by Georgia DOT for input on the local level. These meetings will be on-going throughout project development. Additional scoping for input from State and Federal agencies is not planned at this time. A public hearing will be held after preparation of a draft EIS. Public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: April 17, 1985.

David H. Densmore,

Development Engineer.

[FR Doc. 85-10056 Filed 4-24-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Dept. Circ. Public Debt Series—No. 11-85]

Treasury Notes of April 30, 1987, Series U-1987

April 18, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,000,000,000 of United States securities, designated Treasury Notes of April 30, 1987, Series U-1987 (CUSIP No. 912827 SC 7), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated April 30, 1985, and will accrue interest from that date, payable on a semiannual basis on October 31, 1985, and each subsequent 6 months on April 30 and October 31 through the date that the principal becomes payable. They will mature April 30, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfer will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes 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. 20239, prior to 1:00 p.m., Eastern Standard time, Wednesday, April 24, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 23, 1985, and received no later than Tuesday, April 30, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. 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%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose 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 are on the list of reporting dealers published by the

Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit 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 all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, 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, an interest rate will be established, at 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 99.500. That stated rate of interest will be paid on all of the Notes. 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 prices 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.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield 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 Notes 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 the Notes allotted 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 Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5 must be made or completed on or before Tuesday, April 30, 1985. 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 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 Friday, April 26, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, April 30, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes 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 (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Carole Jones Dineen,

Fiscal Assistant Secretary.

[FR Doc. 85-9960 Filed 4-22-85; 11:53 am]

BILLING CODE 4810-40-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Modifications in Specialty Steel Import Relief

AGENCY: Notice.

SUMMARY: This notice establishes country allocations of the quotas presently applicable to imports of certain specialty steel and makes modifications in the Tariff Schedules of the United States to implement changes in the import relief. The notice provides separate allocations within the stainless steel bar, stainless steel wire rod, and alloy tool steel categories for Brazil, and within the stainless steel bar category for the Republic of Korea.

EFFECTIVE DATE: April 20, 1985.

FOR FURTHER INFORMATION CONTACT: Maria T. Springer, United States Trade Representative, (202) 395–4946.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 5074 of July 19, 1983 (48 FR 33233), provided for the temporary imposition of increased tariffs and quantitative restrictions on certain stainless steel and alloy tool steel imported into the United States, pursuant to section 203 of the Trade Act of 1974.

Proclamation 5074 authorizes the U.S. Trade Representative to take such actions and perform such functions for the United States as may be necessary to administer and implement the relief, including negotiating orderly marketing agreements and allocating quota quantities on a country-by-country basis. The U.S. Trade Representative is also authorized to make modifications in the Tariff Schedules of the United States (TSUS) headnote or items proclaimed by the President in order to implement such actions.

Pursuant to the above authority, the U.S. Trade Representative has determined that the quota quantity should be reallocated to provide country allocations for certain steel products for Brazil and the Republic of Korea.

In conformity with the above, subpart A, part 2 of the Appendix to the TSUS is modified as follows:

(1) Item 926.11 is modified to add to the country allocations, in alphabetical order, "Brazil" and the "Republic of Korea", and also to add corresponding quota quantities of "850" short tons and "730" short tons, respectively, for the period April 20, 1985 through July 19, 1985. Item 925.11 is further modified by changing the quota quantity for "Other" countries to "541" short tons for that same restraint period.

(2) Item 926.16 is modified to add "Brazil" to the country allocations, and also to add a corresponding quota quantity of "550" short tons for the period April 20, 1985 through July 19, 1985. Item 926.16 is further modified by changing the quota quantity for "Other" countries to "1,610" short tons for that same restraint period.

(3) Item 926.21 is modified to add "Brazil" to the country allocations, and also to add a corresponding quota quantity of "550" short tons for the period April 20, 1985 through July 19, 1985. Item 926.21 is further modified by changing the quota quantity for "Other" countries to "1,337" for that same restaint period.

William E. Brock,

United States Trade Representative.

[FR Doc. 85–10021 Filed 4–24–85; 8:45 am]

BILLING CODE 3190-01-M

VETERANS ADMINISTRATION

Advisory Committee on Former Prisoners of War; Meeting

The Veterans Administration gives notice under Pub. L. 92–463, section 10(a)(2) that a meeting of the Advisory Committee on Former Prisoners of War will be held at the Veterans Administration Central Ofice, 810 Vermont Avenue, NW, Washington, DC 20420, on June 17 and 18, 1985. The purpose of the Committee is to consult with and advise the Administrator of Veterans' Affairs on the administration of benefits under title 38, United States Code, for veterans who are former prisoners of war and on the need of such veterans for compensation, health care, and rehabilitation.

The meeting will convene at 9 a.m. both days in the Omar N. Bradley Conference Room. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Miss Linda Gardner, Administrative Assistant to the Chief Benefits Director, Veterans Administration Central Office (phone 202/389–2455) prior to June 7, 1985.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. H.B. Mars, Deputy Director, Compensation and Pension Service, Department of Veterans Benefits, Room 400, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Summary minutes of the meeting and rosters of the Committee members may be obtained from Miss Linda Gardner at the aforementioned address.

Dated: April 17, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–10011 Filed 4–24–85; 8:45 am]

BILLING CODE 8320-01-M

Career Development Committee; Availability of Annual Report

Under section 10(d) of Pub. L. 92–463 (Federal Advisory Committee Act) notice is hereby given that the Annual Report for the calendar year 1984 has been issued for the Veterans Administration, Medical Research Service, Career Development Committee.

The report summarizes the activities of the committee on matters related to the review and evaluation of Career Development applications. It is available for public inspection at two locations:

Library of Congress, Serial and Government Publications Reading Room LM 133, Madison Building, Washington, DC 20540

and

Veterans Administration, Medical Research Service, Career Development Program, Room 757, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: April 17, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–10004 Filed 4–24–85; 8:45 am]

BILLING CODE 8320-01-M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Public law 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Holiday Inn Thomas Circle, Massachusetts Ave., at Thomas Circle, NW, Washington, DC 20005, on June 4, 1985. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research

Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8:00 a.m., on June 4, to discuss the general status of the program. To assure adequate accommodations, those who plan to attend should contact Dr. Ping C. Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202-389-3702), prior to May 24, 1985.

The meeting will be closed from 8:00 a.m. to 5:30 p.m. on June 4, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92-463, as amended by section 5(c) of Pub. L. 94-409, and subsection (c)(6) and (c)(9)(B) of section 552b, title 5, United States Code. During this portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: April 17, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-10003 Filed 4-24-85; 8:45 am]

BILLING CODE 8320-01-M

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Pub. L. 92-463, the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Dupont Plaza Hotel, 1500 New Hampshire Avenue, NW, Washington, DC 20036, July 8 through 10, 1985, beginning at 9 a.m. on Monday. The propose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and to make recommendations to the Director, Rehabilitation Research and Development Service regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the July 8th session for approximately one hour to cover administrative matters and to discuss the general status of the program and the administrative details of the review process. During the closed session, the Board will be reviewing research and development applications. This review involves oral comments, discussion of site visits, staff and consultant critiques of research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy. Proprietary data from contractors and private firms will also be presented and this information should not be disclosed in a public session. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with section 552b, Subsections (c)(4), (c)(6), and (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs under Section 10(d) of Public Law 92-463 as amended by Section 5(c) of Pub. L. 94-409.

Due to the limited seating capacity of the room those who plan to attend the open session should contract Dr. Larry P. Turner, Administrative Officer, Rehabilitation Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 (Phone: (202) 389-5177) at least 5 days before the meeting.

Dated: April 17, 1985.

By Direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85-10005 Filed 4-24-85; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 80
Thursday, April 25, 1985

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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 15699.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 AM (Eastern Time), Monday, April 29, 1985.

CHANGES IN MEETING: The following items were postponed at the April 15, 1985, meeting and rescheduled for the April 29, 1985 Commission meeting:

1. Litigation Authorization: General Counsel Recommendations.
2. Proposed Commission Decision.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer Executive Secretariat, at (202) 634–6748.

Dated: April 22, 1985.

Cynthia C. Matthews,

Executive Officer Executive Secretariat.

This Notice Issued April 22, 1985.

[FR Doc. 85–10076 Filed 4–23–85; 9:01 am]

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 15699.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 AM (Eastern Time), Tuesday, April 30, 1985.

CHANGE IN THE MEETING: The following matter was added to the agenda for the open portion of the meeting:

"Proposed Contract for Expert Services in Connection with a Court Case."

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634–6748.

Dated: April 22, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued April 22, 1985.

[FR Doc. 85–10077 Filed 4–23–85; 9:01 am]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, April 30, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge, establish four branches and redesignate the main office:

SouthTrust Bank of Coosa County, Goodwater, Alabama, an insured State nonmember bank, for consent to merge, under its charter and with the title "SouthTrust Bank of Central Alabama," with Alexander City Bank, Alexander City, Alabama, to establish the four offices of Alexander City Bank as branches of the resultant bank, and to redesignate the present main office of Alexander City Bank as the main office of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 461,212–SR—Citizens Bank, Tillar, Arkansas
Case No. 46,213–NR—Ranchlander National Bank, Melvin, Texas

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Quarterly Report of Actions Approved Under Delegated Authority as of September 30, 1984.

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 332 of the Corporation's rules and regulations, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law," which amendments will govern insured banks' direct and indirect involvement in insurance, real estate, and guarantor or surety activities.

Memorandum and resolution re: Petition for Public hearing on proposed amendments to Part 332.

Memorandum and resolution re: Issurance of a Statement of Policy Regarding Disclosure by the FDIC of Statutory Enforcement Actions which policy provides for disclosure and publication of all final orders issued by the Corporation under its statutory enforcement authority.

Memorandum and resolution re: Solicitation of comment on two proposed alternatives for increasing market discipline for FDIC-insured banks and thereby increasing the safe and sound operation of banks and decreasing the risk to the deposit insurance fund: (1) modification of the deposit payoff procedures and (2) increased capital requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Request for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: April 23, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–10155 Filed 4–23–85; 3:06 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5

U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, April 30, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Utah Financial Thrift and Loan, an operating noninsured industrial loan company located at 4626 Highland Drive, Salt Lake City, Utah.

Application for consent to convert into a non-FDIC-insured institution:

First American Bank and Trust, North Palm Beach, Florida.

Request for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

Memorandum regarding the Corporation's assistance agreement with an insured bank under section 13 of the Federal Deposit Insurance Act.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: April 23, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10156 Filed 4-23-85; 3:06 pm]

BILLING CODE 6714-01-M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act", (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, April 22, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Mr. John F. Downey, acting in the place and stead of Director C.T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of First Community Bank, Whitehall, Ohio, an insured State nonmember bank, for consent to acquire certain assets of and assume the liability to pay certain deposits made in the East Broad Street office of First State Savings & Loan Company, Whitehall, Ohio, a non-federally-insured institution.

Application of Capital Bank, North Bay Village, Florida, an insured State nonmember bank, for consent to merge, under its charter and title, with Central Bank, Delray Beach, Florida, and for consent to establish the sole office of Central Bank as a branch of the resultant bank.

Notice of acquisition of control: First Beverly Bank, Beverly Hills, California.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: April 23, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-10157 Filed 4-23-85; 3:06 p.m.]

BILLING CODE 6714-01-M

6

FEDERAL ELECTION COMMISSION

[Federal Register No. 85-9514]

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, April 25, 1985, 10:00 a.m.

THE FOLLOWING ITEM HAS BEEN WITHDRAWN FROM THE AGENDA: Net outstanding campaign obligations (NOCO), Determination—Mondale for President Committee, Inc.

* * * * *

DATE AND TIME: Tuesday, April 30, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

The meeting scheduled for the date of May 2, 1985, has been cancelled.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-10172 Filed 4-23-85; 3:47 p]

BILLING CODE 6715-01-M

7

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 10:00 a.m., Tuesday, April 30, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee, (202-377-6677).

MATTERS TO BE CONSIDERED:

Conversion proxy solicitations.
Modified conversions.
Finance subsidiaries.
Unfair or deceptive credit practices.
Loans-to-one-borrower regulations.
Industry conflicts-of-interest regulations.

Holding company indebtness.

Jeff Sconyers,

Secretary.

[FR Doc. 85-10128 Filed 4-23-85; 1:16 pm]

BILLING CODE 6720-01-M

8

FEDERAL HOME LOAN MORTGAGE CORPORATION

DATE AND TIME: Monday, April 29, 1985, 2:00 p.m.

PLACE: 1769 Business Center Drive, Reston, Virginia, Main Conference Room.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Alan B. Hausman, 1776 G Street, NW., P.O. Box 37248, Washington, D.C. 20013, (202) 789-4763.

MATTERS TO BE CONSIDERED:

Closed

Minutes of February 27, 1985, Board of Directors' Meeting
President's Report
Second Mortgages
Financial Report

Date sent to **Federal Register:** April 23, 1985.

Maud Mater,

Secretary.

[FR Doc. 85-10132 Filed 4-23-85 1:37 pm]

BILLING CODE 6720-02-M

9

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to **Federal Register** on April 12, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 10:45 a.m., Monday, April 22, 1985, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Proposals regarding structure of the academic consultant program.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: April 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-10069 Filed 4-22-85; 4:37 pm]

BILLING CODE 6210-01-M

10

NATIONAL TRANSPORTATION SAFETY BOARD.

[NM-85-8]

TIME AND DATE: 9 a.m., Thursday, May 2, 1985.

PLACE: NTSB Board Room, 8th Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

STATUS: The first three items are open to the public; the last item is closed under Exemption 10 of the Government in the Sunshine Act.

MATTERS TO BE CONSIDERED:

1. *Response to Petition for Reconsideration* from Massachusetts Port Authority regarding the World Airways Accident at Boston-Logan International Airport, Boston, Massachusetts, January 23, 1982.

2. *Highway Accident Report:* Schoolbus Loss of Control Accidents in Miami, Florida, on September 28, 1983, and in Birmingham Alabama, on April 12, 1984.

3. *Marine Accident Report:* Collision of Towboat ANN BRENT and Tow with the Greek Tankship MANTINA, Mile 150, Lower Mississippi River, June 11, 1984.

4. *Opinion and Order.* Administrator v. Johnson, Docket SE-5969; disposition of respondent's appeal.

CONTACT PERSON FOR MORE INFORMATION: Sharon Flemming, (202) 382-6525.

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

April 23, 1985.

[FR Doc. 85-10130 Filed 4-23-85; 1:16 pm]

BILLING CODE 7533-01-M

11

RAILROAD RETIREMENT BOARD

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 2, 1985, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Proposed Changes in the RUIA Regulations
(2) Relinquishment of Rights in Cases Where a Discharge is Claimed to Have Been Wrongful
(3) Centralization of Control Over Criminal Investigations and the Decision to Refer Cases for Prosecution
(4) Canadian Service
(5) Delayed Registrations Made by Terrel D. Godfrey

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, M.R. West.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: April 22, 1985.

Beatrice Ezerski,

Secretary to the Board.

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Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602

Income Taxes; Questions and Answers Relating to Domestic Matters Under Section 338 of the Internal Revenue Code of 1954; Temporary Regulations and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8021]

Income Taxes; Questions and Answers Relating to Domestic Matters Under Section 338 of the Internal Revenue Code of 1954; Temporary Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to miscellaneous domestic matters under section 338 of the Internal Revenue Code of 1954 ("Code"), as added by the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and as amended by the Technical Corrections Act of 1982 ("TCA") and the Tax Reform Act of 1984 ("TRA"). The temporary regulations provide guidance to domestic taxpayers subject to the provisions of section 338. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**.

DATE: These regulations are effective April 25, 1985. These temporary regulations generally apply to stock acquisitions made after August 31, 1982.

FOR FURTHER INFORMATION CONTACT: Duane H. Pellervo of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document adds new temporary regulations § 1.338-4T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR"). This document also amends temporary regulations §§ 1.338-1T and 1.338-2T, which were published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and which were amended and redesignated (as §§ 1.338-1TR and 1.338-2T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Finally, this document amends the table of OMB control numbers in Part 602 of Title 26 of the CFR to reflect the OMB control number assigned to § 1.338-4T.

Substantially all of new § 1.338-4T is in the form of questions and answers, and provides guidance on a broad range of domestic issues under section 338 of the Code, as added by section 224 of TEFRA (Pub. L. No. 97-248; 96 Stat. 485) and as amended by section 306(a)(8) of the TCA (Pub. L. No. 97-448; 96 Stat. 2402) and section 712(k) of the TRA (Pub. L. No. 98-369; 98 Stat. 946). The temporary regulations added and amended by this document will remain in effect until superseded by later temporary or final regulations relating to these matters.

Temporary Extension of Time To Make Section 338, Election Expires on August 23, 1985

Temporary regulations under section 338 were published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and were amended and redesignated by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). Temporary regulations §§ 1.338-1T through 1.338-3T. Temporary regulations § 1.338-1T provides that elections under section 338 for acquisitions occurring after August 31, 1982, need not be filed before the later of (1) the 60th day after the date of publication of temporary regulations § 1.338-4T or (2) the otherwise applicable due date. Section 1.338-1T(c). The extension also applies to the following provisions in those temporary regulations: Sections 1.338-1T(f)(7)(ii) and 1.338-2T(e)(6) (time to select taxable year of new target); §§ 1.338-1T(h) and 1.338-2T(h) (waiver of certain additions to tax and times to act); and § 1.338-1T(j)(2) (perfecting declaration relating to elections under section 338 made notwithstanding suspension applicable to certain corporations). This document contains temporary regulations § 1.338-4T. Because of the length and complexity of temporary regulations § 1.339-4T, however, the due dates specified above are extended by this document to a date not earlier than the 120th day after the date of publication of this document, *i.e.*, August 23, 1985. A special suspension of time to make an election under section 338 for foreign targets and certain other corporations that may be affected by future regulations under section 338(h)(6)(B) remains in affect. See § 1.338-1T(j)(1).

Operation of Section 338

Section 338 generally provides that, if a corporation ("target") is acquired by another corporation ("purchasing corporation") in a qualified stock purchase, the purchasing corporation may elect (or may be deemed to elect under certain consistency rules) to have the target treated as if it: (1) Sold all of its assets (as "old target") at fair market value at the close of the day on which the qualified stock purchase occurred ("acquisition date") and (2) purchased those assets as a new corporation ("new target") at the beginning of the following day for an amount generally equal to the price paid by the purchasing corporation for target stock plus liabilities of target and other relevant items. Section 338 (a) and (b). The deemed sale of assets by old target generally is governed by the nonrecognition rule of section 337. The application of section 337 is limited by section 338(c)(1), however, if the maximum percentage (by value) of target stock held by the purchasing corporation during a one-year period beginning on the acquisition date is less than 100 percent. In general, the tax attributes of old target are not available to new target. The net effect of a section 338 election is that the purchasing corporation obtains a basis in target assets that generally reflects the price it paid for target stock. Under former section 334(b)(2), which was repealed when section 338 was enacted, it was necessary to liquidate target in order to obtain similar treatment.

In order to prevent certain abuses, section 338 contains elaborate consistency rules that operate to force, or prohibit, the application of section 338 to certain acquisitions. Section 338 (e) and (f). In order to prevent a corporation from selectively obtaining, from the same affiliated group, both assets at a cost basis and tax attributes, the asset consistency rule of section 338(e) may require a deemed section 338 election to be made for a target if the purchasing corporation acquires, at any time during the consistency period (as defined in section 338(h)(4)) applicable to target, assets of target or its target affiliate (as defined in section 338(h)(6)). Exceptions to the asset consistency rule are contained in section 338(e)(2), which excepts sales in the ordinary course of the transferor's trade or business, acquisitions in which the transferee's basis is measured wholly by reference to the transferor's basis, and acquisitions occurring before September 1, 1982. Authority is provided in section 338(e)(2)(D) for regulations to permit exceptions for other asset acquisitions that meet "such conditions as such regulations may provide."

Under the stock consistency rules of section 338(f), a corporation that, within a specified period, makes qualified stock purchases of two or more corporations from, generally, the same affiliated group will be subject to section 338 treatment for all such corporations or for none of them. Section 338(i) grants the

Secretary broad authority to prevent circumvention of the consistency rules.

Overview of Temporary Regulations § 1.338–4T

These temporary regulations provide guidance on a broad range of issues under section 338. These temporary regulations deal principally with domestic aspects of section 338. Regulations dealing with international aspects of section 338 are the topic of a separate regulations project to be published in the near future.

Section 1.338–4T(c) of the temporary regulations contains questions and answers relating primarily to the qualified stock purchase requirement. Section 1.338–4T(d) deals with the effect of post-acquisition events (*e.g.*, a disposition of purchasing corporation or target) on the eligibility of target for a section 338 election and with the requirement for a corporate purchaser.

Section 1.338–4T(e) provides guidance on the application of the stock consistency rules of section 338(f).

Section 1.338–4T(f) provides guidance on the application of the asset consistency rule of section 338(e)(1). Rules are provided in § 1.338–4T for the application of a number of exceptions to the asset consistency rule, including an exception for sales in the ordinary course of the transferor's trade or business (section 338(e)(2)(A)) and an exception for acquisitions in which the transferee's basis is determined wholly by reference to the transferor's basis (section 338(e)(2)(B)). A number of exceptions also are provided under the regulatory authority granted in section 338(e)(2)(D), including an exception for *de minimis* asset acquisitions. Also under the authority of section 338(e)(2)(D), § 1.338–4T(f) provides rules for making a protective carryover basis election ("protective carryover election"), pursuant to which a deemed election under section 338(e)(1) may be avoided. Section 1.338–4T(f) also describes the circumstances under which a carryover basis election by affirmative action ("affirmative action carryover election") is made. The rules relating to the carryover basis election exception are described in more detail later in this preamble.

Special consistency rules are provided in § 1.338–4T(g). Pursuant to § 1.338–4T(g)(1), the consistency period specified in section 338(h)(4)(A) and the 12-month acquisition period specified in section 338(h)(1) will be extended in certain cases. Section 1.338–4T(g)(2) contains detailed rules designed to prevent avoidance of the consistency rules through the device of causing third parties not included in the P group to buy assets of target or a target affiliate (or stock in target or a target affiliate).

Guidance on the calculation of the aggregate price at which old target is deemed to sell all of its assets in the deemed sale under section 338 is provided in § 1.338–4T(h). The deemed sale price is significant because it is used to measure certain tax liabilities of target that result from the deemed sale and that are included in the total amount that is allocated as basis among the assets of new target. Regulatory authority is provided in section 338(h)(11) to devise an elective formula for determining the deemed sale price that takes into account liabilities of target and other relevant items. The sample formula is provided in § 1.338–4T(h).

Section 1.338–4T(j) provides general guidance on the calculation of the total amount to be allocated as basis among the assets of new target. Among other matters, guidance on making the election described in section 338(b)(3) (relating to an election to adjust the basis of nonrecently purchased target stock) is provided in § 1.338–4T(j). Although section 338(b)(5) grants regulatory authority for determining how the aggregate deemed purchase amount is to be allocated among the assets of the target, these temporary regulations generally do not address that issue. That issue is the topic of a separate regulations project to be published in the near future.

Section 1.338–4T(k) provides guidance on miscellaneous matters affecting old T. Among other matters, basic guidance on the operation of section 338(h) (10), (12), and (15) is provided here. Section 338(h)(10) provides an elective procedure whereby the seller of target in certain cases may treat the stock sale as an asset sale. Section 338(h)(12) permits the nonrecognition rule of section 337 to apply in certain cases to actual asset sales made by the target before its acquisition date. Section 338(h)(15) permits several targets acquired from the same consolidated return group on the same acquisition date to file a combined deemed sale return.

Section 1.338–4T(l) provides guidance on miscellaneous matters affecting new T, including the effect of a section 338 election on employment taxes and employee plans.

Carryover Basis Election and Deemed Election

Relationship Between Carryover Basis Election and Deemed Election Under Section 338(e)(1)

The purchasing corporation ("P") generally may make an election under section 338(g) ("express election") with respect to its qualified stock purchase of the stock of target ("T") at any time during the period ending on the 15th day of the 9th month beginning after the month in which the acquisition date occurs. If, however, P wishes to avoid making a section 338 election for T, that objective can be achieved with certainty under the temporary regulations by filing a protective carryover election for T under § 1.338–4T(f)(6) before the close of the period within which to make an express election for T. In no case will a deemed election under section 338(e)(1) be imposed if the protective carryover election is made.

If the P group makes a tainted asset acquisition and neither a section 338 election nor a protective carryover election is made for T, then the tainted asset acquisition by a member of the P group will cause an affirmative action carryover election for T under the temporary regulations. An asset acquisition is a tainted asset acquisition if it is described in section 338(e)(1) and is not subject to an exception (other than the carryover basis election exception) to section 338(e)(1). The District Director may override the affirmative action carryover election and cause a deemed election under section 338(e)(1) for T, however, if that result is appropriate to carry out the purposes of the consistency rules of section 338 (e), (f), or (i). These rules were designed to encourage timely elections (either protective carryover elections or express elections) and to minimize or eliminate plans to circumvent the consistency rules.

Effect of Carryover Basis Election

A purchasing corporation that makes a carryover basis election (either a protective or an affirmative action carryover election) is bound by all of the terms and conditions imposed by these temporary regulations with respect to tainted asset acquisitions, as are all of the corporations that are members of the purchasing corporation's affiliated group. The terms and conditions generally are designed to eliminate circumvention of the consistency rules of section 338 (e), (f), or (i) that otherwise could result from a tainted asset acquisition. The basic consequence of a carryover basis election is that the P group member acquiring an asset in a tainted asset acquisition takes a carryover basis in that asset. This consequence was specifically contemplated in the legislative history of the Tax Reform Act of 1984, which expanded the grant of regulatory authority provided in sections

338(e)(2)(D) and (i). See H.R. Rep. No. 861, 98th Cong., 2d Sess. 1221 (1984) (Conference Report).

The most significant effect of a carryover basis in the transferred asset is that the same increment of gain with respect to that asset potentially will be taxed twice, *i.e.*, once to the corporation selling the asset to the P group member and again to the P group member upon a subsequent disposition of the asset. In order to ameliorate this result, yet without permitting circumvention of the consistency rules, the temporary regulations provide limited relief (depending upon the fact situation) from the carryover basis consequence in the three basic fact situations in which a tainted asset acquisition occurs.

First, if the transferor of the asset in a tainted asset acquisition is not a member of the P group at the time of the tainted asset acquisition, then relief is provided if, within a specified period, the transferee P group member ("P") transfers the asset in a qualifying transaction to another P group member ("P1") in which P holds stock. The relief in such a case takes the form of an increase in P's basis in P1 stock, generally in an amount equal to the excess of P's basis in the transferred asset absent the carryover basis election over P's carryover basis in that asset. Such excess is only added on the first transfer; subsequent transfers of the tainted asset do not result in similar relief. This relief in the form of stock basis is available only in connection with a *protective* carryover election.

Second, if the transferor of the asset in a tainted asset acquisition is a member of the P group at the time of the tainted asset acquisition but does not join in a consolidated return with the transferee P group member for the year of the asset acquisition, then relief is provided if an offset prohibition election is made. The principal consequences of an offset prohibition election are that: (1) The transferee P group member takes a basis in the asset that is determined without regard to the carryover basis election and (2) the transferor's gain on the transfer cannot be offset by any deductions of the transferor and the tax attributable to that gain cannot be offset by certain credits of the transferor. Several other special rules also apply. The offset prohibition election can be made only in connection with a *protective* carryover election.

Third, if the transferor of the asset in a tainted asset acquisition is a member of the P group at the time of the asset acquisition and also joins in a consolidated return with the transferee P group member for the year of the asset acquisition, then relief is provided in the form of a general adherence to the principles of the consolidated return regulations governing deferred intercompany transactions. Although, under the consolidated return regulations, the transferee P group member therefore may obtain a cost basis in the transferred asset, the rules governing deferral and restoration of the transferor P group member's gain in the acquisition generally ensure that the P group as a whole obtains no benefit from the cost basis. The principal exception provided by these temporary regulations to the consolidated return regulations applies if deferred gain in the tainted asset acquisition is restored because the transferor ceases to be a member of the P group. In such a case, the consolidiated return restoration rules may not operate effectively to ensure that the principles of the consistency rules are not avoided. Thus, these temporary regulations alter these rules. The transferee P group member's basis in the acquired asset is reduced by the amount of the restored deferred gain unless an offset prohibition election applies to the acquisition. Again, such offset prohibition election can be made only in connection with a protective carryover election. The principal consequences of an offset prohibition election in the consolidated return context are that: (1) The basis in the acquired asset is not reduced and (2) the restored deferred gain that otherwise is the measure of the step-down cannot be offset by any deductions of the P group and the tax attributable to that gain cannot be offset by certain credits of the P group. Several other special rules also apply.

Comments Requested Regarding Effect of Contingent Payments and Liabilities

This document does not deal with the effect of contingent payments and liabilities on the calculation of either the deemed sale price or the total amount to be allocated as basis among the assets of new target. No inference as to the Treasury's position on these matters should be drawn from the contents of these temporary regulations. Comments are invited as to the appropriate treatment of such payments and liabilities.

Appropriate Amendments to Regulations Under Affected Sections To Be Made

If the rules in these temporary regulations that relate to sections of the Code other than section 338 are issued in the form of final regulations, the appropriate regulations sections will be amended to reflect those rules (see, *e.g.*, the regulations under sections 48, 79, 83, 168, and 304).

Amendments to §§ 1.338–1T and 1.338–2T

Section 1.338–1T is amended by this document to reflect the fact that the due date for making a section 338 election is a date no earlier than August 23, 1985. (A special suspension of time to make an election under section 338 for foreign targets and certain other corporations that may be affected by future regulations under section 338(h)(6)(B) remains in effect. See § 1.338–1T(j)(1). In addition, § 1.338–1T(e) is amended to reflect new procedure requirements and to provided additional time within which to satisfy the requirements specified therein. Finally, several additional amendments are made to conform §§ 1.338–1T and 1.338–2T with the provisions of § 1.338–4T.

Question and Answer Format

As noted above, substantially all of new § 1.338–4T is presented in the form of questions and answers. The questions and answers are not intended to address comprehensively all of the issues raised by section 338. Taxpayers may rely on these questions and answers, which the Internal Revenue Service will follow in resolving issues arising under section 338. No inference should be drawn, however, regarding questions not expressly raised and answered.

Regulatory Flexibility Act; Executive Order 12291; and Paperwork Reduction Act of 1980

A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, these temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that regulatory impact analysis therefore is not required. The collection of information contained in these regulations has been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control number 1545–0702).

Drafting Information

The principal author of these temporary regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other

offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.301–1–1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

26 CFR Part 602

Reporting and record keeping requirements.

Adoption of Amendments to the Regulations

Accordingly, Part 1 and 602 of Title 26 of the Code of Federal Regulations are amended as follows:

Paragraph 1. A new § 1.338–4T is added immediately after § 1.338–3T to read as follows:

§ 1.338–4T Questions and answers relating to miscellaneous issues under section 338 (temporary).

(a) *Introduction*—(1) *Effective date.* Except as otherwise provided in this section, this section applies to stock acquisitions for which the acquisition date (determined without section 224 (d)(5) of TEFRA) occurs after August 31, 1982.

(2) *Scope of regulations.* This section provides guidance on a broad range of issues under section 338. This section deals principally with domestic aspects of section 338. For foreign aspects, see § 1.338–5T (to be published).

(3) *Outline of topics.* In order to facilitate the use of this section, this paragraph (a) (3) lists the paragraphs, subparagraphs, and subdivisions contained in this section.

(a) Introduction.
- (1) Effective date.
- (2) Scope of regulations.
- (3) Outline of topics.
- (4) Cross-reference of Code provisions to provisions in this section.

(b) Nomenclature and definitions.
- (1) Nomenclature.
- (2) Definitions in section 338(h) and § 1.338–1T.
- (3) Affected target.
- (4) Original target.
- (5) Consistency period.
- (6) Domestic corporation.
- (7) Section 338 election.
- (8) Express election.
- (9) Deemed election.
- (10) Related persons.

(c) Qualified stock purchase and miscellaneous related rules.
- (1) Purchase requirement of section 338(h)(3).
- (2) Date of purchase from certain related persons.
- (3) Qualified stock purchase, deemed election, and acquisition date for tiered targets.
- (4) Effect of redemptions.
- (5) Effect of section 304.

(d) Effect of post-acquisition events on eligibility of T for section 338 election; requirement of purchasing corporation.

(e) Application of the stock consistency rules of section 338(f).

(f) Application of the asset consistency rule of section 338(e).
- (1) Introduction and general operating rules.
  - (i) Introduction.
  - (ii) General operating rules.
- (3) Exception of section 338(e)(2)(A) for acquisitions in ordinary course of trade or business.
- (4) Exception of section 338(e)(2)(B) for acquisitions in which transferee's basis in acquired assets is measured wholly by reference to transferor's basis.
- (5) Certain transactions excepted under section 338(e)(2)(D).
- (6) Carryover basis election exception under section 338(e)(2)(D) and (i).
  - (i) Introduction.
  - (A) Overview.
  - (B) Cross-reference.
  - (ii) Procedure for making protective carryover election and affirmative action carryover election.
  - (iii) Corporations and acquistions subject to protective or affirmative action carryover election.
  - (iv) Consequences of protective or affirmative action carryover election.
- (7) De minimis exception under section 338 (e)(2)(D).

(g) Special consistency rules.
- (1) Extension of consistency period and 12-month acquisition period in certain cases.
- (2) Asset or stock acquisition by non-P group member considered an acquisition by P group member in certain cases.

(h) Determination of section 338(a)(1) deemed sale price.
- (1) Introduction.
- (2) Definitions.
  - (i) ADSP.
  - (ii) Elective ADSP formula.
  - (iii) Allocable ADSP amount.
  - (iv) Recapture gain.
  - (v) Section 338(c)(1) percentage.
- (3) Determination of ADSP.

(i) [Reserved]

(j) Determination of basis of target assets after section 338 election.
- (1) Introduction.
- (2) Determination of adjusted grossed-up basis.

(k) Miscellaneous matters affecting the final return of old T.
- (1) Application of section 337 to deemed sale of assets.
- (2) Application of section 338(h)(10).
- (3) Effect of sections 382(a) and 168(d)(92)(B) on old T's final return.
- (4) Application of § 1.1502–76(c) to old T's final return.
- (5) Effect on old T's final return of plan to abate section 338(c)(1) amounts.
- (6) [Combined deemed sale return under section 338 (h)(15).

(l) Miscellaneous matters affecting new T.
- (1) Effect of old T liabilities.
- (2) Availability of investment tax credit; recovery deductions.
- (3) Effect of acquisition of partnership interest in deemed purchase under section 338(a)(2).
- (4) Employment taxes; employee plans.

(4) *Cross-reference of Code provisions to provisions in this section.* The following tables cross-reference provisions of the Code to subunits of this section in which those Code provisions are dealt with in a significant manner. A Code provision may be cross-referenced to a subunit of this section even though that Code provision is not specifically cited in the section subunit. These tables are not intended to provide an exhaustive cross-reference of Code provisions.

Subunits of section 338	Subunits of § 1.338–4T
(a)(1)	(h)(1); (k)(1) *A. 1*
(a)(2)	(h)(3) *A. 3*; (*l*)(*3*)
(b)	(h)(3) *A. 2*; (j)
(b)(3)	(j)(2)
(b)(5)	(j)(1)
(c)(1)	(h); (j)(2) *A. 4 Ex.*; (k)(1) *A. 3*; (k)(5)
(d)	(d)
(d)(3)	(c)(2)–(4); (d) *A. 4*
(e)	(b)(9); (f); (g)
(e)(2)(A)	(f)(3)
(e)(2)(B)	(f)(4)
(e)(2)(D)	(f)(1)(ii); (f)(4) *A. 3* (ii)(A); (f)(5)–(7)
(e)(3)	(g)(1) *A. 2*
(f)	(b)(9); (d) *A. 1 Ex. (2)*; (e); (f) (7) *A. 2 Ex. (1)* (ii)(g)
(f)(1)	(b)(4); (c)(3); (c)(4) *A. Ex. (3)*; (*f*)(*6*)(*iii*) *A. 1 Ex.*; (*h*)(*3*) *A. 3 Ex.*
(f)(2)	(f)(1)(ii)
(h)	(b)(2)
(h)(1)	(c)(2); (c)(4) *A.* (ii)(B); (c)(4) *A. Ex. (7)*; (*g*)(*1*) *A. 2*
(h)(2)	(c)(3) *A. 2*; (*c*)(*4*)
(h)(3)(A)(i)	(c)(5)
(h)(3)(A)(ii)	(c)(1)
(h)(3)(A)(iii)	(c)(2)
(h)(3)(B)	(c)(3)
(h)(3)(C)	(c)(2); (c)(4) *A.* (ii)(B); (c)(4) *A. Ex. (7)*
(h)(4)	(b)(5); (e); (f)
(h)(4)(B)	(g)(1)–(2)
(h)(5)	(b)(1)(iv)
(h)(8)	(c)(3); (f)(2); (h)(1); (j)(1)
(h)(10)	(b)(1); (k)(2)
(h)(11)	(h); (j)
(h)(12)	(k)(1)
(h)(15)	(k)(6)
(i)	(b)(9); (f); (g)

Code provisions other than 338	Subunits of § 1.338–4T
27–30	(f)(6)(iv) *A. 2* (ii)(B) and *A. 3* (iv)(D)
39–41	(f)(6)(iv) *A. 2* (ii)(B) and *A. 3* (iv)(D)
48(c)	(j)(2) *A. 1*
79	(j)(4)
104–105	(j)(4)
120	(j)(4)
124–125	(j)(4)
127	(j)(4)
129	(j)(4)
168	(j)(2) *A. 2*
168(d)(2)(B)	(k)(3) *A. 2*
168(e)(4)	(j)(2) *A. 2*
168(f)(10)	(j)(2) *A. 2*
179(d)(2)(B)	(j)(2) *A. 1*
301–307	(c)(1) *A. 4*
304(c)(2)(B)	(c)(5)
311(b)	(f)(4) *A. 3*
311(c)	(f)(4) *A. 3*
311(d)(1)	(c)(1) *A. 4*; (*f*)(*4*) *A. 3*
318	(b)(10)
334(b)(1)	(f)(4) *A. 2*

Code provisions other than 338	Subunits of § 1.338-4T
336(b)	(k)(1) *Q. 2*
337	(c)(1); (h)
337(c)	(k)(1)
337(f)	(k)(1) *Q. 2*
341(e)	(k)(1) *A. 4*
341(f)	(k)(1) *A. 1*
351	(f)(5)(iv) *A. 1* (i)(B)
362	(f)(4) *A. 1*
368	(d); (f)(4) *Q. 1*
382(a)	(k)(3) *Q. 1*
401(A)	(f)(4)
403(a)	(f)(4)
408(k)	(f)(4)
422A	(f)(4)
423	(f)(4)
453	(f)(5)(iv) *A. 2* (i)(B)
453(h)	(k)(1) *Q. 5*
453B(d)(2)	(k)(1) *Q. 5*
743(b)	(f)(3)
754	(i)(3)
897(d)(2)	(k)(1) *A. 2*
934(b)	(b)(6)
936	(b)(6)
1031(d)	(f)(4) *Q. 4*
1248(e)	(b)(6)
1563(b)	(i)(2) *A. 1*
3101	(f)(4)
3111	(f)(4)
3301	(f)(4)

(b) *Nomenclature and definitions.* For purposes of this section (and except as otherwise provided in this section)—

(1) *Nomenclature*—(i) P is a domestic corporation that directly purchases all of the outstanding stock in a second domestic corporation.

(ii) T is the domestic corporation the stock of which is purchased by P. T has only one class of stock outstanding.

(iii) P1, P2, etc., are domestic corporations that are members of the P group.

(iv) The P group is an affiliated group (as defined in section 338(h)(5)) that includes one or more P corporations as members.

(v) T1, T2, etc., are domestic corporations that are target affiliates of T. Those corporations (T1, T2, etc.) have only one class of stock outstanding, and also may be targets. None of the stock of those corporations is owned by T.

(vi) S is a domestic corporation (unrelated to P and B) that owns all of the outstanding stock of T prior to the purchase of T stock by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(vii) A is an individual (unrelated to P and B) who is a U.S. resident or citizen and who owns all of the outstanding stock of T prior to the purchase of T stock by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. resident or citizen. Ownership of the stock of T by A and ownership of the stock of T by S are mutually exclusive circumstances.)

(viii) B is an individual (unrelated to T, S, and A) who is a U.S. resident or citizen and who owns all of the outstanding stock of P.

(2) *Definitions in section 338(h) and § 1.338-1T.* The definitions in section 338 (h) and § 1.338-1T also apply to this section.

(3) *Affected target.* A corporation is an "affected target" if a deemed election would occur for that corporation in the event of a section 338 election for T.

(4) *Original target.* A corporation ("X") is an "original target" if there exists no previously acquired target as to which a section 338 election would cause a deemed election under section 338(f)(1) for X. If two corporations are acquired at the same time, either corporation (but not both) may be considered by the purchasing corporation as the original target.

(5) *Consistency period.* The "consistency period" is the period described in section 338(h)(4)(A) unless extended pursuant to paragraph (g)(1) *Answer 1* of this section.

(6) *Domestic corporation.* A "domestic corporation" is a corporation (i) that is created or organized in the United States or under the law of the United States or of any State and (ii) that is not a DISC, a corporation described in section 934(b) or 1248(e), or a corporation to which an election under section 936 applies.

(7) *Section 338 election.* A "section 338 election" is an election to apply section 338(a) to a target. A section 338 election is either an express election or a deemed election.

(8) *Express election.* An "express election" is a section 338 election made for the original target by filing a statement of section 338 election (Form 8023) pursuant to § 1.338-1T(c).

(9) *Deemed election.* A "deemed election" is a section 338 election that is not an express election. A deemed election is made under the authority of section 338 (e), (f), or (i) or under the authority of more than one of those provisions. If an express election for the original target causes a section 338 election by reason of section 338(f)(1) for another target, that other target is considered subject to a deemed election. A statement of section 338 election (Form 8023) need not be filed for that other target, but that other target may be required to be included in a schedule attached to the statement of section 338 election filed for the original target. See § 1.338-1T (c) and (e).

(10) *Related persons.* Two persons are related to each other if stock in a corporation owned by one such person would be attributed under section 318(a) (other than paragraph (4) thereof) to the other, or vice versa.

(c) *Qualified stock purchase and miscellaneous related rules*—(1) *Purchase requirement of section 338(h)(3).* The purpose of this paragraph (c)(1) is to provide guidance on whether particular stock acquisitions qualify as purchases under section 338(h)(3). It is assumed in each question and answer that no exception to the purchase requirement is potentially applicable other than the exception discussed in the particular question and answer.

Question 1: If P acquires T stock from S solely for cash in a transaction with respect to which S does not recognize gain or loss pursuant to section 337, has P acquired that T stock by purchase?

Answer 1: Yes. Such an acquisition of stock is not excepted from the definition of purchase under the regulatory authority in section 338(h)(3)(A)(ii).

Question 2: If P acquires T stock from S solely for cash in a transaction with respect to which S recognizes its income under the installment method, has P acquired that T stock by purchase?

Answer 2: Yes. Such an acquisition of stock is not excepted from the definition of purchase under the regulatory authority in section 338(h)(3)A)(ii).

Question 3: If P acquires T stock from S solely for cash and if S is a foreign person that is not required to pay United States income tax on the disposition of the T stock, has P acquired that T stock by purchase?

Answer 3: Yes. Such an acquisition of stock is not excepted from the definition of purchase under the regulatory authority in section 338(h)(3)(A)(ii).

Question 4: Assume that P owns less than 50 percent in value of the stock of S and that S owns 100 percent of the only class of T stock. If P acquires all of the T stock from S in a distribution with respect to P's S stock or in a redemption of P's S stock, has P acquired that T stock by purchase?

Answer 4: (i) *Distribution with respect to which section 311(d)(1) applies.* If P acquires the T stock in a distribution with respect to which S recognizes gain under section 311(d)(1), then P has acquired that T stock by purchase.

(ii) *Distributions with respect to which section 311(d)(1) does not apply*—(A) *Fair market value of T stock does not exceed its adjusted basis in the hands of S.* If P acquires the T stock in a distribution to which sections 301-307 apply and if the fair market value of the T stock does not exceed its adjusted basis in the hands of S (so that section 311(d)(1) does not apply to the distribution), then P has acquired that T stock by purchase. This result applies

even though S realizes but does not recognize a loss, since such an acquisition of stock is not excepted from the definition of purchase under the regulatory authority in section 338(h)(3)(A)(ii).

(B) *Fair market value of T stock exceeds its adjusted basis in the hands of S.* Under the authority of section 338(h)(3)(A)(ii), if (*1*) P acquires the T stock in a distribution to which sections 301–307 apply, (*2*) the fair market value of the T stock exceeds its adjusted basis in the hands of S, and (*3*) section 311(d)(1) does not apply to the distribution, then P has not acquired that T stock by purchase.

Example (1). P owns less than 50 percent in value of the stock of S, and S owns all of the stock of T. The stock of T has a fair market value of $1,000, and S's basis in that stock is $400. On November 1, 1986, S distributes all of the stock of T to P in a redemption qualifying under section 302(a) of the S stock held by P. S recognizes a gain of $600 on the distribution pursuant to section 311(d)(1). Accordingly, P has acquired the T stock by purchase under section 338(h)(3).

Example (2). Assume the same facts as in *Example (1)*, except that S's basis in the T stock is $1,400. The result is the same.

Example (3). Assume the same facts as in *Example (1)*, except that the distribution is a dividend distribution rather than a distribution in redemption of S stock. S recognizes a gain of $600 on the distribution pursuant to section 311(d)(1). Accordingly, P has acquired the T stock by purchase under section 338(h)(3).

Example (4). Assume the same facts as in *Example (3)*, except that the distribution occurs on January 1, 1984. S does not recognize a gain on the distribution under section 311(d)(1). P has not acquired the T stock by purchase under section 338(h)3).

(2) *Date of purchase from certain related persons.*

Question: If T stock acquired by P from a related corporation is treated as purchased stock by reason of section 338(h)(3)(C) (relating to certain stock acquisitions from related corporations), what is the date on which P is considered to have acquired that stock for purposes of satisfying the requirement of section 388(d)(3) that stock included in the qualified stock purchase must be acquired during the 12-month acquisition period?

Answer: If T stock acquired by P from a related corporation ("R") is treated as purchased by P by reason of section 338(h)(3)(C), then, solely for purposes of determining whether the 12-month acquistion period requirement for a qualified stock purchase is satisfied, to the extent such T stock is considered owned by P under section 318(a) (other than paragraph (4) thereof) immediately before the acquisition from R by reason of P's ownership of stock in R ("attributed T stock"), that attributed T stock is considered to have been acquired by P on the day on which P is first considered to own that stock rather than on the day on which P actually acquires that stock from R. If the date on which that T stock is considered to have been acquired by P precedes the date of P's actual purchase by more than 12 months, that stock cannot be taken into account for purposes of determining whether a qualified stock purchase has occurred unless, in the particular case, the 12-month acquisition period is extended pursuant to paragraph (g)(1) *Answer 2* of this section. If shares of attributed T stock owned by R are first considered to be owned by P on more than one date, then the attributed T shares purchased by P are deemed to be the T shares that are considered owned by P on the earliest date first, to the extent thereof, and then on the next earliest date.

Example (1). (i) On January 1, 1984, P purchases 75 percent in value of the stock of S. On that date, S owns 4 of the 100 shares of T's only class of outstanding stock. On June 1, 1984, S acquires an additional 16 shares of T stock. On December 1, 1984, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by S.

(ii) Of the 12 shares of T stock purchased by P from S on December 1, 1984, 3 of those shares are deemed to have been acquired by P on January 1, 1984, the date on which 3 of the 4 shares of T stock held by S on that date were first considered owned by P under section 318(a) (other than paragraph (4) thereof), *i.e.*, 4×.75. Section 338(h) (1) and (3)(C)(i). The remaining 9 shares of T stock purchased by P from S on December 1, 1984, are deemed to have been acquired by P on June 1, 1984, the date on which an additional 12 of the 20 shares of T stock owned by S on that date were first considered owned by P under section 318 (a) (other than paragraph (4) thereof), *i.e.*, (20×.75)−3. Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (*i.e.*, 3 shares constructively on January 1, 1984, 9 shares constructively on June 1, 1984, and 70 shares actually on December 1, 1984), a qualified stock purchase is made on December 1, 1984.

Example (2). (i) On February 1, 1983, P acquires 25 percent in value of the stock of S from B (the sole shareholder of P). That S stock is not acquired by purchase. See section 338(h)(3)(A)(iii). On that date, S owns 4 of the 100 shares of T's only class of outstanding stock. On June 1, 1983, P purchases an additional 25 percent in value of the stock of S, and on January 1, 1984, P purchases another 25 percent in value of the stock of S. On June 1, 1984, S acquires an additional 16 shares of T stock. On December 1, 1984, P purchases 66 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by S.

(ii) Of the 12 shares of T stock purchased by P from S on December 1, 1984, 2 of those shares are deemed to have been acquired by P on June 1, 1983, the date on which 2 of the 4 shares of T stock held by S on that date were first considered owned by P under section 318(a) (other than paragraph (4) thereof), *i.e.*, 4×.5. For purposes of this attribution, the S stock need not be acquired by P by purchase. See section 338(h)(1). (By contrast, the acquisition of T stock by P from S will not qualify as a purchase unless P has acquired at least 50 percent in value of S stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of T stock purchased by P from S on December 1, 1984, 1 of those shares is deemed to have been acquired by P on January 1, 1984, the date on which an additional 1 share of the 4 shares of T stock held by S on that date was first considered owned by P under section 318(a) (other than paragraph (4) thereof), *i.e.*, (4×.75)−2. The remaining 9 shares of T stock purchased by P from S on December 1, 1984, are deemed to have been acquired by P on June 1, 1984, the date on which an additional 12 shares of T stock held by S on that date were first considered owned by P under section 318(a) (other than paragraph (4) thereof), *i.e.*, (20×.75)−3. Because a qualified stock purchase of T by P is made on December 1, 1984, only if all 12 shares of T stock purchased by P from S on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1, 1984 (*i.e.*, on June 1, 1983), a qualified stock purchase is not made. (In appropriate cases, however, the 12-month period within which the qualified stock purchase must be made will be extended pursuant to paragraph (g)(1) *Answer 2* of this section.)

Example (3). Assume the same facts as in *Example (2)*, except that on February 1, 1983, P acquires 25 percent in value of the stock of S by purchase. The result is the same as in *Example (2)*.

(3) *Qualified stock purchase, deemed election, and acquisition date for tiered targets.*

Question 1: Assuming that T owns 80 percent of the only class of outstanding T1 stock, and that P purchases 80 percent of the only class of outstanding T stock in a qualified stock purchase, will T have made both a qualified stock purchase of T1 stock and a deemed election for T1 if P makes a valid express election for T?

Answer 1: Yes. By reason of P's express election for T, old T is deemed to sell T's assets and new T is deemed to purchase those assets. Under section 338(h)(3)(B), this deemed purchase of 80 percent of the T1 stock by new T is a purchase by new T for purposes of section 338(d)(3), and thus constitutes a qualified stock purchase of T1 stock. Accordingly, the express election for T

also causes a deemed election for T1 (a target affiliate of T) under section 338(f)(1) since, under section 338(h)(8), purchases by members of the same affiliated group (here P and new T) are treated as if made by one corporation. For guidance in a case in which a qualified stock purchase of T stock is effected in part by a redemption by T (on the acquisition date of T) in which T distributes the stock of its subsidiary, see paragraph (c)(4) *Answer Example (3)* of this section.

Question 2: Under the facts of *Question 1* of this paragraph (c)(3), what is the acquisition date of T1?

Answer 2: Under the authority of section 338(h)(3)(B), the acquisition date of T1 is the same day as the acquisition date of T, the corporation the stock of which is actually purchased (rather than deemed purchased pursuant to section 338(h)(3)(B)). However, the deemed sale and purchase of T1's assets is considered to take place instantaneously after the deemed sale and purchase of T's assets.

Question 3: Assume the facts of *Question 1* of this paragraph (c)(3). Assume in addition that T1 owns 80 percent of the only class of T2 stock. What is the acquisition date of T2?

Answer 3: Under the principles of *Answer 1* of this paragraph (c)(3), T1 is deemed to make a qualified stock purchase of T2 stock and the deemed election for T1 under section 338(f)(1) causes a deemed election for T2 (also under section 338(f)(1)). The acquisition date of T2 is the same day as the acquisition date of T, the corporation the stock of which is actually purchased (rather than deemed purchased pursuant to section 338(h)(3)(B)). However, the deemed sale and purchase of T2's assets is considered to take place instantaneously after the deemed sale and purchase of T1's assets.

Example (1). T is the common parent of an affiliated group that files consolidated returns. The group consists of T, T1, and T2. T owns 80 percent of the only class of outstanding T1 stock and T1 owns 80 percent of the only class of outstanding T2 stock. On September 10, 1984, P purchases all of the outstanding T stock and makes an express election for T. Pursuant to *Answer (1)* of this paragraph (c)(3), new T's deemed purchase of the stock of T1 constitutes a qualified stock purchase of T1 stock by new T, and the section 338 election for T also applies to T1 by reason of section 338(f)(1). Similarly, new T1 is deemed to have made a qualified stock purchase of T2 stock, for which a deemed election also is made. The acquisition date of T1 and T2 is September 10, 1984, *i.e.*, the acquisition date of T, the stock of which was actually purchased. The T group's final consolidated return for the period ending at the close of September 10, 1984, will include any items resulting from the deemed asset sales of old T, old T1, and old T2 (all of the deemed sales of which are treated as occurring on that date). See § 1.338-1T(f)(2)(ii).

Example (2). A owns all 100 shares of T's only class of outstanding stock. T owns 50 of the 100 shares of X's only class of outstanding stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1, 1985, P acquires all of the stock of T in a qualified stock purchase and makes an express election for T. On December 1, 1985, P acquires by purchase the 50 shares of X stock held by Y. A qualified stock purchase of X stock is made on December 1, 1985, since the deemed purchase of 50 shares of X stock by new T by reason of the express election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), the X stock T is deemed to purchase is deemed purchased on the acquisition date of T, *i.e.*, January 1, 1985.

(4) *Effect of redemptions.*

Question: May the requirements for a qualified stock purchase under section 338(d)(3) be satisfied through a combination of T stock purchases by P and redemptions by T?

Answer: Yes. (i) *Redemptions from persons unrelated to P.* A qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to T stock that is both (A) held on that day by P and (B) purchased by P during the 12-month acquisition period ending on that day ("qualifying target stock"). That day is the "acquisition date" within the meaning of section 338(h)(2). T stock redemptions from persons unrelated to P that occur at any time before the close of the 12-month acquisition period (whether before or after the beginning of that period and whether before or after the purchase of any T stock by P) are taken into account as reductions in T's outstanding stock for purposes of determining whether T stock purchased by P in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(ii) *Redemptions from P or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of T stock during the 12-month acquisition period from P or from any person related to P is not taken into account as a reduction in T's outstanding stock.

(B) *Exception for certain redemptions from related persons.* A redemption of T stock during the 12-month acquisition period from a person related to P will be taken into account as a reduction in T's outstanding stock to the extent of the purchased stock amount. The "purchased stock amount" is the portion of the redeemed stock that could have been purchased by P from the related person on the day of the redemption (by reason of section 338(h)(3)(C)) and that, in the event of such a purchase, would have been qualifying target stock with respect to the 12-month acquisition period. See paragraph (c)(2) of this section.

Example (1). A owns all 100 shares of T's only class of outstanding stock. On January 1, 1984, P purchases 40 shares of T stock from A. On July 1, 1984, T redeems 25 shares from A. On December 1, 1984, P purchases 20 shares of T stock from A. A qualified stock purchase is made by P on December 1, 1984, since, within a 12-month period ending on that date, the 60 shares of T stock purchased by P satisfy the percentage ownership requirements of section 338(d)(3), *i.e.*, 80 percent, 60/75 shares, determined by taking into account the redemption of 25 shares.

Example (2). Assume the same facts as in *Example (1)*, except that P purchases 60 shares on January 1, 1984, and none on December 1, 1984. A qualified stock purchase is made by P on July 1, 1984, since that is the first day on which T stock purchased by P within the preceding 12-month period satisfies the percentage ownership requirements of section 338(d)(3), *i.e.*, 80 percent, 60/75 shares, determined by taking into account the redemption of 25 shares.

Example (3). Assume the same facts as in *Example (2).* Assume further that T distributes to A all of the stock of T's wholly-owned subsidiary, T1, in the redemption on July 1, 1984, and that P makes an express election with respect to its qualified stock purchase of T stock. The acquisition date of T is July 1, 1984. Although T held all of the stock of T1 on that date a qualified stock purchase and deemed election are not considered made for T1 by reason of the express election for T. In order for a deemed election to be made for T1, T must hold the T1 stock when T's deemed sale of assets occurs pursuant to section 338(a). The deemed sale of assets is considered that last transaction of old T at the close of the acquisition date. Accordingly, T1 stock actually disposed of by T on the acquisition date is not included in the deemed sale and purchase of assets pursuant to section 338(a). Thus, as qualified stock purchase and deemed election are not made for T1. See paragraph (c)(3) *Answer 1* of this section and § 1.338-1T(f).

Example (4). A owns all 100 shares of T's only class of outstanding stock. On January 1, 1984, T redeems 25 of those shares. On February 1, 1984, P purchases 30 shares of T stock from A, and on January 15, 1985, P purchases another 30 shares. A qualified stock purchase is made by P on January 15, 1985, since T stock held by P on that date that was purchased during the preceding 12 months satisfies, on that date, the percentage

ownership requirements of section 338(d)(3), *i.e.*, 80 percent, 60/75 shares, determined by taking into account the redemption of 25 shares. It is irrelevant that the redemption necessary for this result occurred before the 12-month acquisition period.

Example (5). Assume the same facts as in *Example (4)*, except that the redemption occurs on April 1, 1985. Assume further that the 12-month acquisition period is not extended. A qualified stock purchase is not made by P on April 1, 1985. This result obtains because the percentage ownership requirements of section 338(d)(3) are not satisfied on that date by reference to T stock held on that date that was purchased during the preceding 12 months, since such stock represents only 40 percent of the T stock, *i.e.*, 30/75 shares, determined by taking into account the redemption of 25 shares.

Example (6). On December 15, 1983, T redeems 30 percent of its only class of outstanding stock from P. The redeemed stock was held by P for several years and constituted the total interest of P in T. On December 1, 1984, P purchases the remaining outstanding stock of T from A. A qualified stock purchase is not made by P on December 1, 1984, since, for purposes of the percentage ownership requirements of section 338(d)(3), the redemption on December 15, 1983, is not taken into account as a reduction in T's outstanding stock.

Example (7). (i) X and T each have outstanding 100 shares of a single class of stock. On January 1, 1985, P purchases 60 shares of X stock. On that date, X owns 40 shares of T stock. On April 1, 1985, T redeems the 40 shares of T stock held by X and P purchases the remaining 60 shares of T stock from an unrelated person. Assume that the 12-month acquisition period is not extended.

(ii) For purposes of the percentage ownership requirements of section 338(d)(3), the redemption of T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock to the extent of the purchased stock amount. Under these facts, all 40 of the redeemed shares contitute the purchased stock amount since (A) P could have acquired those 40 shares from X on the day of the redemption by purchase (by reason of section 338(h)(3)(C)(i)), and (B) those 40 shares, in the event of such a purchase, would have been qualifying target stock with respect to the 12-month period ending on April 1, 1985. If P had acquired the 40 shares of T stock from X by purchase on the day of the redemption, April 1, 1985, then, for purposes of the 12-month acquisition period, 24 of those 40 shares of T stock would have been considered purchased by P on January 1, 1985, and the remaining 16 shares would have been considered purchased by P on April 1, 1985. See paragraph (c)(2) of this section. Accordingly, a qualified stock purchase is made by P on April 1, 1985, since the 60 shares of T stock purchased by P on that date satisfy, as of that date, the percentage ownership requirements of section 338(d)(3), *i.e.*, 100 percent, 60/60 shares, determined by taking into account the redemption of 40 shares.

(5) *Effect of section 304.*

Question: If A, the owner of 20 percent of T's only class of outstanding stock, transfers that stock to P solely in exchange for all the stock of P, and if, pursuant to the same transaction, P, solely in exchange for cash, acquires the remaining 80 percent of T's stock from the other T shareholder, B, that is unrelated to A, will section 304(a)(1) apply to preclude a qualified stock purchase of T stock by P?

Answer: No. (i) *Background*—(A) *Operation of section 304(a)(1).* Under section 304(a)(1), if one or more persons that control each of two corporations transfer stock in one of those corporations ("issuing corporation") to the other of those corporation ("acquiring corporation") in return for property, then those persons will be treated as having received that property as a distribution in redemption of the acquiring corporation's stock. If section 304(a)(1) applies to a person's transfer of issuing corporation's stock, the acquiring corporation is treated as receiving that person's issuing corporation stock as a contribution to the acquiring corporation's capital and, because the acquiring corporation's basis in the issuing corporation's stock is determined by reference to the transferor's basis under section 362(a) and § 1.304–2(a), the issuing corporation's stock is not considered purchased (within the meaning of section 338(h)(3)) by the acquiring corporation. See section 338(h)(3)(A)(i). This result obtains whether or not section 302 (a) or (d) applies to the person's section 304(a)(1) deemed distribution in redemption of the acquiring corporation's stock.

(B) *Control requirement in general.* Section 304(c)(1) provides that, for purposes of section 304, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. Section 304(c)(3) makes section 318(a) (relating to constructive ownership of stock), as modified by section 304(c)(3)(B), applicable to section 304 for purposes of determining control under section 304(c)(1).

(ii) *Effect of section 304(c)(2)(B)*—(A) *In general.* In determining whether the control test with respect to both the issuing and acquiring corporations is satisfied, section 304(a)(1) considers only the person or persons that (*1*) control the issuing corporation before the transaction, (*2*) transfer issuing corporation stock to the acquiring corporation for property, and (*3*) control the acquiring corporation thereafter. Section 317 defines property to include money, securities, and any other property except stock (or stock rights) in the distributing corporation. However, section 304(c)(2)(B) provides a special rule to extend the relevant group of persons to be tested for control of both the issuing and acquiring corporations to include the person or persons that do not acquire property, but rather solely stock from the acquiring corporation in the transaction. Section 304(c)(2)(B) provides that if two or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation, and if the transferors are in control of the acquiring corporation after the transfer, then the person or persons in control of each corporation will include each of those transferors. Because the purpose of section 304(c)(2)(B) was to include in the relevant control group the person or persons that retain or acquire in the transaction acquiring corporation stock, only the person or persons transferring stock of the issuing corporation that retain or acquire any proprietary interest in the acquiring corporation will be taken into account for purposes of applying section 304(c)(2)(B).

(B) *Application of section 304(c)(2)(B) to facts in question.* Under the facts set forth in the question in this paragraph (c)(5), while both A and B were in control of T (the issuing corporation) before the transaction and both A and B transferred T stock to P (the acquiring corporation), section 304 (c)(2)(B) and (a)(1) will not apply to B since B did not retain or acquire any proprietary interest in P in the transaction. Section 304(a)(1) also does not apply to A since A (or a control group of P and T of which A was a member) did not control T before the transaction. Accordingly, the acquisition by P of the 80 percent stock interest in T constitutes a qualified stock purchase.

(d) *Effect of post-acquisition events on eligibility of T for section 338 election; requirement of purchasing corporation.*

Question 1: May P make an express or deemed election for T after T is liquidated, merged into another corporation, or otherwise disposed of by P?

Answer 1: Yes, provided that, under the facts and circumstances, P is considered for tax purposes as the purchaser of the T stock.

Example (1). On January 1, 1985, P purchases all of the stock of T in a qualified stock purchase. On June 1, 1985, P sells all of the stock of T to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1, 1985, to make a section 338 election for T.

Example (2). On January 1, 1985, P purchases all of the stock of T in a qualified stock purchase. On that date, T owns all of the stock of T1. On March 1, 1985, T sells all of the stock of T1 to an unrelated person. On April 1, 1985, P makes an express election for T. Notwithstanding that the stock of T1 previously was sold on March 1, 1985, the express election for T on April 1, 1985, results in a qualified stock purchase by T of T1 on January 1, 1985, and a deemed election is made for T1 under section 338(f)(1) as a result of P's express election for T. See paragraph (c)(3) *Answer 1* of this section. The result is the same if P transfers both T and T1 on February 1, 1985, and whether or not the transfer is characterized as a dividend, a reorganization under section 368, or a taxable sale, provided that P is considered for tax purposes as the purchaser of the T stock.

Question 2: May an express or deemed election be made for T after P is liquidated or merged into another corporation in a transaction described in section 381(a)?

Answer 2: Yes, provided that, under the facts and circumstances, P is considered for tax purposes as the purchaser of the T stock. The acquiring corporation in the section 381(a) transaction may make a section 338 election for T.

Question 3: Assume that P exchanges cash for all of the stock of new subsidiary N, N thereafter merges with and into T, and pursuant to the merger T shareholders receive cash in exchange for all of their T stock. If, under the circumstances, the step-transaction doctrine properly is applied to disregard the existence of N for tax purposes, will P be considered to have made a qualified stock purchase of T stock?

Answer 3: Yes. If the existence of N properly is disregarded for tax purposes under these circumstances, then P is deemed to have acquired the T stock directly from the T shareholders for cash. The acquisition described in this *Question 3* and *Answer 3*, commonly called a "reverse subsidiary cash merger," will be a qualified stock purchase by P if all of the requirements of a qualified stock purchase are satisfied. The result would be the same if P contributed other property (such as P stock) as well as cash to N, provided that the use of such other property in the acquisition would not cause the acquisition to qualify as a reorganization under section 368.

Question 4: May an individual make a qualified stock purchase of T stock?

Answer 4: No. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that there be a corporate purchaser of the stock of T.

Question 5: Assume that individual B contributes cash for all of the stock of new corporation P and that P thereafter transfers cash to the shareholders of T for all of the stock of T. If P either merges downstream into T or liquidates, has a qualified stock purchase of T stock been made?

Answer 5: Yes, provided that, under the facts and circumstances, P is considered for tax purposes as the purchaser of the T stock.

(e) *Application of the stock consistency rules of section 338(f).* This paragraph (e) provides general guidance on the operation of section 338(f). For special consistency rules issued under the authority of section 338 (e)(3), (h)(4)(B), and (i), see paragraph (g) of this section.

Question 1: Assume that S owns directly all of the stock of T and T1, that P makes a qualified stock purchase of T stock, and that, after the acquisition date of T but within T's consistency period, P makes a qualified stock purchase of T1 stock. If no section 338 election has been made for T so that T1 is not already subject to a deemed election under section 338(f)(1), may P make an express election for T1?

Answer 1: No. Under section 338(f)(2), the express election must be made for T, the original target. An express election made for T will cause a deemed election under section 338(f)(1) for T1. If P makes qualified stock purchases of the stock of T and T1 at the same time, the express election may be made for either target (but not both), and that election will cause a deemed election under section 338(f)(1) for the other target. For guidance on making the express election and complying with related requirements (*e.g.*, inclusion of schedule of corporations subject to the express election by reason of section 338(f)(1), attachments to T returns, etc.), see § 1.338–1T.

Question 2: If P makes qualified stock purchases of the stock of T and T1 on January 1, 1985, and November 1, 1986, respectively, will T1 be affected by a section 338 election for T (or by the absence of such an election for T)?

Answer 2: No. The acquisition date of T1 must occur during T's consistency period in order for T1 to be subject to section 338(f) (1) and (2) by reason of the status of T. Under section 338(h)(4)(A)(iii), T's consistency period normally will end at the close of the one-year period beginning on January 2, 1985 (the day after the acquisition date of T). It is irrelevent that the beginning of T1's consistency period overlaps with the end of T's consistency period. Thus, assuming that T's consistency period is not extended, the section 338 election for T will not cause a deemed election under section 338(f)(1) for T1, and the absence of a section 338 election for T will not bar an express election for T1 by reason of section 338(f)(2).

Question 3: Would the answer to *Question 2* of this paragraph (e) be different if (i) P also makes a qualified stock purchase of T2 stock on December 15, 1985, (ii) T2 is a target affiliate of T, and (iii) T1 is a target affiliate of T2?

Answer 3: Yes. T1 will be affected by a section 338 election for T (or by the absence of such an election for T). This result follows because T2 is a target affiliate of T and is acquired by P during T's consistency period. Similarly, T1 is a target affiliate of T2 and is acquired by P during T2's consistency period. Thus, a section 338 election for T causes a deemed election under section 338(f)(1) for T2, which in turn causes a deemed election under section 338(f)(1) for T1. Similarly, under section 338(f)(2), the absence of a section 338 election for T bars an express election for T2, which in turn bars an express election for T1.

Question 4: Assume that P makes a qualified stock purchase of all of the stock of T from S and thereafter, within one year, also makes a qualified stock purchase of all of the stock of X from Y. Assume further that S and Y are and always have been unrelated corporations that respectively have held all of the stock of T and X since those corporations were organized. If P makes a valid section 338 election for T, is a deemed election under section 338(f)(1) made for X?

Answer 4: No. A deemed election is made for X only if X is a target affiliate of T. Under section 338(h)(6)(A), X is a target affiliate of T only if, at any time during so much of T's consistency period as ends on the acquisition date of T, X and T were members of an affiliated group that had the same common parent. Even though X and T are both members of the P group after the acquisition date of X, X is not a target affiliate of T because X was not a member of the P group during so much of T's consistency period as ends on the acquisition date of T. Even if the acquisition date of X were the same as the acquisition date of T, X would not be a target affiliate of T and T would not be a target affiliate of X under these facts.

(f) *Application of the asset consistency rule of section 338(e)*—(1) *Introduction and general operating rules*—(i) *Introduction.* This paragraph (f) provides general guidance on the operation of section 338(e). For special consistency rules issued under the authority of section 338(e)(3), (h)(4)(B), and (i), see paragraph (g) of this section.

(ii) *General operating rules.*

Question 1: Under what circumstances will a deemed election

under section 338(e)(1) be made by P with respect to its qualified stock purchase of T stock?

Answer 1: Under the authority of section 338 (e)(2)(D) and (i), a deemed election under section 338(e)(1) will be made by P with respect to its qualified stock purchase of T stock *only* if the District Director determines, in connection with the examination of a return that would be affected by a deemed election for T, that—

(i) P (or another member of the P group) has acquired an asset of T (or a target affiliate of T) during T's consistency period in an acquisition that is described in section 338(e)(1) and that is not subject to an exception (other than the carryover basis election exception of paragraph (f)(6) of this section) to section 338(e)(1),

(ii) Neither a section 338 election nor a protective carryover election under paragraph (f)(6)(ii) *Answer 1* of this section is made by P with respect to T, and

(iii) A deemed election for T, in lieu of the affirmative action carryover election for T under paragraph (f)(6)(ii) *Answer 3* of this section, is appropriate to carry out the purposes of the consistency rules of section 338(e), (f), or (i) (see paragraph (f)(6)(i)(A) and (ii) *Answer 3 Example (1)).*

Question 2: Will section 338(f)(2) apply to bar the District Director's determination of a deemed election under section 338(e)(1) for T1 if—

(i) P makes a qualified stock purchase of T stock,

(ii) After the acquisition date of T but within T's consistency period, P makes a qualified stock purchase of the stock of T1, target affiliate of T,

(iii) No section 338 election has been made for T so that T1 is not already subject to a deemed election under section 338(f)(1), and

(iv) P acquires an asset from T1 during T1's consistency period but after the close of T's consistency period in an acquisition that is described in section 338(e)(1) and that is not subject to an exception (other than the carryover basis election exception of paragraph (f)(6) of this section) to section 338(e)(1)?

Answer 2: No. Section 338(f)(2) will not bar the District Director's determination of a deemed election under section 338(e)(1) for T1.

Question 3: Will the District Director's determination of a deemed election under section 338(e)(1) for T1 under the facts described in *Question 2* of this paragraph (f)(1)(ii) cause a deemed election for T?

Answer 3: Yes. Under the authority of section 338 (f)(1) and (i), T will be subject to a deemed election whenever the District Director determines that a deemed election under section 338(e)(1) is made for a later-acquired target (*i.e.*, a target acquired by the P group subsequent to the P group's acquisition of T), provided that a deemed election under section 338(f)(1) would be considered made for the later-acquired target if a section 338 election were made for T. It is irrelevant, for purposes of this *Answer 3*, whether the asset acquisition occurs before or after the period within which to make an express election for T or before or after the close of T's consistency period.

(2) *Asset acquisition by P (or another member of the P group) from T or T's target affiliate.*

Question 1: Is an asset acquisition by a future or a former member of the P group considered an asset acquisition by a member of the P group for purposes of section 338(e)(1)?

Answer 1: No, provided that the acquisition is not treated as made by a member of the P group under paragraph (g)(2) of this section.

Question 2: Is an asset acquisition by T after the acquisition date of T and while T is a member of the P group considered an asset acquisition by a member of the P group for purposes of section 338(e)(1)?

Answer 2: Yes. For purposes of determining whether an asset acquisition is made by a P group member, T is treated like any other P group member once it joins that group.

(3) *Exception of section 338(e)(2)(A) for acquisitions in ordinary course of trade or business.*

Question: Under what circumstances will an asset sale by T (or a target affiliate of T) ("selling corporation") to P (or another member of the P group) be subject to the exception to section 338(e)(1) provided by section 338(e)(2)(A) (relating to sales in the ordinary course of the selling corporation's trade or business)?

Answer: (i) *General rule.* An asset sale will be subject to the exception of section 338(e)(2)(A) if the sale is either customary for the selling corporation or a normal incident to the conduct of the trade or business in which that selling corporation is engaged. For purposes of applying this exception, all sales made by a selling corporation to members of the P group during T's consistency period will be aggregated and treated as a single sale by that selling corporation if, on the basis of all of the facts and circumstances, it appears that such sales were separated for the purpose of satisfying the ordinary course of trade or business exception. In addition, all sales by all of the selling corporations to members of the P group during the consistency period will be aggregated and treated as a single sale by each selling corporation for purposes of applying the ordinary course of trade or business exception to each such selling corporation if, on the basis of all of the facts and circumstances, it appears that some or all of the assets sold were dispersed among T and its target affiliates for the purpose of satisfying the ordinary course of trade or business exception.

(ii) *Customary for selling corporation.* The determination whether the sale is customary for the selling corporation is based on all of the facts and circumstances of the particular sale in light of the selling corporation's customary practice. Factors that must be considered in determining customary practice include the frequency and magnitude (both in terms of quantity and value) of prior sales of such property as well as the circumstances under which such prior sales occurred.

(iii) *Normal incident to trade or business.* In general, a sale is considered a normal incident to the conduct of the trade or business in which the selling corporation is engaged if, taking into consideration all of the facts and circumstances of the particular sale, it is one that reasonably would occur in the context of the ongoing business operations of a similarly situated company engaged in the same trade or business as the selling corporation.

Example (1). On January 1, 1985, P acquires all of the stock of T in a qualified stock purchase. T is a corporation engaged in the manufacture and sale of steel products. On April 1, 1985, P purchases steel girders from T for use in P's construction business. P makes no additional purchases from T (or from a target affiliate of T) during T's consistency period. T customarily sells girders in its business, and the magnitude of P's purchase is not unusual. The ordinary course of trade or business exception applies.

Example (2). (i) Assume the same facts as in *Example (1).* Assume in addition that T owns several tractor-trailers used to deliver its steel products. T has owned and operated these vehicles for four years. It is a general practice in T's industry to replace such vehicles after three or four years. T sells the tractor-trailers to P1 pursuant to T's standard procedure for disposing of and replacing used equipment. T promptly purchases new tractor-trailers and continues in the business of delivering steel products. In terms of both the sales price of the used equipment and the quantity, the sale to P1 is unexceptional.

(ii) While T may not be engaged in the business of selling tractor-trailers, the sale of the tractor-trailers to P1 is customary in its business. Accordingly, the ordinary course of trade or business exception applies.

Example (3). Assume the same facts as in Example (1). Assume in addition that a fire at one of T's plants destroys uninsured

machinery used in T's business, and that T sells the machinery to P as scrap for cash in an amount that exceeds T's adjusted basis in the machinery. Such a sale reasonably would occur in T's industry in the context of ongoing business operations in the event of a fire. Accordingly, the ordinary course of trade of business exception applies.

(4) *Exception of section 338(e)(2)(B) for acquisitions in which transferee's basis in acquired assets is measured wholly by reference to transferor's basis.*

Question 1: Does the exception to section 338 (e) (1) provided by section 338(e)(2)(B) apply if P (or any other member of the P group) acquires assets from T (or a target affiliate of T) in a reorganization as defined in section 368 under which the transferee P group member's basis in the transferred assets is governed by section 362(b)?

Answer 1: Yes, provided that the transferee's basis under section 362(b) in the transferred assets is determined wholly by reference to the adjusted basis of that property in the hands of the transferor. Thus, if the transferor recognizes gain on the transfer by reason of the receipt of property not permitted to be received without recognition of gain, the exception of section 338(e)(2)(B) will not apply to the acquisition.

Question 2: Does the exception to section 338(e)(1) provided by section 338(e)(2)(B) apply if P (or any other member of the P group) acquires assets from T (or a target affiliate of T) in a liquidation to which section 334(b)(1) applies?

Answer 2: Yes. The transferee of assets in a liquidation subject to section 334(b)(1) takes as its basis in the transferred assets the transferor's basis in those assets. Accordingly, the exception of section 338(e)(2)(B) applies.

Question 3: Does the exception to section 338(e)(1) provided by section 338(e)(2)(B) apply if P (or any other member of the P group) receives money or other property as a dividend distribution from T (or a target affiliate of T)?

Answer 3: (i) *Receipt of money in dividend distribution.* The exception of section 338(e)(2)(B) applies to the receipt of money (not including foreign currency) in a dividend distribution from T (or a target affiliate of T).

(ii) *Receipt of other property in dividend distribution*—(A) *Fair market value not greater than distributor's basis.* Although the exception of section 338(e)(2)(B) may not apply, an exception to section 338(e)(1) applies under the authority of section 338(e)(2)(D) to the receipt of property in a dividend distribution if the fair market value of that property is not greater than the distributing corporation's basis in that property.

(B) *Fair market value exceeds distributor's basis.* The exception of section 338(e)(2)(B) does not apply if the distributee's basis in property received in a dividend distribution exceeds the distributing corporation's basis in that property immediately before the distribution. The distributing corporation's basis will be exceeded, for example, if (*1*) section 311(d)(1), as amended by the Tax Reform Act of 1984 (Pub. L. No. 98–369; 96 Stat. 568), applies to the distribution or (*2*) the distributing corporation otherwise recognizes gain on the distribution (*e.g.*, under section 311 (b) or (c)). On the other hand, the distributee corporation's basis will not exceed the distributing corporation's basis, for example, if section 311(d)(1), as amended by the Tax Reform Act of 1984, does not apply to the distribution and the distributing corporation does not otherwise recognize gain on the distribution. In such a case, the exception of section 338(e)(2)(B) applies to the distribution.

Example. On January 1, 1985, P acquires all of the stock of T in a qualified stock purchase. P and T, which are calendar year taxpayers, do not join in a consolidated return for calendar year 1985. On June 1, 1985, T makes a divided distribution to P of raw land (held for investment) with a fair market value of $100,000 and a basis to T of $10,000. T recognizes a gain of $90,000 on the distribution pursuant to section 311(d)(1), as amended by the Tax Reform Act of 1984. Pursuant to section 301(d)(2), P's basis in the land is $100,000. Because P's basis exceeds T's basis in the land immediately before the distribution, the exception of section 338(e)(2)(B) does not apply.

Question 4: Does the exception to section 338(e)(1) provided by section 338(e)(2)(B) apply if (i) P (or any other member of the P group) ("acquiring member") acquires an asset from T (or a target affiliate of T) in exchange for an asset of that acquiring member ("exchange asset") and (ii) pursuant to section 1031(d), the acquiring member's basis in the acquired asset is determined by reference to that acquiring member's basis in the exchanged asset?

Answer 4: No. Section 338(e)(2)(B) requires that the acquiring P group member's basis in the asset acquired from T (or a target affiliate of T) be determined wholly by reference to the adjusted basis of that asset in the hands of the transferor.

(5) *Certain transactions excepted under section 338(e)(2)(D).*

Question: What acquisitions by P (or any other member of the P group) from T (or a target affiliate of T) or what arrangements between P (or any other member of the P group) and T (or a target affiliate of T) are subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D)?

Answer: (i) *No step-up property.* The acquisition of property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if the transferee's basis in that property is not greater than the transferor's basis immediately before the transfer.

(ii) *Target affiliate stock.* The acquisition of stock in a target affiliate of T is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D).

(iii) *T or target affiliate debt or other instruments.* The acquisition of debt of T or a target affiliate of T or the acquisition of a call option or warrant to acquire the stock or debt of T or a target affiliate of T is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D).

(iv) *Covenant not to compete.* A covenant not to compete that is separately allocable from other assets is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D).

(v) *Lease or license of tangible or intangible property.* The lease or license of tangible or intangible property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D), provided that the transaction is not actually a sale for tax purposes of either the underlying property or the leasehold or license interest with respect to the property.

(vi) *Property by T after T's acquisition date.* The acquisition by P of property from T is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if (A) T acquired that property after T's acquisition date from a person other than a target affiliate of T and (B) T's basis in that property was not determined in whole or in part by reference to the adjusted basis of an asset held by T (or a target affiliate of T) on T's acquisition date.

Example (1). On January 1, 1985, P purchases all of the stock of T in a qualified stock purchase. On January 15, 1985, T purchases, for $60,000 in cash, a machine for use in its trade or business. On December 1, 1985, P purchases that machine from T for $65,000 in cash. P's acquisition of the machine from T is subject to the exception to section 338(e)(1) provided in this *Answer* (vi) under the authority of section 338(e)(2)(D).

Example (2). On January 1, 1985, P purchases all of the stock of T in a qualified stock purchase. On December 1, 1985, P purchases a storage tank from T for $65,000 in cash. The cost of the storage tank to T was $50,000. Of that $50,000, $32,000 represented

the price paid by T for raw materials used in constructing the storage tank. Those raw materials were held by T on T's acquisition date. The remaining $28,000 of T's $50,000 cost in the storage tank represented labor and other production costs. Assume that the exception of section 338(e)(2)(A), relating to sales in the ordinary course of the selling corporation's trade or business, does not apply. P's acquisition of the storage tank is not subject to the exception to section 338(e)(1) provided in the *Answer* (vi) under the authority of section 338(e)(2)(D), since T's basis in the property was determined in part by reference to the adjusted basis of assets (*i.e.*, the raw materials) held by T on T's acquisition date.

(vii) *Property subject to timely disposition.* The acquisition of property is subject to an exception to section 338(e)(1) under the authority of section 338(e)(2)(D) if the P group disposes of that property to an unrelated person that is not a target affiliate of T on or before the latest of the following three dates: (A) [120th day after date of publication of these regulations in the **Federal Register**], (B) the 90th day after the date on which the P group member acquires the property, or (C) the 90th day after the acquisition date of the original target.

(viii) *Other transactions.* The Internal Revenue Service may treat other transactions as subject to an exception 338(e)(1) under the authority of section 338(e)(2)(D).

(6) *Carryover basis election exception under section 338 (e)(2)(D) and (i)*—(i) *Introduction*—(A) *Overview.* If P makes a protective carryover basis election under this paragraph (f)(6) ("protective carryover election") with respect to its qualified stock purchase of T stock, then a tainted asset acquisition will in no case cause a deemed election under section 338(e)(1) for T. A "tainted asset acquisition" occurs if, during T's consistency period, a P group member acquires an asset of T (or a target affiliate of T) in an acquisition that is described in section 338(e)(1) and that is not subject to an exception (other than the carryover basis election exception of this paragraph (f)(6)) to section 338(e)(1). If the P group makes a tainted asset acquisition and neither a section 338 election nor a protective carryover election is made for T, then a tainted asset acquisition will cause a carryover basis election by affirmative action ("affirmative action carryover election") as of the later of the day of the tainted asset acquisition or the expiration of the period within which to make the protective carryover election for T. Pursuant to paragraph (f)(1)(ii) *Answer 1* of this section, however, the District Director in appropriate cases may cause T to be subject to a deemed election under section 338(e)(1) in lieu of the otherwise applicable affirmative action carryover election. Thus, the only certain way for the P group to avoid a deemed election under section 338(e)(1) for T in the event of a tainted asset acquisition is to make a timely protective carryover election. Apart from the District Director's authority to override an affirmative action carryover election and impose a deemed election under section 338(e)(1) in lieu thereof, the consequences of a protective carryover election and an affirmative action carryover election are identical, except that an offset prohibition election under this paragraph (f)(6) and the special increase in basis of transferee member stock under this paragraph (f)(6)(iv) *Answer 1* (i)(B) are available only if a *protective* carryover election is made. Unless otherwise indicated, any reference in this section to the carryover basis election exception of this paragraph (f)(6) is a reference to either the protective carryover election or the affirmative action carryover election.

(B) *Cross-references.* Subdivision (ii) of this paragraph (f)(6) explains how the protective carryover election and the affirmative action carryover election are made, subdivision (iii) of this paragraph (f)(6) describes the corporations and acquisitions to which those elections apply, and subdivision (iv) of this paragraph (f)(6) describes the consequences of those elections.

(ii) *Procedure for making protective carryover election and affirmative action carryover election.*

Question 1: How is the protective carryover election made for T?

Answer 1: (i) *Filing procedure.* The protective carryover election is made in the form of a statement of protective carryover election ("protective carryover election statement") filed with each Internal Revenue Service Center with which each corporation required to join in making the protective carryover election files its annual income tax return. The protective carryover election statement must be filed within the period during which an express election may be made for T.

(ii) *Corporations required to join in making protective carryover election.* Each corporation included in the P group at any time during so much of T's consistency period as ends on the day the protective carryover election statement is filed is required to join in making the protective election.

(iii) *Contents of protective carryover election statement*—(A) *General rule.* The protective carryover election statement must be identified prominently as a protective carryover election under § 1.338–4T(f)(6) and must contain the name, address, and employer identification number of T and of each other corporation required to join in making the election. In addition, the protective carryover election statement must contain the following declaration (or a substantially similar declaration): "EACH CORPORATION MAKING THIS ELECTION AGREES, WITH RESPECT TO ASSET ACQUISITIONS SUBJECT TO THE PROTECTIVE CARRYOVER ELECTION, TO BE BOUND BY THE TERMS AND CONDITIONS IMPOSED BY § 1.338–4T(f)(6) NOTWITHSTANDING ANY OTHER PROVISION OF THE INTERNAL REVENUE CODE (OR OTHER APPLICABLE STATUTE) OR THE REGULATIONS ISSUED THEREUNDER. EACH SUCH CORPORATION FURTHER AGREES TO CAUSE SUBSEQUENT P GROUP MEMBERS ACQUIRED DURING THE CONSISTENCY PERIOD OF ANY AFFECTED TARGET TO FILE A SUPPLEMENTAL STATEMENT." Finally, the protective carryover election statement must be signed, in the manner prescribed in § 1.338–1T(d)(1)(v) (for a statement of section 338 election), by a person authorized to make the protective carryover election on behalf of each corporation required to join in making the election.

(B) *Additional contents required for offset prohibition election.* If the P group wishes to make an offset prohibition election for T, the protective carryover election statement must contain, in addition to the material described in subdivision (iii)(A) of this *Answer 1*, a statement indicating that an offset prohibition election is made for T. For the consequences of an offset prohibition election, see *Answer 2* (ii) and *Answer 3* (iv) of paragraph (f)(6)(iv) of this section.

(C) *Schedule of information relating to targets subject to protective carryover election.* A schedule providing the information specified in this subdivision (C) ("required data") must be attached to the protective carryover election statement. Failure to attach the schedule, however, will not invalidate the protective carryover election. The schedule must contain the name, address, and employer identification number of each corporation that is an affected target as of the day the protective carryover election statement is filed. In addition, the schedule must—

(*1*) Disclose the fair market value of the consideration paid by the purchasing corporation for the stock T and each such affected target.

(2) Identify the portion of that consideration represented by the following components: (*i*) cash, (*ii*) purchase money debt, and (*iii*) other components of consideration (with each such other component separately stated), and

(3) Disclose the liabilities of T and each such affected target (as of the close of the particular target's acquisition date).

Question 2: What is the procedure for filing the supplemental statement referred to in *Answer 1* (iii)(A) of this paragraph (f)(6)(ii)?

Answer 2: (i) *Who must file.* The supplemental statement must be filed for any P group member that becomes a member during the consistency period of any affected target and after a protective carryover election statement for the P group has been filed. Failure to file the supplemental statement, however, will not invalidate the protective carryover election.

(ii) *Filing procedure.* The supplemental statement is filed with the Internal Revenue Service Center with which the P group member for which the supplemental statement is made files its annual income tax return and with each other Service Center with the protective carryover election statement was filed. The supplemental statement must be filed on or before the 15th day of the 9th calendar month beginning after the month in which the P group member for which the supplemental statement is made joined the P group.

(iii) *Contents of supplemental statement.* The supplemental statement must be identified prominently as a supplemental statement under § 1.338–4T(f)(6) and must contain the name, address, and employer identification number of the target for which the protective carryover election was made and of the P group member for which the supplemental statement is made. In addition, the supplemental statement must contain the declaration described in *Answer 1* (iii)(A) of this paragraph (f)(6)(ii) and must indicate that a copy of the previously filed protective carryover election statement is attached to and incorporated by reference as a part of the supplemental statement. Finally, the supplemental statement must be signed, in the manner prescribed in § 1.338–1T(d)(1)(v) (for a statement of section 338 election), by a person authorized to make the supplemental statement for the P group member for which the supplemental statement is made. A copy of the protective carryover election statement (and, if applicable, the schedule described in subdivision (iv) of this *Answer 2*) must be attached to the supplemental statement.

(iv) *Schedule of information relating to targets subject to protective carryover election.* The schedule described in *Answer 1* (iii)(C) of this paragraph (f)(6)(ii) must be attached to the supplemental statement. That schedule must include the required data for T and for each corporation that is an affected target as of the day the supplemental statement is filed. The schedule need not be attached to the supplemental statement if it would be identical to a schedule already received by each Service Center with which the supplemental statement is required to be filed.

Question 3: Under what circumstances is the affirmative action carryover election made for T?

Answer 3: (i) *General rule.* An affirmative action carryover election is made for T on the first day on which all of the following three requirements are satisfied:

(A) A P group member made a tainted asset acquisition.

(B) Neither a section 338 election nor a protective carryover election is made by P with respect to T.

(C) The time to make a protective carryover election for T has expired.

(ii) *Offset prohibition election and special increase in basis of transferee member stock inapplicable.* An offset prohibition election under this paragraph (f)(6) cannot be made and the special increase in basis of transferee member stock under this paragraph (f)(6)(iv) *Answer 1* (i)(B) is not available in connection with an affirmative action carryover election.

(iii) *Discretion of District Director to impose deemed election under section 338(e)(1) in lieu of affirmative action carryover election.* Under the circumstances described in paragraph (f)(1)(ii) *Answer 1* of this section, the District Director may override the affirmative action carryover election and impose a deemed election under section 338(e)(1) in lieu of that affirmative action carryover election.

Example (1). On January 1, 1985, P purchases all of the stock of T in a qualified stock purchase. P makes neither a section 338 election nor a protective carryover election for T. On December 15, 1985, P purchases an asset from T for cash in a tainted asset acquisition. Accordingly, an affirmative action carryover election is made for T on December 15, 1985. Under the circumstances described in paragraph (f)(1)(ii) *Answer 1* of this section, however, a deemed election under section 338(e)(1) will be made for T in lieu of the affirmative action carryover election if the District Director determines that such a deemed election is appropriate to carry out the purposes of the consistency rules of section 338 (e), (f), or (i).

Example (2). Assume the same facts as in *Example (1)*, except that the asset acquisition on December 15, 1985, is subject to an exception (other than the carryover basis election exception of this paragraph (f)(6)) to section 338(e)(1) (*e.g.*, the *de minimis* exception of paragraph (f)(7) of this section). An affirmative action carryover election is not made for T on December 15, 1985.

(iii) *Corporations and acquisitions subject to protective or affirmative action carryover election.*

Question 1: What targets and other P group members are subject to a protective or an affirmative action carryover election for T?

Answer 1: (i) *Targets subject to protective or affirmative action carryover election.* A protective or an affirmative action carryover election for T also applies to all affected targets.

(ii) *Other P group members subject to protective or affirmative action carryover election.* All other members of the P group, including members that join the group after the protective or affirmative action carryover election is made, are subject to the election.

Example. (i) T, T1, and T2 are wholly-owned, first-tier subsidiaries of S. On January 1, 1985, P purchases all of the stock of T in a qualified stock purchase. On April 1, 1985, S acquires a new wholly-owned subsidiary, Z. On June 15, 1985, P purchases all of the stock of T1 in a qualified stock purchase. On July 15, 1985, P purchases all of the stock of Z in a qualified stock purchase. On September 1, 1985, a protective carryover election is made for T. On August 1, 1986, P purchases all of the stock of T2 in a qualified stock purchase. All members of the P group are included in a single consolidated return.

(ii) The protective carryover election made for T also applies to T1 and Z, since T1 and Z are affected targets. Although Z is not a target affiliate of T and therefore would not directly be subject to a deemed election under section 338(f)(1) in the event of a section 338 election for T, Z is subject to the protective carryover election because a section 338 election for T indirectly would cause a deemed election for Z: A section 338 election for T would cause a deemed election under section 338(f)(1) for T1, and, since Z is a target affiliate of T1 and was acquired during T1's consistency period, the deemed election for T1 would cause a deemed election for Z. Assuming that the consistency periods for the targets are not extended pursuant to paragraph (g)(1) of this section, T2 is not subject to the protective carryover election, since a section 338 election for T would not cause a deemed election for T2.

Question 2: What asset acquisitions are subject to a protective or an affirmative action carryover election for T?

Answer 2: (i) *General rule.* An asset acquisition is subject to a protective or an affirmative action carryover election for T (*i.e.*, to the carryover basis election

exception) and therefore to the consequences imposed by this paragraph (f)(6), if—

(A) The asset is acquired by P (or another member of the P group) from T, an affected target, a target affiliate of T, or a target affiliate of an affected target, and

(B) With respect to T or any affected target, the acquisition is a tainted asset acquisition.

(ii) *Coordination with de minimis exception.* Notwithstanding that an asset acquisition is subject to the *de minimis* exception to section 338(e)(1) under paragraph (f)(7) of this section, that acquisition is subject to a protective or an affirmative action carryover election for T (and therefore to the consequences imposed by this paragraph (f)(6)).

(iv) *Consequences of protective or affirmative action carryover election.*

Question 1: What are the consequences of an unincluded company asset acquisition ("UCA acquisition"), *i.e.*, the acquisition of an asset by a P group member ("acquiring member") from T or a target affiliate of T ("U") in a case in which the acquisition (i) is subject to a protective or an affirmative action carryover election and (ii) occurs while U is not a member of the P group?

Answer 1: (i) *General rule*—(A) *Carryover basis to acquiring member.* For all purposes of the Code, the acquiring member's basis in an asset acquired in a UCA acquisition ("UCA asset") is the adjusted basis of that asset in the hands of U immediately before the transfer.

(B) *Special increase in basis of transferee member stock.* If the acquiring member in a UCA acquisition transfers the UCA asset to T or any other P group member ("transferee member") within the permissible transfer period (*1*) in a transaction to which section 351 applies, (*2*) as paid-in surplus, or (*3*) as a contribution to capital, then that acquiring member's basis in transferee member stock will be increased by the special adjustment amount. The "special adjustment amount" is the excess (if any) of the basis the acquiring member would have taken in the UCA asset absent subdivision (i)(A) of this *Answer 1* over the transferee member's basis in the asset immediately after the transfer. This increase for the special adjustment amount is made in addition to any other adjustment to the acquiring member's basis in its transferee member stock that (without this subdivision (i)(B)) results from the transfer to the transferee member.

(C) *Permissible transfer period.* The stock basis increase for the special adjustment amount is permitted only if the transfer to the transferee member occurs on or before the latest of the following three dates: (*1*) August 23, 1985, (*2*) the 90th day after the date on which the acquiring member acquires the UCA asset, or (*3*) the 15th day of the 9th month beginning after the month in which the acquisition date of the original target occurs.

(D) *Special increase in basis of transferee member stock applicable only if protective carryover election made.* The stock basis increase for the special adjustment amount is permitted only if the UCA acquisition is subject to a protective carryover election.

(ii) *Exception for transfer of UCA asset prior to U's acquisition date in certain cases.* If the UCA acquisition occurs in a taxable year of U that ends after U's acquisition date, then subdivision (i) of this *Answer 1* does not apply to that UCA acquisition, the UCA asset is considered an INA asset subject to *Answer 2* of this paragraph (f)(6)(iv), and gain on the transfer is considered INA gain subject to that *Answer 2.*

Example (1). (i) On January 1, 1985, P acquires all of the stock of T from S in a qualified stock purchase for $100,000. P makes a protective carryover election for T. On December 31, 1985, P purchases a machine from S in an asset acquisition that is subject to the protective carryover election. P pays $1,000 in cash for the machine and assumes a liability of $600 that encumbers the machine. S had an adjusted basis for the machine immediately before the transfer of $250. P immediately transfers the machine to T in a transaction governed by sections 351 and 357(c).

(ii) Pursuant to the protective carryover election, P's basis in the machine is $250, the adjusted basis of the machine in the hands of S. P recognizes a gain of $350 under section 357(c) on the transfer of the machine to T, *i.e.*, the excess of the $600 liability assumed over P's $250 basis in the machine. Thus, T's basis in the machine after the transfer is $600, *i.e.*, P's $250 basis in the machine plus P's $350 gain on the transfer to T. Section 362(a). Because P transfers the machine to T within the permissible transfer period, P's adjusted basis in T stock is increased by the special adjustment amount. The special adjustment amount is $1,000, since the basis P would have taken in the machine absent the protective carryover election ($1,600, *i.e.*, $1,000 cash paid plus the $600 liability assumed) exceeds by $1,000 T's basis in the machine immediately after the transfer ($600). Under these facts, no adjustment to P's basis in T stock other than the increase for the special adjustment amount is permitted. (Under section 358(a)(1), P's basis in T stock is increased by zero, *i.e.*, P's basis in the transferred machine ($250), plus P's recognized gain ($350), minus the liability assumed ($600).) Accordingly P's adjusted basis in T stock after the transfer to T is $101,000, *i.e.*, $100,000 + $1,000.

Example (2). Assume the same facts as in *Example (1).* Assume in addition that, immediately after P's transfer of the machine to T, T transfers the machine to its wholly-owned subsidiary, T1. No special increase in T's basis in T1 stock is permitted since T was not the acquiring member in the UCA acquisition within the meaning of this *Answer 1.*

Question 2: What are the consequences of an intercompany non-consolidated asset acquisition ("INA acquisition"), *i.e.*, the acquisition of an asset by a P group member ("acquiring member") from T or a target affiliate of T ("N") in a case in which the acquisition (i) is subject to a protective or an affirmative action carryover election and (ii) occurs while N is a member of the P group and during a taxable year for which N is not included in a consolidated return with the acquiring member?

Answer 2: (i) *Carryover basis to acquiring member.* For all purposes of the Code, the acquiring member's basis in an asset acquired in an INA acquisition ("INA asset") is the adjusted basis of that asset in the hands of N immediately before the transfer.

(ii) *Exception if INA acquisition is subject to offset prohibition election*—(A) *Offset prohibition for INA gain; carryover basis rule inapplicable.* For purposes of determining N's taxable income, gain recognized by N in an INA acquisition ("INA gain") may not be offset by any deductions of N for the taxable year if an offset prohibition election was made in a timely filed protective carryover election for T and if subdivision (iii) of this *Answer 2* does not apply ("offset prohibition"). The offset prohibition does not apply for purposes of calculating the earnings and profits of N (other than the earnings and profits reduction for N's tax liability.) If INA gain is subject to the offset prohibition, then the INA acquisition to which that INA gain relates is not subject to the carryover basis rule of subdivision (i) of this *Answer 2.*

(B) *Limitation on application of certain credits.* For purposes of determining the amount by which N's tax liability may be reduced by restricted credits in a taxable year in which there is INA gain subject to the offset prohibition, N's tax liability before reduction by restricted credits is calculated as if the INA gain were not income to N. "Restricted credits" are credits against tax described in part IV (other than subparts A and C thereof and section 27(a)) of subchapter A of chapter 1 of the Code (*i.e.*, sections

27(b), 28–30, and 38–41). For treatment of the foreign tax credit, see § 1.338–5T (to be published).

(C) *Character and timing of INA gain.* INA gain subject to the offset prohibition is ordinary income if the INA asset to which it relates is of a character that is subject to the allowance for depreciation, amortization, or depletion in the hands of the acquiring member. In addition, INA gain subject to the offset prohibition may not be recognized under the installment method.

(iii) *Subdivision (ii) inapplicable if gain realized by N is not required to be recognized.* If, pursuant to any provision of the Code (or other applicable statute) or the regulations thereunder (other than provisions relating to recognition of income under the installment method), all or a portion of the gain realized by N in an INA acquisition is not required to be recognized by N at the time of the acquisition, then—

(A) The carryover basis rule of subdivision (i) of this *Answer 2* applies to that INA acquisition notwithstanding an otherwise applicable offset prohibition election, and

(B) Subdivision (ii) of this *Answer 2* does not apply to that INA acquisition.

Question 3: What are the consequences of an intercompany consolidated asset acquisition ("ICA acquisition"), *i.e.*, the acquisition of an asset by a P group member ("acquiring member") from T or a target affiliate of T ("C") in a case in which the acquisition (i) is subject to a protective or an affirmative action carryover election and (ii) occurs while C is a member of the P group and during a taxable year for which C is included in a consolidated return with the acquiring member?

Answer 3: (i) *Consolidated return intercompany transaction rules generally apply.* Subject to the limitations of this *Answere 3*, § 1.1502–13 of the consolidated return regulations (relating to intercompany transactions) applies to an ICA acquisition.

(ii) *Periodic restoration limitation for property subject to depreciation, etc.*—(A) *General rule.* Under the periodic restoration limitation—

(*1*) The annual disregarded ICA gain amount is not taken into account as income in determining the separate taxable income of C (or of any other P group member) under § 1.1502–12 and

(*2*) The annual disregarded ICA deduction is not taken into account as a deduction in determining the separate taxable income of the acquiring member (or of any other P group member) under § 1.1502–12.

(B) *Annual disregarded ICA gain amount; annual disregarded ICA deduction.* The "annual disregarded ICA gain amount" is the deferred gain in an ICA acquisition that, absent this *Answer 3*, would be restored during the taxable year to C's income under § 1.1502–13(d) (relating to periodic restoration of deferred gain for property subject to depreciation, etc.). The "annual disregarded ICA deduction" is so much of the acquiring member's depreciation, amortization, or depletion deduction for the ICA asset as does not exceed the annual disregarded ICA gain amount with respect to that ICA asset.

(C) *Exceptions.* The periodic restoration limitation does not apply for purposes of calculating—

(*1*) The earnings and profits of P group members (other than the earnings and profits reduction for tax liability);

(*2*) The remaining balance of C's deferred gain in the ICA acquisition; and

(*3*) the acquiring member's adjusted basis in the asset acquired in the ICA acquisition.

(iii) *Limitations if C ceases to be a member and offset prohibition election does not apply*—(A) *In general.* The consequences of an ICA acquisition if C ceases to be a member of the P group are governed by this subdivision (iii) if an offset prohibition election was not made for T.

(B) *Application of periodic restoration limitation.* For the consolidated return year in which C ceases to be a member of the P group, the periodic restoration limitation of subdivision (ii) of this *Answer 3* applies to C and the acquiring member to the extent that there is an annual disregarded ICA gain amount for that taxable year.

(C) *Reduction in basis of ICA asset by amount of remaining ICA gain amount.* For all purposes of the Code, the acquiring member's basis in an asset acquired in an ICA acquisition ("ICA asset") is reduced by the remaining ICA gain amount. The "remaining ICA gain amount" is C's deferred gain with respect to the ICA asset that is restored to C's income by reason of § 1.1502–13(f)(1)(iii) because C ceases to be a member of the group.

(iv) *Limitations if C ceases to be a member and offset prohibition election applies*—(A) *In general.* The consequences of an ICA acquisition if C ceases to be a member of the P group are governed by this subdivision (iv) if an offset prohibition election was made in a timely filed protective carryover election for T.

(B) *Application of periodic restoration limitation.* Subdivision (iii)(B) of this *Answer 3* (relating to the application of the periodic restoration limitation for the taxable year in which C ceases to be a member of the P group) also applies to an ICA acquisition that is subject to this subdivision (iv).

(C) *Offset prohibition for remaining ICA gain amount; reduction in basis rule inapplicable.* For purposes of determining the P group's consolidated taxable income, the remaining ICA gain amount (as defined in subdivision (iii)(C) of this *Answer 3*) may not be offset by any deductions of any P group members for the taxable year if an offset prohibition election was made in a timely filed protective carryover election for T ("offset prohibition"). The offset prohibition does not apply for purposes of calculating the earnings and profits of P group members (other than the earnings and profits reduction for tax liability). If a remaining ICA gain amount is subject to the offset prohibition, then the ICA acquisition to which that remaining ICA gain amount relates is not subject to the reduction in basis rule of subdivision (iii)(C) of this *Answer 3*.

(D) *Limitation on application of certain credits.* For purposes of determining the amount by which the P group's consolidated tax liability may be reduced by restricted credits in a taxable year in which there is a remaining ICA gain amount subject to the offset prohibition, the P group's consolidated tax liability before reduction by restricted credits is calculated as if that remaining ICA gain amount were not income to the P group. "Restricted credits" are credits against tax described in part IV (other than subparts A and C thereof and section 27(a)) of subchapter A of chapter 1 of the Code (*i.e.*, sections 27(b), 28–30, and 38–41). For treatment of the foreign tax credit, see § 1.338–5T (to be published).

(E) *Character of remaining ICA gain amount.* A remaining ICA gain amount subject to the offset prohibition is ordinary income if the ICA asset to which it relates is of a character that is subject to the allowance for depreciation, amortization, or depletion in the hands of the acquiring member.

(F) *Remaining ICA gain amount not considered C's income for purposes of loss or credit carryovers from separate return limitation years.* For purposes of determining the amount of a loss or credit of C arising in a separate return limitation year of C (or of a predecessor of C) that may be included in the consolidated carryover of such losses or credits to the consolidated return year in which there is a remaining ICA gain amount subject to the offset prohibition, that remaining ICA gain amount is

considered an item of income of a P group member other than C.

(G) *Recapture of investment tax credit on ICA asset.* For purposes of investment tax credit recapture under § 1.1502–3(f)(2), the P group member acquiring an ICA asset from C is deemed to dispose of that asset not later than the day on which the remaining ICA gain amount with respect to that ICA asset is restored to C's income if that remaining ICA gain amount is subject to the offset prohibition.

(v) *Gain on ICA acquisition that is restored pursuant to § 1.1502–13(f)(1)(vii) considered a remaining ICA gain amount.* If C's deferred gain in an ICA acquisition is restored to C's income under § 1.1502–13(f)(1)(vii) because the P group files consolidated returns for fewer than three consecutive taxable years immediately preceding a separate return year of the common parent of the P group, then that restored deferred gain is considered a remaining ICA gain amount for purposes of applying this *Answer 3.*

(vi) *Limitations when gain in an ICA acquisition is not deferred*—(A) *General rule.* If gain in an ICA acquisition is not deferred under §1.1502–13 (*e.g.*, by reason of an election under § 1.1502–13(c)(3) not to defer gain on deferred intercompany transactions), then the provisions of *Answer 2* of this paragraph (f)(6)(iv) apply as if C were not included in a consolidated return with the acquiring member for the taxable year in which the asset acquisition occurs.

(B) *Recapture of investment tax credit when gain in an ICA acquisition is not deferred.* For purposes of investment tax credit recapture under § 1.1502–3(f)(2) in the case of an ICA acquisition with respect to which gain is not deferred under § 1.1502–13, the P group member acquiring the ICA asset from C is deemed to dispose of that asset not later than the day on which C ceases to be a member of the P group, provided that C ceases to be a member under circumstances that would cause the restoration of deferred gain under § 1.1502–13(f)(1)(iii) (had there been deferred gain subject to that restoration rule.]

Example (1). (i) In 1984, C, a calendar year corporation, sustains a $450 net operating loss that is not a net operating loss carryback to any preceding taxable year. On January 1, 1985, C purchases for $20,000 an item of intangible property with a remaining useful life as of that date of five years. The property has no salvage value. In its 1985 return, C reports an allowance for depreciation on the intangible property of $4,000 under the straight line method (*i.e.*, $20,000/5), thereby reducing its adjusted basis to $16,000. C's 1985 taxable income before the net operating loss deduction is $50. Accordingly, $50 of the 1984 net operating loss is allowed as a net operating loss carryover to 1985.

(ii) P, a calendar year common parent of an affiliated group that files consolidated returns, purchases all of the stock of C in a qualified stock purchase at the close of December 31, 1985, and makes a protective carryover election for C. An offset prohibition election is not made in the protective carryover election statement. See *Answer 1* (iii)(B) of paragraph (f)(6)(ii) of this section. On January 1, 1985, P purchases the intangible property from C in an ICA acquisition for $22,000. The ICA acquisition is a deferred intercompany transaction under § 1.1502–13, and C's $6,000 gain on the ICA acquisition (*i.e.*, $22,000 − $16,000) is a deferred gain. Absent this *Answer 3*, P would report, in the 1986 consolidated return, an allowance for depreciation on the intangible property ("ICA asset") of $5,500 under the straight line method, assuming a remaining useful life as of January 1, 1986, of four years and no salvage value, *i.e.*, $22,000/4. Similarly, absent this *Answer 3*, $1,500 of C's $6,000 deferred gain would be restored to C's income (as ordinary income) in 1986 by reason of P's $5,500 deduction, *i.e.*, $6,000 × $5,500/$22,000. See § 1.1502–13(c)(4)(ii) and (d)(1). Assume that, absent this *Answer 3*, C's separate taxable income under § 1.1502–12 for 1986 would be $1,500.

(iii) Pursuant to subdivision (ii)(A)(*1*) of this *Answer 3*, the $1,500 of deferred gain that, absent this *Answer 3*, would be restored to C's income in 1986 pursuant to § 1.150–13(d)(1) is an annual disregarded ICA gain amount that is not taken into account as income in determining C's separate taxable income under § 1.1502–12 for 1986. Thus, T's separate taxable income for 1986 is $0. In addition, under subdivision (ii)(A)(*2*) of this *Answer 3*, P's $5,500 deduction that, absent this *Answer 3*, would have caused the annual disregarded ICA gain amount of $1,500 to be restored to C's income in 1986 is not taken into account as a deduction in determining P's separate taxable income under § 1.1502–12 for 1986 to the extent of the annual disregarded ICA deduction of $1,500, *i.e.*, so much of the total $5,500 depreciation allowance as does not exceed the annual disregarded ICA gain amount of $1,500. Thus, P reports a deduction in 1986 with respect to the ICA asset of $4,000, *i.e.*, $5,500 − $1,500. P's adjusted basis in the ICA asset, however, is reduced by the entire $5,500 from $22,000 to $16,500. Because C's separate taxable income for 1986 is $0, none of C's net operating loss incurred in 1984, a separate return limitation year, can be a carryover to 1986, since C does not make a contribution to the P group's consolidated taxable income in 1986. See § 1.1502–21(c)(2). At the beginning of the following taxable year, the remaining balance of C's deferred gain in the ICA acquisition is $4,500, *i.e.*, $6,000 − $1,500.

Example (2). (i) Assume the same facts as in *Example (1).* Assume in addition that on January 1, 1987, an individual purchases all of the stock of C from P. Accordingly, all of C's remaining deferred gain in the ICA acquisition ($4,500) is restored to C's income in the P group's 1987 consolidated return by reason of § 1.1502–13(f)(1)(iii). Assume that C has no other items of income or deduction while a member of the P group during 1987. Thus, C's only item of income or loss for that period is the restored deferred gain of $4,500. Assume in addition that, absent this *Answer 3*, P's separate taxable income for 1987 would be a loss of $4,500, reflecting a deduction of $5,500 for the ICA asset, *i.e.*, $16,500/3. All other P group members break even for the year.

(ii) The $4,500 of deferred gain that is restored to C's income in 1987 by reason of § 1.1502–13(f)(1)(iii) is a remaining ICA gain amount. Because the ICA acquisition is not subject to an offset prohibition election, P must reduce its basis in the ICA asset by $4,500 (*i.e.*, by the remaining ICA gain amount) as of January 1, 1987. See subdivision (iii)(C) of this *Answer 3.* Accordingly, P's deduction in 1987 for the ICA asset is reduced by $1,500 from $5,500 to $4,000, *i.e.*, ($16,500 − $4,500)/3. P's separate taxable income for 1987, as adjusted for the basis adjustment, therefore is a loss of $3,000, *i.e.*, the loss of $4,500 (P's separate taxable income for 1987 absent this *Answer 3*), reduced by $1,500. The remaining ICA gain amount of $4,500 is income reported in the P group's 1987 consolidated return. Accordingly, the P's group's consolidated taxable income for 1987 (computed without the consolidated net operating loss deduction) is $1,500, *i.e.*, C's income of $4,500 minus P's loss of $3,000.

(iii) Since C's limitation under § 1.1502–21(c) exceeds $400, all of C's $400 net operating loss incurred in 1984, a separate return limitation year, may be included in the P group's consolidated net operating loss carryover to 1987. Assuming that no other net operating losses are available for inclusion in that carryover, the P group's consolidated taxable income for 1987 after reduction for that carryover is $1,100, *i.e.*, $1,500 minus $400.

Example (3). (i) Assume the same facts as in *Example (2)*, except that the ICA acquisition is subject to an offset prohibition election. All of the consequences described in *Example (1)* and *Example (2)* apply, except that P's adjusted basis in the ICA asset is not reduced as of January 1, 1987, by the remaining ICA gain amount and, as explained below, none of C's 1984 net operating loss is a carryover to 1987. In addition, four other potential consequences attend the ICA acquisition.

(ii) First, the remaining ICA gain amount of $4,500 is ordinary income to the P group that may not be offset by any deductions of C or any other P group member for 1987 (including C's $400 remaining portion of the net operating loss incurred in 1984). Thus, notwithstanding that the aggregate of taxable income and loss of P group members in 1987 is $0 (*i.e.*, C's income of $4,500 minus P's loss of $4,500), the P group is considered to have a consolidated taxable income in 1987 of $4,500 (the remaining ICA gain amount). See subdivision (iv)(C) of this *Answer 3.* In addition, however, the P group is considered to incur a consolidated net operating loss in 1987 of $4,500, *i.e.*, P's loss in 1987 of $4,500 that may not be used to offset C's remaining ICA gain amount of $4,500 because of the offset prohibition election. That consolidated

net operating loss may be applied to reduce income in other taxable years pursuant the applicable carryover and carryback rules.

(iii) Second, for purposes of determining the amount by which the P group's consolidated tax liability for 1987 may be *reduced* by restricted credits (as defined in subdivision (iv)(D) of this *Answer 3*), the P group's consolidated tax liability before reduction by any such restricted credits is calculated as if the remaining ICA gain amount of $4,500 were no income to the P group for 1987. Under these facts, the P group has no income (and therefore no pre-credit tax liability) in 1987 absent the remaining ICA gain amount. Thus, the P group's 1987 tax liability (before restricted credits) may not be reduced by restricted credits. Credits that, by reason of this *Answer 3*, cannot be applied to reduce the P group's consolidated tax liability in a taxable year in which there is a remaining ICA gain amount subject to the offset prohibition nevertheless may be applied to reduce tax liability in other taxable years pursuant to the applicable carryover and carryback rules for the particular credit.

(iv) Third, the remaining ICA gain amount is considered an item of income of a P group member other than C for purposes of determining the amount of a loss or credit of C arising in a separate return limitation year that may be included in the consolidated carryover of such a loss or credit to 1987. This rule is irrelevant under the facts of this *Example (3)*, however, since the P group's entire consolidated taxable income for 1987, $4,500, may be offset by no deductions otherwise available to the P group and since the P group's consolidated tax liability before restricted credits is a negative amount for purposes of restricted credit carryovers.

(v) Fourth, if the ICA asset were tangible property eligible for the investment tax credit, investment tax credit recapture could occur in 1987.

(7) *De minimis exception under section 338(e)(2)(D).*

Question 1: Does an exception to section 338(e)(1) apply under the authority of section 338(e)(2)(D) if P (or any other member of the P group) acquires a *de minimis* amount of assets from T (or a target affiliate of T)?

Answer 1: Yes.

Question 2: When does the *de minimis* exception apply?

Answer 2: (i) *General rule.* The *de minimis* exception applies only if the *de minimis* amount equals or exceeds the aggregate gross fair market value of all assets acquired in acquisitions that, with respect to T or any affected target, are described in section 338(e)(1) and are not subject to an exception to section 338(e)(1) (other than the carryover basis election exception of paragraph (f)(6) of this section or this *de minimis* exception). The "gross fair market value" of an asset is the fair market value of that asset without regard to liabilities. For the effect of a protective or an affirmative action carryover election on the *de minimis* exception, see paragraph (f)(6)(iii) *Answer 2* (ii) of this section.

(ii) *De minimis amount.* The *"de minimis* amount" is the lesser of (A) the sum of the five percent amounts for T and all affected targets or (B) $50,000. The "five percent amount" for a target (*i.e.*, either T or an affected target) is an amount equal to five percent of the sum of (A) the target's grossed-up stock basis and (B) the target's liabilities on the acquisition date (not including tax liabilities that would arise if a section 338 election were made for the target). The target's grossed-up stock basis for this purpose is the amount determined under section 338(b)(1) (applied as if the basis of nonrecently purchased target stock were determined under section 338(b)(3)(B)).

Example (1). (i) On December 31, 1985, T and T1 are wholly-owned subsidiaries of S. On January 1, 1986, P acquires all of the stock of T in a qualified stock purchase. On June 1, 1986, P acquires all of the stock of T1 in a qualified stock purchase. On December 1, 1986, P acquires all of the stock of X from S in a qualified stock purchase. S previously acquired X on April 1, 1936, *i.e.*, after T was sold by S but before T1 was sold by S. P makes neither an express election nor a protective carryover election for T. On May 1, 1986, P purchases an asset from T ("T asset"). The T asset has a fair market value of $30,000 and is subject to a liability of $10,000. On August 1, 1987, P purchases an asset from X ("X asset"). The X asset has a fair market value of $25,000 and is subject to no liabilities. Assume that both asset acquisitions are described in section 338(e)(1) and are not subject to an exception to section 338(e)(1) (other than the carryover basis election exception of paragraph (f)(6) of this section or this *de minimis* exception). Assume in addition that the five percent amount for each of the targets (*i.e.*, T, T1, and X) exceeds $50,000.

(ii) T1 and X are affected targets with respect to T, since a deemed election would occur for those corporations in the event of a section 338 election for T. (Note that X is an affected target with respect to T even though X is not a target affiliate of T.) The *de minimis* amount is $50,000, *i.e.*, the lesser of the sum of the five percent amounts for T, T1, and X or $50,000. The May 1, 1986, asset acquisition, standing alone, does not exceed the *de minimis* amount under these facts, since it does not exceed $50,000. By reason of the August 1, 1987, asset acquisition from X, however, the *de minimis* amount is exceeded, since the gross fair market value of the T and X assets exceeds $50,000, *i.e.*, $55,000 ($30,000 + $25,000). As a result, neither asset acquisition is subject to the *de minimis* exception. Note that T is thereby affected by P's acquisition of the X asset even though that acquisition occurs after T's consistency period (assuming that period is not extended pursuant to paragraph (g)(1) *Answer 1* of this section) and even though P acquires the asset from a corporation that is not a target affiliate of T.

Example (2). (i) Assume the same facts as in *Example (1)*, except that (A) the August 1, 1987, asset acquisition does not occur and (B) the five percent amounts for T, T1, and X are $15,000, $10,000, and $40,000, respectively.

(ii) The May 1, 1986, asset acquisition exceeds the *de minimis* amount as of that day, since the $30,000 gross fair market value of the T asset exceeds the *de minimis* amount (as of that day) of $15,000, *i.e.*, the lesser of the five percent amount for T or $50,000. As of May, 1, 1986, the *de minimis* exception therefore does not apply to the asset acquisition. The qualified stock purchase of the stock of T1 does not change this result, since the qualified stock purchase increases the *de minimis* amount only to $25,000 (*i.e.*, the lesser of the five percent amounts for T and T1 or $50,000), which is less than the $30,000 gross fair market value of the T asset. By reason of the qualified stock purchase of the stock of X on December 1, 1986, however, the May 1, 1986, asset acquisition does not exceed the *de minimis* amount, which, as of December 1, 1986, is $50,000, *i.e.*, the lesser of the five percent amounts for T, T1, and X or $50,000. Accordingly, the May 1, 1986, asset acquisition is subject to the *de minimis* exception.

(g) *Special consistency rules*—(1) *Extension of consistency period and 12-month acquisition period in certain cases.*

Question 1: Under what circumstances is T's consistency period extended under section 338(h)(4)(B) beyond the period specified in section 338(h)(4)(A) ("normal consistency period")?

Answer 1: (i) *Extension to period preceding normal consistency period.* T's consistency period extends beyond the normal consistency period to include the day preceding that period on which a member of the P group acquires an asset in a triggering asset acquisition, provided that the Commissioner determines (on the basis of all of the facts and circumstances) that a P group member had a plan in effect at the close of the day of the triggering asset acquisition to make a qualified stock purchase of T and that such plan remained in effect through T's acquisition date.

(ii) *Extension to period following normal consistency period.* T's consistency period extends beyond the normal consistency period to include the later of the day following that period on which a P group member either makes a qualified stock purchase of the stock of a target affiliate of T or makes a triggering asset acquisition, provided that the Commissioner determines (on the basis of all of the facts and circumstances) that a P group member had a plan in effect at the close of the normal consistency period to make such qualified stock purchase or triggering

asset acquisition, and that such plan remained in effect through the subsequent qualified stock purchase or triggering asset acquisition.

(iii) *Triggering asset acquisition.* An asset acquisition is a "triggering asset acquisition" if, had it occurred during the normal consistency period, it would have been described in section 338(e)(1) and would not have been subject to an exception (other than the carryover basis election exception of paragraph (f)(6) of this section) to section 338(e)(1).

Question 2: Under what circumstances is the 12-month acquisition period extended beyond 12 months?

Answer 2: Under the authority of section 338(e)(3) and (i), the 12-month acquisition period is extended beyond 12 months if (i) pursuant to a plan of the P group (as determined by the Commissioner on the basis of all of the facts and circumstances), T stock purchased by P satisfies the percentage ownership requirements of section 338(d)(3) by reference to a period of time that exceeds 12 months ("extended period") and (ii) an extension of the 12-month acquisition period is necessary to carry out the purposes of the consistency rules of section 338(e), (f), or (i). If the requirements of the preceding sentence are satisfied, the extended period is considered the "12-month acquisition period."

(2) *Asset or stock acquisition by non-P group member considered an acquisition by P group member in certain cases.*

Question: Under what circumstances may the Commissioner treat an acquisition by a person other than a P group member ("X") of—

(i) an asset of T (or of a target affiliate of T) as an acquisition of an asset of T (or of a target affiliate of T) by a P group member, or

(ii) stock in T (or in a target affiliate of T) as a purchase of stock in T (or in a target affiliate of T) by a P group member?

Answer: (i) *Acquisition of an asset of T or its target affiliate.* For purposes of applying the consistency rules of section 338 (e), (f), and (i), the Commissioner may treat the acquisition of an asset of T (or of a target affiliate of T) by X as the acquisition of an asset of T (or of a target affiliate of T) by a P group member if—

(A) P makes a qualified stock purchase of T stock,

(B) X acquires the asset of T (or of a target affiliate of T) during T's consistency period,

(C) X transfers the asset to a P group member, or becomes a member of the P group, during T's consistency period, and

(D) If X is not related to a P group member at the time it acquires the asset, the Commissioner determines (on the basis of all of the facts and circumstances) that the requirements described in subdivisions (B) and (C) of this *Answer* (i) were satisfied pursuant to a single plan of the P group.

(ii) *Acquisition of stock in t (or its target affiliate).* For purposes of applying the consistency rules of section 338 (e), (f), and (i), the Commissioner may treat a P group member as having acquired stock in Y (*i.e.*, T or a target affiliate of T) by purchase either on the day a P group member acquires Y stock from X or on the day that X, while holding Y stock, becomes a member of the P group if—

(A) X acquired the Y stock under such circumstances that, if X (whether or not a corporation) were treated as a P group member at the time X acquired that Y stock, a qualified stock purchase of the Y stock ("hypothetical Y stock purchase") would be made by the P group (on or after the day X acquired that Y stock, and wholly or in part by reason of X's acquisition of that Y stock),

(B) Either (*1*) a deemed election would be made for Y by the P group (or could be made for Y by reason of section 338(e)(1) at the discretion of the District Director) if the hypothetical Y stock purchase were an actual qualified stock purchase of Y stock by the P group, or (*2*) a section 338 election actually is made by the P group for any target that would have been an affected target ("hypothetical affected target") if a section 338 election applied with respect to the P group's hypothetical Y stock purchase,

(C) X transfers the Y stock to a P group member or becomes a member of the P group during either (*1*) Y's consistency period (determined as if the hypothetical Y stock purchase were an actual qualified stock purchase of Y by the P group) or (*2*) the consistency period of a hypothetical affected target for which a section 338 election actually is made, and

(D) In the event that X is not related to a P group member at the time it acquires the Y stock, the Commissioner determines (on the basis of all of the facts and circumstances) that the requirements described in subdivisions (A), (B), and (C) of this *Answer* (ii) were satisfied pursuant to a single plan of the P group.

(iii) *Other acquisitions.* The Internal Revenue Service may treat any indirect acquisition of an asset of T (or of a target affiliate of T) or of stock in T (or in a target affiliate of T) as a direct acquisition of such an asset or as a purchase of such stock by a P group member if such treatment is appropriate to carry out the purposes of the consistency rules of section 338 (e), (f), or (i). An indirect acquisition includes, for example, the acquisition of such asset or stock by an intermediary, such as a partnership or trust, in which a P group member has an interest.

(iv) *Operating rules for subdivision (ii) of this Answer*—(A) *Application of section 338(f).* Under the authority of section 338 (f) and (i), the P group is considered to have made a deemed election with respect to its qualified stock purchase of the stock of Y if—

(*1*) That qualified stock purchase occurs in whole or in part by reason of the operation of subdivision (ii) of this *Answer*,

(*2*) Subdivision (ii) of this *Answer* applies to Y by reason of an actual section 338 election for a hypothetical affected target, and

(*3*) The acquisition date of that hypothetical affected target occurs after the acquisition date of Y.

(B) *Aggregation rule.* In the event that acquisitions by two of more persons in the aggregate would satisfy the requirements of subdivision (ii) of this *Answer*, then all such persons shall be treated as a single person for purposes of applying that subdivision.

(v) *Special extension of consistency period and 12-month acquisition period in appropriate cases.* Under the authority of section 338 (e), (f), (h)(4) (B), and (i), the consistency period and 12-month acquisition period of any corporation affected by the provisions of this *Answer* may be extended by the Internal Revenue Service whenever appropriate to carry out the purposes of those provisions:

Example (1). On January 1, 1985, D, an individual unrelated to P, acquires an asset of S for cash ("S asset"). On December 1, 1985, P acquires all of the stock of T from S in a qualified stock purchase. P makes neither an express election nor a protective carryover election for T. On October 1, 1986 (*i.e.*, during T's consistency period), P acquires the S asset from D. Assume that the Commissioner determines, on the basis of all of the facts and circumstances, that D's acquisition of the S asset and D's subsequent transfer of the S asset to P occurred pursuant to a single plan of the P group. For purposes of applying the consistency rules of section 338 (e), (f), and (i), the Commissioner may treat P as having acquired an asset of S.

Example (2). (i) On May 1, 1985, P acquires all of the stock of T from S in a qualified stock purchase and makes an express election for T. On June 1, 1985, B, an individual that is the sole shareholder of P, acquires for cash from S all of the stock of Y.

a target affiliate of T. On December 1, 1985, B transfers the stock of Y to P.

(ii) For purposes of applying the consistency rules of section 338 (e), (f), and (i), the Commissioner may treat P as having acquired the Y stock by purchase, since the three applicable requirements of subdivision (ii) of this *Answer* are satisfied. First, if B were treated as a corporation that was a member of the P group at the time of B's acquisition of the Y stock, then a qualified stock purchase of Y stock would be made by the P group on June 1, 1985. Accordingly, the hypothetical Y stock purchase requirement is satisfied. Second, had the hypothetical Y stock purchase actually occurred, a deemed election under section 338(f)(1) would be made for Y by reason of the P group's express election for T. Third, B transfers the Y stock to P during Y's consistency period (determined as if the hypothetical Y stock purchase were an actual qualified stock purchase of Y by the P group). If the Commissioner treats P as having acquired the Y stock by purchase under these facts, than a P group member is considered to acquire all of the Y stock in a qualified stock purchase on December 1, 1985, notwithstanding that P acquires the stock from B, a person described in section 338(h)(3)(A)(iii), and therefore would not be considered to have purchased that stock absent this *Answer*. If, pursuant to this *Answer*, P is considered to have made a qualified stock purchase of the stock of Y, then the express election for T causes a deemed election under section 338(f) (1) for Y, since Y is a target affiliate of T and was acquired during the consistency period of T.

Example (3). Assume the same facts as in *Example (2)*, except that B is a corporation and that, on December 1, 1985, B does not transfer the Y stock to a P group member but rather becomes a member of the P group. The result is the same as in *Example (2)*.

Example (4). (i) Assume the same facts as in *Example (2)*, except that (A) on June 1, 1985, B acquires for cash from S only 40 of the 100 shares of Y's only class of outstanding stock, and (B) on April 1, 1986, P purchases for cash the remaining 60 shares of Y's stock.

(ii) If B were considered a corporation that was a member of the P group at the time of B's acquisition of the Y stock, then a qualified stock purchase of Y stock would be made by the P group on April 1, 1986. (Note that the hypothetical Y stock purchase requirement is satisfied by reason of an event (P's purchase of 60 shares of Y stock on April 1, 1986) that occurs after B transfers the 40 shares of Y stock to P.) Thus, the result is the same as in *Example (2)*, except that the qualified stock purchase of Y stock by the P group occurs on April 1, 1986 (assuming that the Commissioner determines under subdivision (ii) of this *Answer* that the P group should be treated as having acquired the Y stock from B by purchase) rather than on December 1, 1985.

Example (5). (i) On January 1, 1985, S holds all of the stock of Y and T. At the close of that date, B, an individual that is the sole shareholder of P, acquires for cash from S all of the stock of Y. On February 1, 1985, P acquires all of the stock of T from S in a qualified stock purchase and makes an express election for T. On May 1, 1985, B transfers the stock of Y to P.

(ii) For purposes of applying the consistency rules of section 338(e), (f), and (i), the Commissioner may treat P as having acquired the Y stock by purchase, since the three applicable requirements of subdivision (ii) of this *Answer* are satisfied. First, if B were treated as a corporation that was a member of the P group at the time of B's acquisition of the Y stock, then a qualified stock purchase of Y stock would be made by the P group on January 1, 1985. Accordingly, the hypothetical Y stock purchase requirement is satisfied. Second, an express election actually is made by the P group for a target (T) that is a hypothetical affected target. Third, B transfers the Y stock to P during the consistency period of a hypothetical affected target (T) for which a section 338 election actually is made. If, pursuant to this *Answer*, P is considered to have made a qualified stock purchase of the stock of Y, then the express election for T causes a deemed election under section 338 (f)(1) for Y, since Y is a target affiliate of T and was acquired during the consistency period of T.

Example (6). Assume the same facts as in *Example (5)*, except that P acquires all of the stock of T from S in a qualified stock purchase on September 1, 1985. The result is the same as in *Example (5)*. Assuming that P is treated under subdivision (ii) of this *Answer* as having acquired the stock of Y in a qualified stock purchase, a deemed election is made for Y by reason of subdivision (iv)(A) of this *Answer*. This result follows because (i) the qualified stock purchase of Y occurs under subdivision (ii) of this *Answer* by reason of the actual section 338 election for T, a hypothetical affected target, and (ii) the acquisition date of T occurs after the Acquisition date of Y. Note that the express election for T properly is made even though, as a result of that express election, there may exist a target, Y, that, as between Y and T, is the original target. See paragraph (e) of this section.

Example (7). (i) On May 1, 1985, B, an individual that is the sole shareholder of P, acquires for cash from S all of the stock of T. On September 1, 1985, P acquires an asset of S. On January 1, 1986, B transfers the stock of T to P.

(ii) Under these facts, the hypothetical Y stock purchase requirement is satisfied. If, under the circumstances, a deemed election under section 338(e)(1) with respect to the P group's hypothetical Y stock purchase could be made at the discretion of the District Director by reason of the asset acquisition on September 1, 1985, then the Commissioner may treat B's transfer of the Y stock to P on January 1, 1986, as a purchase by P of that Y stock on that date, since the transfer occurs during the consistency period of Y (determined as if the hypothetic Y stock purchase were an actual qualified stock purchase of Y stock by the P group).

(h) *Determination of section 338(a)(1) deemed sale price*—(1) *Introduction.* The price at which old T is treated as selling its assets in the section 338(a)(1) deemed sale must be determined in order to measure the gain or loss recognized by T in the deemed sale. The questions and answers in this paragraph (h) provide guidance on the determination of the aggregate deemed sale price. For purposes of applying this paragraph (h), T stock is considered purchased or held by P if it is purchased or held by any member of the P group. See section 338(h)(8). This paragraph (h) does not apply if an election under section 338(h)(10) is made. For the effect of old T's tax liabilities, as determined under this paragraph (h), on the basis of new T's assets, see paragraph (j) of this section.

(2) *Definitions*—(i) *ADSP.* The "ADSP" is the aggregate deemed sale price, *i.e.*, the price at which T is deemed to have sold all of its assets in the deemed sale under section 338(a)(1).

(ii) *Elective ADSP formula.* The "elective ADSP formula" is an elective formula prescribed under the authority of section 338(h)(11) for determining the ADSP.

(iii) *Allocable ADSP amount.* The "allocable ADSP amount" is the portion of the ASDP as calculated under the elective ADSP formula that is allocable to a particular T asset. (The ADSP is allocated among the T assets for this purpose in proportion to their relative fair market values. Recapture gain on a T asset under the elective ADSP formula is computed by reference to the allocable ADSP amount for that asset.)

(iv) *Recapture gain.* "Recapture gain" is gain that is recognized in the section 338(a)(1) deemed sale notwithstanding the application of section 337 to the deemed sale. Examples of recapture gain include depreciation and LIFO recapture, section 338(c)(1) amounts, and tax benefit items.

(v) *Section 338(c)(1) percentage.* The "section 338(c)(1) percentage" is 100 percent minus the maximum percentage specified in section 338(c)(1). Items of gain or loss that are realized in the deemed sale but that would not be recognized in an actual sale under section 337 are multiplied by the section 338(c)(1) percentage to arrive at the section 338(c)(1) gain (or loss) recognized in the deemed sale.

(3) *Determination of ADSP*

Question 1: How is the ADSP determined?

Answer 1: (i) *General rule.* The ADSP is the aggregate of the fair market values of all old T's assets at the close of the acquisition date. Section 338(a)(1). A proper appraisal of the assets will be considered evidence of fair market value.

(ii) *Elective ADSP formula for determining ADSP*—(A) *General rule.* Under the authority of section 338(h)(11), the ADSP may be determined under the

elective ADSP formula, which takes into account liabilities and other relevant items.

(B) *Procedure for electing elective ADSP formula and for revoking election.* The election to apply the elective ADSP formula ("formula election") is made by attaching to the final return of old T (including an amended final return) a statement containing the following declaration (or a substantially similar declaration): "THIS RETURN REFLECTS A FORMULA ELECTION FOR T UNDER SECTION 338 AND § 1.338–4T(h)(3)." The formula election is revoked by attaching to an amended final return of old T a statement containing the following declaration (or a substantially similar declaration): "THIS RETURN DOES NOT REFLECT A FORMULA ELECTION FOR T UNDER SECTION 338 AND § 1.338–4T(h)(3)." In addition, a formula election may be made or revoked in connection with the examination of the final return of old T. A formula election made for T also applies to all affected targets, as does the revocation of a formula election for T. A formula election may not be made or revoked if the period within which to make an assessment of tax has expired for any return that would be affected by the election or the revocation. For this purpose, a return would be affected by the election (or revocation) if the election (or revocation) would have the effect, directly or indirectly, of increasing the tax liability reported in that return.

Question 2: How is the ADSP determined under the elective ADSP formula?

Answer 2: (i) *Introduction.* The ADSP under the elective ADSP formula is the sum of (A) the grossed-up basis of P's recently purchased T stock (as defined in section 338(b)(6)(A)), (B) the liabilities of T (including any tax liability resulting from the deemed sale), and (C) other relevant items. If T is acquired in a true bargain purchase (*i.e.*, if the cost of the stock acquisition of P is less than the aggregate fair market value of the assets of T), the ADSP as determined under the elective ADSP formula will reflect that bargain element. This result follows because the elective ADSP formula takes into account the actual price paid by P or T stock. If the elective ADSP formula is not used in such a case, recapture gain items measured by reference to the ADSP will be disproportionately high as compared to the price P actually paid for the T stock and the basis of new T's assets.

(ii) *Grossed-up basis of P's recently purchased T stock.* The grossed-up basis of P's recently purchased T stock is an amount equal to P's basis in recently purchased T stock, divided by the percentage of T stock (by value) attributable to that recently purchased T stock. If T has a single class of outstanding stock, the grossed-up basis of P's recently purchased T stock for purposes of the elective ADSP formula reflects the total price P would have paid for all outstanding T stock had it purchased all such stock for a price per share equal to the average price per share that it paid for the recently purchased T stock.

(iii) *Tax liability resulting from the deemed sale.* The elective ADSP formula takes into account both tax credit recapture liability arising by reason of the deemed sale and the tax liability on recapture gain. The elective ADSP formula reflects that fact that recapture gain both increases the ADSP (by creating a tax liability) and is computed by reference to the ADSP.

(iv) *Calculation of recapture gain with respect to certain property.* Section 1245 depreciation recapture gain an a T asset under the elective ADSP formula is the amount by which (A) the lesser of the recomputed basis of that asset or the allocable ADSP amount for that asset exceeds (B) the adjusted basis of that asset. Proper use of recomputed basis for items of section 1245 property results in the lowest ADSP. When a large number of items subject to section 1245 depreciation recapture must be included in the elective ADSP formula, the determination as to which of those assets should be measured by reference to recomputed basis to arrive at the lowest ADSP requiries a very large number of trial and error computations. Similar rules apply to other classes of property with respect to which recapture gain is properly determined by reference to the lesser of the allocable ADSP amount or some other amount.

(v) *Other applicable rules apply in elective ADSP formula.* The elective ADSP formula may not be applied in such a way as to contravene other applicable rules. Thus, for example, a capital loss under section 338(c)(1) cannot be applied in the elective ADSP formula to reduce ordinary income recapture gain.

(vi) *Sample elective ADSP formula.* The sample elective ADSP formula shown below takes into account the existence of recapture gain arising under sections 1245 and 338(c)(1). Other items of recapture gain may be added to the elective ADSP formula as appropriate. The sample formula is as follows:

$$ADSP = G + L + t_R \times [(\text{Lesser of R or } (ADSP \times F)) - B] + C \times t_R \times [(ADSP \times F) - Cb]$$

For purposes of this sample formula—

(A) "G" is the grossed-up basis of P's recently purchased T stock (as determined under subdivision (ii) of this *Answer 2*).

(B) "L" is the sum of T's liabilities other than T's tax liability for recapture gain amounts determined by reference to the ADSP. (Investment tax credit recapture under section 47 that results from the deemed sale of T's assests is included in L, for example, since that liability is not determined by reference to the ADSP.)

(C) "t_R" is the tax rate applicable to the recapture gain item represented by the bracketed material immediately following this symbol. In the sample formula, the bracketed material following the first use of the "t_R" symbol represents section 1245 depreciation recapture gain on an asset. (If there is more than one asset subject to section 1245 depreciation recapture, the recapture gain for each asset is separately computed in the elective ADSP formula.) The bracketed material following the second use of the "t_R" symbol in the sample formula represents section 338(c) (1) gain on an asset.

(D) "R" is the recomputed basis (as defined in section 1245(a)(2)) of an item of (section 1245 property).

(E) "F" is a fraction the numerator of which is the fair market value of a T asset on T's acquisition date and the denominator of which is the aggregate fair market value of all T assets on T's acquisition date. This fraction is multiplied by the ADSP to arrive at the allocable ADSP amount for a T asset.

(F) [Reserved]

(G) "B" is the adjusted basis of a T asset on the acquistion date.

(H) "C" is the section 338(c)(1) percentage (as defined in paragraph (h)(2)(v) of this section).

(I) "Cb" is the basis of an asset for purposes of determining the section 338(c)(1) gain or loss on that asset. An item of section 1245 property, for example, is taken into account for purposes of determining section 338(c)(1) gain only if the recomputed basis of that item (rather than the allocable ADSP amount for that item) is the measure of section 1245 depreciation recapture gain on that asset, since only in that case is there realized gain on the item that, absent section 338(c)(1), would not be recognized by reason of section 337. In such a case, the recomputed basis is the "Cb" amount.

Example (1). (i) T is a calendar year taxpayer that files separate returns and that has no loss or tax credit carryovers to 1985. As of July 1, 1985, T's only asset, which T has held for more than one year, is an item of section 1245 property with an adjusted basis

to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. On July 1 1985, P purchases all of the stock of T for $75,000 and makes an express election for T. Assume that T has no liabilities other than a tax liability resulting from the deemed sale of assets. Assume in addition that T's marginal tax rate for any ordinary income resulting from the deemed sale of assets is 46 percent.

(ii) Section 1245 depreciation recapture gain on the item of section 1245 property is determined under the elective ADSP formula by reference to the lesser of the recomputed basis of that item ($80,000) or the allocable ADSP amount for that item. (Note that the allocable ADSP amount for the item under these facts is the entire ADSP.) The elective ADSP formula as applied to these facts is as follows:

ANSP = G + L + t_R × [(Lesser of R or ADSP) − B]
ADSP = ($75,000/1) + $0 + .46 × [(Lesser of $80,000 or ADSP) − $50,400]

ADSP—Recomputed basis measurement:

ADSP = $75,000 + .46 × ($80,000 − $50,400)
ADSP = $88,616

ADSP—ADSP measurement:

ADSP = $75,000 + .46 × (ADSP − $50,400)
ADSP = $75,000 + (.46 × ADSP) − 23,184
ADSP = $51,816 + .46ADSP
ADSP = − .46ADSP = $51,816
.54ADSP/.54 = $51,816/.54
ADSP = $95,955.56

Accordingly, the ADSP of T is $88,616, *i.e.*, the recomputed basis measurement ($88,616), which is less than the ADSP measurement ($95,955.56).

Example (2). Assume the same facts as in *Example (1)*, except that on July 1, 1985, P purchases only 80 of the 100 outstanding shares of T's only class of stock for $60,000. Assume in addition that those 80 shares represent, at all times during the one-year period beginning on July 1, 1985 (the aquisition date of T), 80 percent of the value of all T stock and that P purchases no additional T stock during that one-year period. Accordingly, the section 338(c)(1) percentage under paragraph (h)(2)(v) of this section is 20 percent, *i.e.*, 100 percent minus 80 percent. Assume that any net capital gain resulting from the deemed sale will be taxed at the 28 percent rate. The elective ADSP formula as applied to these facts is as follows:

ADSP = G + L + t_R × [(Lesser of R or ADSP) − B] + C × t_R × (ADSP − Cb)
ADSP = ($60,000/.8) + $0 + .46 × [(Lesser of $80,000 or ADSP] − 50,400] + .20 × .28 × [ADSP − (Lesser of $80,000 or ADSP)]*

*Section 338(c)(1) gain exists under the formula only if the recomputed basis of $80,000 rather than the allocable ADSP amount is the measure of section 1245 depreciation recapture gain. The section 338(c)(1) gain in that case is the allocable ADSP amount, reduced by $80,000. Whenever section 1245 depreciation recapture gain for an item is calculated by reference to the allocable ADSP amount for that item, the section 338(c)(1) calculation may be omitted for that item.

ADSP—Recomputed basis measurement:

ADSP = ($60,000/.8) + .46 × ($80,000 − $50,400) + .20 × .28 × (ADSP − $80,000)
ADSP = $75,000 + $13,616 + (.056 × ADSP) − $4,480
ADSP = $84,136 + .056ADSP
ADSP − .056ADSP = $84,136
.944ADSP/.944 = $84,136/.944
ADSP = $89,127.12

ADSP—ADSP measurement:

ADSP = ($60,000/.8) + .46 × (ADSP − $50,400)
ADSP = $75,000 + (.46 × ADSP) − $23,184
ADSP = $51,816 + .46ADSP
ADSP − .46ADSP = $51,816
.54ADSP/.54 = $51,816/.54
ADSP = $95,955.56

Accordingly, the ADSP of T is $89,127.12, *i.e.*, the recomputed basis measurement ($89,127.12), which is less than the ADSP measurement ($95,955.56).

Example (3). T is a calendar year taxpayer that files separate returns and that has no loss or tax credit carryovers to 1985. On July 1, 1985, P purchases 80 of the 100 outstanding shares of T's only class of stock for $80,000 and makes an express election for T. Assume that those 80 shares represent, at all times during the one-year period beginning on July 1, 1985 (the acquisition date of T), 80 percent of the value of all T stock and that P purchases no additional T stock during that one-year period. Accordingly, the section 338(c)(1) percentage under paragraph (h)(2)(v) of this section is 20 percent, *i.e.*, 100 percent minus 80 percent. Assume in addition that T's marginal tax rate for any ordinary income resulting from the deemed sale of assets will be 46 percent, and that any net capital gain resulting from the deemed sale of assets will be taxed at the 28 percent rate. T does not inventory goods under the LIFO method, so there is no LIFO recapture gain in the deemed sale. T's assets, all of which have been held by T for more than one year, are as follows:

Assets	Basis	FMV [1]	Fraction [2]
1. Goodwill	$5,000	$15,000	.0697674
2. Inventory (FIFO)	10,000	30,000	.1395348
3. Equipment A (recomputed basis $80,000)	5,000	80,000	.372093
4. Equipment B (recomputed basis $20,000)	10,000	90,000	.4186046
Totals	30,000	215,000	1.00

[1] Fair market value.
[2] Fraction of aggregate fair market value. These amounts may reflect certain rounding errors.

T has liabilities (not including the tax liability for recapture gain on its assets) of $50,000. The elective ADSP formula as applied to these facts is as follows (the subscript numerals in the formula correspond to the number assigned each asset in the above table and indicate which asset is being referred to):

ADSP = G + L + t_R × [(Lesser of R_3 or (ADSP × F_3)) − B_3 + (Lesser of R_4 or (ADSP × F_4)) − B_4] + C × t_R × [(ADSP × (F_1 + F_2 + F_4)) − (Cb_1* + Cb_3** + Cb_4***)] + C × t_R × [(ADSP × F_2) − Cb_2****]

*Equal to B_1.
**Equal to the lesser of R_3 or (ADSP × F_3).
***Equal to the lesser of R_4 or (ADSP × F_4).
****Equal to B_2.

ADSP = $80,000/.8 + $50,000 + .46 × [(Lesser of $80,000 or (ADSP × .372093)) − $5,000 + (Lesser of $20,000 or (ADSP × .4186046) − $10,000] + .2 × .28 × [(ADSP × (.0697674 + .372093 + .4186046) − $5,000 − (Lesser of $80,000 or (ADSP × .372093)) − (Lesser of $20,000 or (ADSP × .4186046)] + .2 × .46 × [(ADSP × .1395348) − $10,000]

In this case, the recomputed basis is less than the allocable ADSP amount for Asset #4 but not for Asset #3. The elective ADSP formula computation, as applied on these assumptions, is as follows:

ADSP = $100,000 + $50,000 + .46 × [(.372093ADSP − $5,000) + ($20,000 − $10,000)] + .2 × .28 × (.860465ADSP − $5,000 − .372093ADSP − $20,000) + .2 × .46 × (.1395348ADSP − $10,000)
ADSP = $150,000 + .46 × (.372093ADSP + $5,000) + .056 × (.488372ADSP − $25,000) + .092 × (.1395348ADSP − $10,000)
ADSP = $150,000 + .1711627ADSP + $2,300 + .0273488ADSP − $1,400 + .0128372ADSP − $920
ADSP = $150,000 + .2113487ADSP − $20
ADSP = $149,980 + .2113487ADSP
ADSP = .2113487ADSP = $149,980
.7886513ADSP/.7886513 = $149,980/.7886513
ADSP = $190,172.76

The following table breaks the ADSP of $190,173 down to the deemed sale price, section 1245 depreciation recapture gain (and resulting tax) and section 338(c)(1) gain (and resulting tax) allocable to each asset:

Asset	Fraction	ADSP amt (column 2 × $190,173)	Section 1245 gain	Tax on column 4 (× 46)	Section 338(c)(1) gain	Tax on column 6
(1)	(2)	(3)	(4)	(5)	(6)	(7)
#1	.0697674	$13,268	N/A	N/A	[5] $1,654	[6] $463
#2	.1395348	26,536	N/A	N/A	[4] 3,307	[7] 1,521
#3	.3720932	70,762	[1] $65,762	$30,251	N/A	N/A
#4	.4186046	79,607	[2] 10,000	4,600	[3] 11,921	3,338
Totals:	1.00	190,173	75,762	34,851	16,882	5,322

[1] Asset #3: (ADSP × F_3) − B_3 = $70,762 − $5,000 = $65,762.
[2] Asset #4: R_4 − B_4 = $20,000 − $10,000 = $10,000.
[3] Asset #1: C × (Col. 3 − B_1) = .2 × ($13,268 − $5,000) = $1,654.
[4] Asset #2: C × (Col. 3 − B_2) = .2 × ($26,536 − $10,000) = $3,307.
[5] Asset #4: C × (Col. 3 − B_4) = .2 × ($79,607 − $20,000) = $11,921.
[6] t_R = .28.
[7] t_R = .46.

Summary of calculation

Grossed-up basis of P's recently purchased T stock	$100,000
Liabilities (except taxes measured by reference to ADSP)	50,000
Tax on section 1245 depreciation recapture gain	34,851
Tax on section 338(c)(1) gain	5,322
ADSP	190,173

Question 3: Assume that T owns all of the stock of T1 at the close of T's acquisition date and that P makes a qualified stock purchase of and express election for T. For purposes of applying the elective ADSP formula to T1, what is T's basis in the T1 stock that T is deemed to sell and purchase under section 338(a)?

Answer 3: T's basis in recently purchased T1 stock is the allocable ADSP amount for the T1 stock that is deemed purchased by T, treating the T1 stock in the same manner as any other asset of T to which the ADSP of T is allocated under the elective ADSP formula.

Example: (i) Assume the facts of *Example (3)* of *Answer 2* of this paragraph (h), except that Asset #2 is all of the stock of T1 rather than inventory. T1 is a calendar year taxpayer that files separate returns and that has no loss or tax credit carryovers to 1985. As of July 1, 1985, T1's only asset, which T1 has held for more than one year, is an item of section 1245 property with an adjusted basis to T1 of $18,000 and a recomputed basis of $25,000. Under these facts, the express election for T causes a deemed election under section 338(f)(1) for T1. Assume that T1 has no liabilities other than a tax liability resulting from section 1245 depreciation recapture gain in the deemed sale of assets. Assume in addition that T1's marginal tax rate for any ordinary income resulting from its deemed sale of assets is 46 percent.

(ii) The ADSP of T under the elective ADSP formula is computed as follows (the assumptions regarding the application of recomputed basis in the elective ADSP formula are the same as in *Example (3)*):

$$ADSP = G + L + t_R \times x[((ADSP \times F_4) - B_3) + (R_4 - B_4)] + C \times t_R \times [ADSP^* - Cb_1 + Cb_2 + Cb_3 + Cb_4)]$$

*The total ADSP is taken into account in determining the long term capital gain realized in the deemed sale of T since long-term capital gain potentially is realized with respect to all four assets held by T. Because section 1245 depreciation recapture gain on Asset #3 is calculated by reference to the allocable ADSP amount, however, no long-term capital gain is actually realized with respect to Asset #3, *i.e.*, all gain on Asset #3 is treated as section 1245 depreciation recapture gain.

ADSP = $100,000 + $50,000 + .46 × [(.372093ADSP − $5,000) + ($20,000 − $10,000)] + .2 × .28 × [ADSP − ($5,000 + $10,000 + .372093ADSP + $20,000)]

ADSP = $150,000 + .46 × (.372093ADSP + $5,000) + .056 × (.627907ADSP − $35,000)

ADSP = $150,000 + .1711627ADSP + $2,300 + .0351627ADSP − $1,960

ADSP = $150,340 + .2063254ADSP

ADSP − .2063254ADSP = $150,340

.7936746ADSP/.7936746 = $150,340/.7936746

ADSP = $189,442.71

The ADSP in this *Example* is less than the ADSP in *Example (3)* of *Answer 2* of this paragraph (h)(3) because the gain on Asset #2 (*i.e.*, the T1 stock) that is recognized in the deemed sale (by reason of section 338(c)(1)) is taxed at the 28 percent rate rather than at the 46 percent rate.

(iii) For purposes of applying the elective ADSP formula to T1, T's basis in recently purchased T1 stock is equal to the allocable ADSP amount for the item of T property represented by the T1 stock. The allocable ADSP amount for the T1 stock is $26,431.06, *i.e.*, $189,422.71 × 1395348. No P group members other than T hold recently purchased T1 stock. Thus, the elective ADSP formula as applied to T1 is as follows:

ADSP = G + L + t_R × [(Lesser of R or ADSP) − B]

ADSP = $26,431/1 + $0 + .46 × [(Lesser of $25,000 or ADSP) − $18,000]

ADSP—Recomputed basis measurement:

ADSP = $26,431 + .46 × ($25,000 − $18,000)

ADSP = $29,651

ADSP—ADSP measurement:

ADSP = $26,431 + .46 × (ADSP − $18,000)

ADSP = $26,431 + (.46 × ADSP) − $8,280

ADSP = $18,151 + .46ADSP

ADSP − .46ADSP = $18,151

.54ADSP/.54 = $18,151/.54

ADSP = $33,612.96

Because the recomputed basis measurement ($29,651) is less than the ADSP measurement ($33,613), the ADSP of T1 is $29,651.

Question 4: How is the elective ADSP formula affected by an increase in the maximum percentage (by value) of T stock held by P during the one-year period following T's acquisition date?

Answer 4: The section 338(c)(1) percentage used in the elective ADSP formula is determined by reference to the maximum percentage (by value) of T stock held by P during the one-year period following T's acquisition date. See paragraph (h)(2)(v) of this section. Thus, the ADSP as calculated under the ADSP formula cannot be determined with certainty until that one-year period has elapsed. See paragraph (k)(5) of this section.

(i) Reserved.

(j) *Determination of basis of target assets after section 338 election*—(1) *Introduction.* The questions and answers in this paragraph (j) provide guidance under section 338(b) on the determination || f the total sum ("adjusted grossed-up basis") to be allocated as basis to the assets || f new T. These questions and answers do not specifically deal with the manner in which the adjusted grossed-up basis is allocated among T's assets. For purposes of applying this paragraph (j), T stock is considered purchased or held by P if it is purchased or held by any member of the P group. See section 338(h)(8).

(2) *Determination of adjusted grossed-up basis.*

Question 1: How is the adjusted grossed-up basis determined?

Answer 1: (i) *General rule.* The adjusted grossed-up basis is the sum of (A) P's grossed-up basis in recently purchased T stock, (B) P's basis in nonrecently purchased T stock, (C) the liabilities of T (including tax liabilities computed under paragraph (h) of this section), and (D) other relevant items.

(ii) *P's grossed-up basis in recently purchased T stock.* P's grossed-up basis in recently purchased T stock is the product of P's basis in recently purchased T stock (as defined in section 338(b)(6)(A)), multiplied by the fraction described in section 338(b)(4). If T has a single class of outstanding stock, P's grossed-up basis in recently purchased T stock reflects the total price P would have paid for all outstanding T stock (other than P's nonrecently purchased T stock, as defined in section 338(b)(6)(B)) had P purchased all such stock (other than such nonrecently purchased T stock) for a price per share equal to the average price per share that P paid for the recently purchased T stock. Note that P's grossed-up basis in recently purchased T stock as calculated for purposes of the adjusted grossed-up basis differs from the "grossed-up basis of P's recently purchased T stock" as calculated in the elective ADSP formula. The elective ADSP formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P. See *Answer 2* (ii) of paragraph (h)(3) of this section.

(iii) *P's basis in nonrecently purchased T stock.* In the absence of an election under section 338(b)(3) ("gain recognition election"), P's basis in nonrecently purchased T stock is P's historic basis in that stock.

Question 2: What is the effect of a gain recognition election under section 338(b)(3)?

Answer 2: If P makes a gain recognition election, then, for all purposes of the Code and regulations, (i) P is treated as if it sold on the acquisition date the nonrecently purchased T stock for the basis amount determined under section 338(b)(3)(B), and (ii) P's basis on the acquisition date in nonrecently purchased T stock is the basis amount. If T has a single class of outstanding stock, P's basis in each share of nonrecently purchased T stock after the gain recognition election is

equal to the average price per share of P's recently purchased T stock. In such a case, the sum of P's grossed-up basis in recently purchased T stock and P's basis in nonrecently purchased T stock will be equal to the "grossed-up basis of P's recently purchased T stock" as calculated in the elective ADSP formula. See *Answer 2* (ii) of paragraph (h)(3) of this section. Absent a gain recognition election, the adjusted grossed-up basis will differ from the ADSP as calculated under the elective ADSP formula whenever P holds nonrecently purchased T stock at a basis that differs from P's basis in recently purchased T stock.

Question 3: May losses on nonrecently purchased T stock be recognized in the deemed sale of such stock under section 338(b)(3)?

Answer 3: No. Only gains (unreduced by losses) on the nonrecently purchased T stock are recognized.

Question 4: If P makes a gain recognition election for T, what stock held by P is subject to that election?

Answer 4: All T stock held by P (or other members of the P group) on T's acquisition date that is not recently purchased T stock is subject to the election. In addition, stock in an affected target held by P group members on the affected target's acquisition date also is subject to the gain recognition election for T if such stock is not recently purchased affected target stock.

Example. (i) Assume the same facts as in *Example (2)* of *Answer 2* of paragraph (h)(3) of this section, except that on June 1, 1984 (*i.e.*, more than 12 months before July 1, 1985, the acquisition date of T), P purchases 10 of the 100 outstanding shares of T's only class of stock for $5,000. Those 10 shares constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1, 1985. Assume that the 90 shares of T stock thus held by P on July 1, 1985, represent, at all times during the one-year period beginning on that date (the acquisition date of T) 90 percent of the value of all T stock, and that P purchases no additional T stock during that one year period. Accordingly, the section 338(c)(1) percentage under paragraph (h)(2)(v) of this section is 10 percent, *i.e.*, 100 percent minus 90 percent. The elective ADSP formula as applied to these facts is as follows:

$$ADSP = G + L + t_R \times [(\text{Lesser of } R \text{ or } ADSP) - B] + C \times t_R \times (ADSP - Cb)$$

$$ADSP = (\$60,000/.8) + \$0 + .46 \times [(\text{Lesser of } \$80,000 \text{ or } ADSP) - 50,400] + .10 \times .28 \times [ADSP - (\text{Lesser of } \$80,000 \text{ or } ADSP)]^*$$

*Section 338(c)(1) gain exists under the formula only if the recomputed basis of $80,000 rather than the allocable ADSP amount (as defined in paragraph(h)(2)(iii) of this section) is the measure of section 1245 depreciation recapture gain. The section 338(c)(1) gain in that case is the allocable ADSP amount, reduced by $80,000. Whenever section 1245 depreciation recapture gain for an item is calculated by reference to the allocable ADSP amount for that item, the section 338(c)(1) calculation may be omitted for that item.

ADSP—Recomputed basis measurement:

$$ADSP = (\$60,000/.8) + .46 \times (\$80,000 - \$50,400) + .10 \times .28 \times (ADSP - \$80,000)$$

$$ADSP = \$75,000 + \times \$13,616 + (.028 \times ADSP - \$2,240$$

$$ADSP = \$86,376 + .028ADSP$$

$$ADSP - .028ADSP = \$86,376$$

$$.972ADSP/.972 = \$86,376/.972$$

$$ADSP = \$88,864.20$$

ADSP—ADSP measurement:

$$ADSP = (\$60,000/.8) + .46 \times (ADSP - \$50,400)$$

$$ADSP = \$75,000 + (.46 \times ADSP) - \$23,184$$

$$ADSP = \$51,816 + .46ADSP$$

$$ADSP - .46ADSP = \$51,816$$

$$.54ADSP/.54 = \$51,816/.54$$

$$ADSP = \$95,955.56$$

Accordingly, the ADSP of T is $88,864.20, *i.e.*, the recomputed basis measurement ($88,864.20), which is less than the ADSP measurement ($95,955.56). This ADSP differs from the ADSP in *Example (2)* of *Answer 2* of paragraph (h)(3) of this section because the section 338(c)(1) percentage in this *Example* is 10 percent rather than 20 percent. The existence of nonrecently purchased T stock is irrelevant for purposes of the elective ADSP formula, since that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P. See *Answer 2* (ii) of paragraph (h)(3) of this section.

(ii) The total tax liability resulting from T's deemed sale of assets, as calculated under the ADSP formula, is $13,864.20, determined as follows:

Tax on section 1245 recapture gain [.46×($80,000−$50,400)]	$13,616.00
Tax on section 338(c)(1) gain [.1×.28×($88,864.20−$80,000)]	248.20
Total	13,864.20

(iii) The adjusted grossed-up basis of new T's assets is determined on the basis of the following formula:

$$AGUB = GRP + BNP + L$$

For purposes of this formula—

(A) "GRP" is P's grossed-up basis in recently purchased T stock, *i.e.*, the product of P's basis in recently purchased T stock multiplied by a fraction the numerator of which is 100 percent minus the percentage of T stock (by value) attributable to P's nonrecently purchased T stock and the denominator of which is the percentage of T stock (by value) attributable to P's recently purchased T stock. See section 338(b)(4).

(B) "BNP" is P's basis in nonrecently purchased T stock. If P makes a gain recognition election under section 338(b)(3), P's basis in nonrecently purchased T stock is the basis amount determined under section 338(b)(3)(B). (The basis amount is equal to the GRP multiplied by a fraction the numerator of which is the percentage of T stock (by value) attributable to P's nonrecently purchased T stock and the denominator of which is 100 percent minus the numerator amount.) The sum of the GRP and the BNP in the event of a gain recognition election may be stated in a simplified manner: That sum is equal to P's basis in recently purchased T stock, divided by the percentage of T stock (by value) attributable to that recently purchased T stock. Note that this formulation is identical to the formulation used in calculating the "grossed-up basis of P's recently purchased T stock" in the elective ADSP formula.

(C) "L" is the sum of T's liabilities (including tax liabilities computed under paragraph (h) of this section).

(iv) If P does not make a gain recognition election, the adjusted grossed-up basis of new T's assets under the formula described in subdivision (iii) of this *Example* is $86,364.20, determined as follows:

$$AGUB = \$60,000 \times [(1 - .1)/.8] + \$5,000 + \$13,864.20$$

$$AGUB = \$86,364.20$$

(v) If P makes a gain recognition election, the adjusted grossed-up basis of new T's assets under the formula described in subdivision (iii) of this *Example* is $88,864.20, determined as follows:

$$AGUB = \$60,000 \times [(1 - .1)/.8] + \$60,000 \times [(1 - .1)/.8] \times [.1/(1 - .1)] + \$13,864.20$$

$$AGUB = \$88,864.20$$

The calculation of adjusted grossed-up basis if P makes a gain recognition election may be simplified as follows (see subdivision (iii)(B) of this *Answer*):

$$AGUB = \$60,000/.8 + \$13,864.20$$

$$AGUB = \$88,864.20$$

(vi) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500, *i.e.*, $60,000×[(1−.1)/.8]×[.1/(1−.1)]. Accordingly, P's basis in each of its 10 shares of nonrecently purchased T stock after the gain recognition election is $750, *i.e.*, $7,500/10. P's basis in each share of nonrecently purchased T stock before the gain recognition election was $500, *i.e.*, $5,000/10. Thus, P recognizes a gain in 1985 with respect to its nonrecently purchased T stock of $2,500, *i.e.*, 10×($750−$500).

Question 5: How is the gain recognition election under section 338(b)(3) made?

Answer 5: (i) *Attachment to statement of section 338 election.* The gain recognition election is made in the form of a gain recognition statement ("GRS") that is attached to a timely filed statement of section 338 election (Form 8023) for T. In order for the gain recognition election to be valid, the statement of section 338 election (with the GRS attached) must be filed within the time specified in § 1.338–1T(c) with the Internal Revenue Service Centers specified in § 1.338–1T (c) and (d) and with each other Service Center with which each affected P group member (as defined in this *Answer 5* (ii)(A)) files its annual income tax return. If a statement of section 338 election is filed on or before August 23, 1985 without the GRS attachment, the P group may make a valid gain recognition election by filing the GRS (with a copy of the previously

filed statement of section 338 election attached) on or before that day with each Service Center specified in the preceding sentence. The gain recognition election is irrevocable. For certain additional filing requirements if a gain recognition election is made, see § 1.338–1T(e)(2).

(ii) *Contents of GRS.* The GRS must be identified as a gain recognition election under section 338(b)(3) and § 1.338–4T(j). In addition, the GRS must—

(A) Contain the name, address, and employer identification number of each corporation (*1*) that is a P group member on the acquisition date of T and that holds nonrecently purchased T stock on that date or (*2*) that is a P group member on the acquisition date of an affected target (provided that such acquisition date occurs on or before the day on which the statement of section 338 election is filed) and that holds nonrecently purchased stock in that affected target on that acquisition date ("affected P group member");

(B) Contain the following declaration (or a substantially similar declaration): "EACH CORPORATION HOLDING STOCK SUBJECT TO THIS GAIN RECOGNITION ELECTION AGREES TO REPORT ANY GAIN PURSUANT TO THE GAIN RECOGNITION ELECTION IN ITS FEDERAL INCOME TAX RETURN (INCLUDING AN AMENDED RETURN, IF NECESSARY) FOR ITS TAXABLE YEAR IN WHICH THE ACQUISITION DATE OF T OR ANY AFFECTED TARGET OCCURS"; and

(C) Be signed (in the manner prescribed in § 1.338–1T(d)(1)(v) by a person authorized to act on behalf of each affected P group member.

Question 6: Assume that T owns all of the stock of T1 at the close of T's acquisition date and that P makes a qualified stock purchase of and express election for T. For purposes of determining the adjusted grossed-up basis of T1, what is T's basis in the T1 stock that T is deemed to sell and purchase under section 338(a)?

Answer 6: T's basis in recently purchased T1 stock for purposes of determining the adjusted grossed-up basis of T1 is new T's basis in the T1 stock.

(k) *Miscellaneous matters affecting the final return of old T*—(1) *Application of section 337 to deemed sale of assets.*

Question 1: If a section 338 election is made for T, will the deemed sale of T's assets under section 338(a)(1) be governed by section 337, notwithstanding section 337 (c)(1)(A) or (c)(2) (relating to collapsible corporations and liquidation subject to section 332, respectively)?

Answer 1: Yes. Section 337 will not apply to T's deemed sale of assets, however, to the extent that another section of the Internal Revenue Code overrides (in whole or in part) the operation of section 337. Thus, for example, if old T is a "consenting corporation" within the meaning of section 341(f) and if old T holds "subsection (f) assets" on the acquisition date, section 337 will not apply to the deemed sale to the extent that gain realized on the deemed sale of the subsection (f) assets is required to be recognized under section 341(f)(2). See also section 897(d)(2), under which a foreign target will be required to recognize gain or loss with respect to its deemed sale of a United States real property interest notwithstanding section 337.

Question 2: Does the LIFO recapture rule of section 337(f) (rather than section 336(b)) apply to T's deemed sale of assets?

Answer 2: Yes.

Question 3: How does section 337 operate in the context of section 338(h)(12), under which, for purposes of section 337, T is treated as having distributed all of its assets at the close of the acquisition date?

Answer 3: (i) *General rule.* Section 338(h)(12) provides that, for purposes of section 337 and provisions that relate to section 337, T is treated as distributing all of its assets as of the close of its acquisition date if (A) T adopts a plan of complete liquidation during the 12-month period ending on the acquisition date, (B) the plan is not rescinded before the close of the acquisition date, and (C) a section 338 election is made for T. Section 337(a) provides that no gain or loss shall be recognized to a corporation from the sale or exchange of property (as defined in section 337(b)) during the 12-month period beginning on the date on which that corporation adopts a plan of complete liquidation, provided that, within such 12-month period, the corporation distributes all of its assets in complete liquidation (less assets retained to meet claims). Accordingly, if the requirements of section 338(h)(12) are satisfied, T does not recognize gain or loss from its sale or exchange of property during so much of such 12-month period as ends on T's acquisition date if the nonrecognition rule of section 337 would have applied to such sale or exchange had T hypothetically distributed all of its assets on the acquisition date ("hypothetical distribution"). For purposes of applying section 337 to the hypothetical distribution, section 337(c)(2) bars the operation of the nonrecognition rule of section 337 if section 332 would have applied to a distribution of all of T's assets in complete liquidation immediately after the plan of complete liquidation was adopted. The restrictions normally applicable to section 337 (*e.g.*, the limitation on collapsible corporations) also apply to the operation of section 337 in the section 338(h)(12) context.

(ii) *Exception for section 338(c)(1) percentage.* Gain or loss on actual asset sales pursuant to the plan of complete liquidation that are subject to the nonrecognition rule of section 337 by reason of section 338(h)(12) nevertheless is recognized to the extent of the section 338(c)(1) percentage (as defined in paragraph (h)(3)(v) of this section). Section 338(c)(1) applied to such gain or loss in the same manner as it applies to gain or loss arising in the deemed sale of assets under section 338(a)(1).

Example. (i) A owns all 100 shares of the only class of outstanding stock of T, a calendar year taxpayer. On January 1, 1985, T adopts a plan of complete liquidation which is not rescinded before the close of June 1, 1985. On April 1, 1985, T sells land held for investment and realizes a long-term capital gain of $2,000. On June 1, 1985, P purchases 90 of T's 100 shares from A and makes an express election for T. Assume that those 90 shares represent, at all times during the one-year period beginning on June 1, 1985 (the acquisition date of T), 90 percent of the value of all T stock and that P purchases no additional T stock during the one-year period beginning on June 1, 1985. Accordingly, the section 338 (c)(1) percentage is 10 percent.

(ii) Because T satisfies all of the requirements of section 338(h)(12), the nonrecognition rule of section 337 applies to T's asset sale on April 1, 1985, assuming that such nonrecognition rule would have applied to that sale had T hypothetically distributed all of its assets on June 1, 1985, *i.e.*, on T's acquisition date. By reason of section 338(c)(1), however, the capital gain of $2,000 is recognized to the extent of the section 338(c)(1) percentage of 10 percent. Accordingly, T recognizes a capital gain of $200 (*i.e.*, $2,000×.10) that must be reported in old T's final return. (The section 338(c)(1) percentage also may cause the recognition of gain or loss in T's deemed sale of assets on June 1, 1985.)

Question 4: How does section 341 apply to A and T if—

(i) At all relevant times, T is a collapsible corporation (as defined in section 341(b)(1)),

(ii) On January 1, 1985, a causes T to adopt a plan of complete liquidation,

(iii) On June 30, 1985, T sells property (other than property described in section 337(b)(1)) to an unrelated person for cash,

(iv) T immediately distributes that cash to A in exchange for T stock owned by A,

(v) On December 31, 1985, A sells all of its remaining T stock to P,

(vi) Rather than completing the liquidation of T, P makes a section 338 election for T, and

(vii) All of the requirements of section 338(h)(12) are satisfied?

Answer 4: (i) *Application of section 341(e)(4) to T's sale of property.* Section 337(c)(1)(A) bars the application of the nonrecognition rule of section 337 to T's sale of property on June 30, 1985, unless section 341(e)(4) applies with respect to that sale. For purposes of determining whether the requirement of section 341(e)(4)(B) is satisfied, T is treated as selling at the close of T's acquisition date all of the properties held by T on that date.

(ii) *Application of section 341(a)(2) to A's gain on the cash distribution to A.* To the extent that A's gain on the cash distribution from T in exchange for T stock owned by A would be considered (but for section 341(a)(2)) as gain from the sale or exchange of a capital asset held for more than six months, such gain is recharacterized under section 341(a)(2) as ordinary income unless section 341(a) is made inapplicable to A by reason of section 341 (d) or (e)(2). For purposes of determining under section 341(e)(2) whether the requirement of section 341(e)(4)(B) is satisfied, T is treated as selling at the close of T's acquisition date all of the properties held by T on that date.

(iii) *Application of section 341(a)(1) to A's gain on the stock sale.* To the extent that A's gain on the December 31, 1985, sale of T stock would be considered (but for section 341(a)(1)) as gain from the sale or exchange of a capital asset held for more than six months, such gain is recharacterized under section 341(a)(1) as ordinary income unless section 341(a) is made inapplicable to A by reason of section 341 (d), (e)(1), or (f).

Question 5: How do sections 453B(d)(2) and 453(h) apply with respect to the distribution of an installment note ("note") by T to A, the sole shareholder of T at the time of the distribution, if—

(i) On January 1, 1985, A causes T to adopt a plan of complete liquidation,

(ii) On June 30, 1985, T acquires the note in consideration for the sale of non-depreciable property (other than property described in section 337(b)(1)(A)),

(iii) T immediately distributes the note to A in exchange for T stock owned by A,

(iv) On December 31, 1985, A sells all of its remaining T stock to P,

(v) Rather than completing the liquidation of T, P makes a section 338 election for T, and

(vi) The nonrecognition rule of section 337 would have applied by reason of section 338(h)(12) had T sold or exchanged the note on the day it distributed that note to A?

Answer 5: Pursuant to section 453B(d)(2) (and subject to the limitations described therein), no gain or loss is recognized by T on the distribution of the note to A. Pursuant to section 453(h), the receipt by A of payments under the note (and not the receipt of that note in the distribution) is treated as the receipt of payment by A for the T stock transferred to T in exchange for the installment note.

(2) *Application of section 338(h)(10).*

Question 1: Is a section 338 election a prerequisite to a section 338(h)(10) election?

Answer 1: Yes.

Question 2: May an election under section 338(h)(10) be made prior to issuance of a Treasury decision containing regulations under section 338(h)(10)?

Answer 2: No.

Question 3: After a Treasury decision containing regulations under section 338(h)(10) is published, will an election under section 338(h)(10) be permitted retroactively for a qualified stock purchase that occurred prior to publication of that Treasury decision?

Answer 3: Yes. After a Treasury decision containing regulations under section 338(h)(10) is published, a section 338(h)(10) election may be made for stock sales included in a qualified stock purchase with respect to which the acquisition date occurs after January 12, 1983. (January 12, 1983, is the date of enactment of the Technical Corrections Act of 1982, which added section 338(h)(10).)

(3) *Effect of sections 382(a) and 168(d)(2)(B) on old T's final return.*

Question 1: Does section 382(a) (as in effect for taxable years beginning before January 1, 1986) apply solely by reason of the operation of section 338 to bar a net operating loss carryover to old T's final return?

Answer 1: No.

Question 2: Does section 168(d)(2)(B) operate to bar a recovery deduction for the taxable period represented by old T's final return?

Answer 2: (i) *General rule.* Subject to certain exceptions, section 168(d)(2)(B) bars a recovery deduction for the taxable period represented by old T's final return since, by reason of the operation of section 338(a)(1), all of old T's assets are disposed of during that taxable period.

(ii) *Effect of deemed sale return.* The general rule of this *Answer 2* applies only if the final return of old T is not a deemed sale return (within the meaning of § 1.338–1T(f)(3)(i)). If a deemed sale return is filed, the operation of section 338 does not prevent T from taking a recovery deduction for T's taxable period that ends immediately before the deemed sale of assets, since T's assets are not considered disposed of by reason of section 338(a)(1) during that taxable period. (That taxable period is included in the consolidated return of the selling group. See § 1.338–1T(f)(3).) Although the rule of section 168(d)(2)(B) technically applies to the deemed sale return, it is of no consequence since a recovery deduction could not be taken for that taxable period in any case.

Example (1). T is a calendar year taxpayer that files separate returns. On November 1, 1985, P purchases all of the stock of T from S in a qualified stock purchase and makes an express election for T. T is denied a recovery deduction by reason of section 168(d)(2)(B) for the ten-month period that ends at the close of November 1, 1985.

Example (2). Assume the same facts as in *Example (1)*, except that T is included in consolidated returns of the S group and therefore is required, by reason of the express election made by P for T, to file a deemed sale return under § 1.338–1T(f)(3). T is not denied a recovery deduction by reason of section 168(d)(2)(B) for the ten-month period that ends immediately before T's deemed sale of assets at the close of November 1, 1985. Such a recovery deduction is reported in the consolidated return of the S group for 1985.

(4) *Application of § 1.1502–76(c) to old T's final return.*

Question: How does § 1.1502–76(c) apply to old T's final return if, immediately before T's deemed sale of assets at the close of the acquisition date, old T was a member of an affiliated group ("selling group") that did not file consolidated returns for taxable years of the common parent of that group that precede the taxable year that includes old T's acquisition date?

Answer: (i) *General rule.* Under § 1.338–1T(f)(6)(i), old T's final return is due on the 15th day of the third calendar month following the month in which the acquisition date occurs ("final return due date"). Under § 1.1502–76(c)(2), a choice is permitted as to the taxable period included in old T's final return if, on or before the final return due date (including extensions), the selling group has not filed a consolidated return that would include old T's taxable period that ends on the acquisition date. On or before the final return due date (including extensions), T may either (i) file a deemed sale return (as defined in § 1.338–1T(f)(3)(i)), on the assumption that the selling group will file the consolidated return, or (ii) file a return

for so much of old T's taxable period as ends at the close of the acquisition date, on the assumption that the consolidated return will not be filed. For purposes of applying § 1.1502–76(c)(2), an extension of time to file old T's final return is considered to be in effect for the period during which the waiver rule of § 1.338–1T(h)(1) applies.

(ii) *Consequence of erroneous filing of deemed sale return.* If, pursuant to subdivision (i) of this *Answer*, T files a deemed sale return but the selling group does not file a consolidated return, then T must file a substituted return for old T not later than the due date (including extensions) for the return of the common parent with which old T would have been included in the consolidated return. The substituted return is for so much of old T's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(iii) *Consequence of erroneous filing of return for regular tax year.* If, pursuant to subdivision (i) of this *Answer*, T files a return for so much of old T's regular taxable year as ends at the close of the acquisition date but the selling group also files a consolidated return, T must file an amended return for old T not later than the due date (including extensions) for the selling group's consolidated return. (The amended return will be a deemed sale return.)

(iv) *Last date for payment of tax.* If either a substituted or amended final return of old T is filed pursuant to this *Answer*, the last date prescribed for payment of tax is the final return due date (as defined in subdivision (i) of this *Answer*).

(5) *Effect on old T's final return of plan to abate section 338(c)(1) amounts.*

Question: If, at the time old T's final return is filed, old T is liable for tax by reason of section 338(c)(1) gain but there is a plan in effect to abate such gain by reason of a purchase or redemption of T stock, must such gain nonetheless be reported in old T's final return?

Answer: Yes. T must file old T's final return and pay tax based on the facts as they exist at the time of filing. If the tax payment reflects section 338(c)(1) amounts that are later abated, an amended return should be filed.

(6) *Combined deemed sale return under section 338(h)(15).*

Question 1: What targets are included in a combined deemed sale return ("combined return") under section 338(h)(15)?

Answer 1: The combined return must include all of the targets (i) that are acquired by the P group from a single selling consolidated group (as defined in section 338(h)(10)(B)) and (ii) that would be required to file separate deemed sale returns for the same acquisition date if a combined return were not filed. All such targets must be included in the combined return even though, as between those targets, no one such target is a common parent corporation. Thus, for example, T and T1 may be included in a combined return if (i) T and T1 are directly owned subsidiaries of S, (ii) P, on a single day, acquires from S all of the stock of both T and T1 in qualified stock purchases, and (iii) under the circumstances, T and T1 would be required to file separate deemed sale returns if a combined return were not filed.

Question 2: If a combined return is filed, will the losses of one target included in that return offset the gains of another target, and will a similar rule apply to tax credits?

Answer 2: Yes. Gains and losses recognized on the deemed sale of assets by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions ("SRLY restrictions") of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return will continue to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule will apply to tax credits. For SRLY restrictions, see, *e.g.*, §§ 1.1502–1(f), 1.1502–3(c), 1.1502–4(f), 1.1502–21(c), and 1.1502–22(c).

Question 3: How is the combined return made?

Answer 3: The combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all of the targets required to be included in the combined return. The combined return reflects the deemed sales of all of the targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an "Election to file a combined return under section 338(h)(15)." The attachment must—

(i) Contain the name, address, and employer identification number of each target required to be included in the combined return,

(ii) Contain the following declaration (or a substantially similar declaration): "EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN," and

(iii) Be signed (in the manner prescribed in § 1.338–1T(d)(1)(v)) by a person authorized to act on behalf of each of those targets.

(l) *Miscellaneous matters affecting new T*—(1) *Effect of old T liabilities.*

Question: Is new T liable for old T's tax liabilities, including new tax liabilities resulting from the deemed sale?

Answer: Yes. For purposes of subtitle F of the Internal Revenue Code, new T is treated as a continuation of old T. Thus, new T will be liable for old T's tax liabilities. The shareholders of old T also will be liable, however, for those tax liabilities of old T tax that are attributable to taxable years in which those shareholders and old T joined in a consolidated return. See § 1.1502–6(a).

(2) *Availability of investment tax credit; recovery deductions.*

Question 1: Is new T entitled to the investment tax credit for property it is deemed to purchase under section 338(a)(2)?

Answer 1: Yes, provided that the property would qualify for the investment tax credit if new T acquired it in an actual purchase. The property acquired by new T in the deemed purchase generally will be subject to the used property limitations of section 48(c)(2). Notwithstanding § 1.338–1T(f)(3)(v), old T and new T are not considered component members of the same controlled group for purposes of applying section 179(d)(2)(B) to section 48(c)(1) (relating to the related party limitation on the definition of "used section 38 property").

Question 2: Is new T entitled to recovery deductions under section 168(a) for property it is deemed to purchase under section 338(a)(2)?

Answer 2: Yes. New T generally is permitted to take recovery deductions on recovery property acquired in the

deemed purchase of assets, and may make new elections under section 168 without regard to the elections made by old T. For purposes of the "anti-churning" rule of section 168(e)(4) and the rule of section 168(f)(10) (under which the transferee of property is treated as the transferor in certain cases for purposes of applying section 168(a)), old T is not a related person with respect to new T.

(3) *Effect of acquisition of partnership interest in deemed purchase under section 338(a)(2).*

Question: If one of the assets held by old T at the close of the acquisition date is an interest in a partnership with respect to which an election under section 754 applies, then may new T's deemed purchase of that partnership interest cause an adjustment under section 743(b) to the basis of partnership property (with respect to new T only)?

Answer: Yes. The provisions of subchapter K of the Code (relating to partners and partnerships) apply as if the deemed sale and purchase under section 338(a) were an actual sale and purchase.

(4) *Employment taxes; employee plans.*

Question 1: May wages earned by the employees of old T be considered wages earned by such employees from new T for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act)?

Answer 1: Yes.

Question 2: For purposes of applying the rules applicable to employee benefit plans (including, for example, those plans described in sections 79, 104, 105, 120, 124, 125, 127, and 129), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simiplified employee pensions (section 408(k)), and tax qualified stock option plans (sections 422A and 423), are old T and new T to be treated as a single employer?

Answer 2: Yes.

Par. 2. Section 1.338—It is amended as follows—

1. Paragraph (c) is amended by—

a. Removing from the first sentence the words "the 60th day after the date of publication of temporary regulations § 1.338–4T" and by adding in their place the words "August 23, 1985", and

b. Removing the third sentence thereof and by adding in its place the following sentence: "See paragraph (e)(1) of this section for an attached schedule containing information relating to target and such other corporations."

2. Paragraph (e)(1) is revised to read as set forth below.

3. Paragraph (e)(2) is revised to read as set forth below.

4. Paragraph (e)(3) is amended by removing the last sentence thereof and by adding in its place the following sentence: "Failure to comply with the requirements of paragraphs (e) (1) and (2) of this section, however, will not invalidate a statement of election (or, if applicable, a gain recognition election under § 1.338–4T(j)(2)) and will have no effect on the applicability of section 338(f)(1)."

5. Paragraph (f)(7)(ii) is amended by removing the words "the 60th day after the date of publication of temporary regulations § 1.338–4T" and by adding in their place the words "August 23, 1985".

6. Paragraph (h) is amended by—

a. Removing, from each place they appear, the words "the 60th day after the date of publication of temporary regulations § 1.338–4T" and by adding in their place the words "August 23, 1985",

b. Removing, from the first sentence of paragraph (h)(1), the words "such 60th day" and by adding in their place the words "August 23, 1985", and

c. Removing, from the first sentence of paragraph (h)(2)(ii), the words "such 60th day" and by adding in their place the words "August 23, 1985".

7. Paragraph (j)(2) is amended by removing from the third sentence the words "the 60th day after the date of publication of temporary regulations § 1.338–4T" and by adding in their place the words "August 23, 1985".

§ 1.338–1T Elections under section 338(g) of the Internal Revenue Code of 1954 (temporary).

* * * * *

(e) *Schedule; attachments to target returns*—(1) *Schedule of information relating to corporations subject to election*—(i) *Required data.* A schedule providing the information specified in this paragraph (e)(1)(i) ("required data") must be attached to the statement of election. The schedule must contain the name, address, and employer identification number of each corporation subject to the statement of election by reason of section 338(f)(1) as of the day the statement of election is filed. In addition, the schedule must—

(A) Disclose the fair market value of the consideration paid by the purchasing corporation for the stock of each such corporation as well as for the stock of the corporation for which the statement of election is expressly made ("target corporations").

(B) Identify the portion of that consideration represented by the following components: (*1*) cash, (*2*) purchase money debt, and (*3*) other components of consideration (with each such other component separately stated), and

(C) Disclose the liabilities of each of the target corporations (as of the close of the particular target's acquisition date, with the tax liability resulting from the deemed sale of assets under section 338(a)(1) separately stated).

(ii) *Transitional rule.* If a statement of election filed on or before August 23, 1985, does not include the schedule with all of the required data, the requirements of paragraph (e)(1)(i) of this section will be satisfied if, on or before August 23, 1985, the schedule (with a copy of the previously filed statement of election attached) is filed with the Internal Revenue Service Center(s) with which the statement of election is required to be filed under paragraphs (c) and (d) of this section. That schedule must include the required data for each corporation subject to the statement of election as of the day the schedule is filed.

(2) *Attachments to target returns; additional filings with certain Service Centers*—(i) *Attachments.* The following items ("required items") must be attached to old target's final return and to the first return of new target (or, if target is a foreign corporation not subject to United States tax (as defined in paragraph (k)(3)(iii) of this section), to the returns specified in paragraph (k)(6) of this section): (A) a copy of the statement of election, (B) the schedule described in paragraph (e)(1) of this section ("schedule"), and (C) if a gain recognition election under section 338(b)(3) is made in the statement of election, a copy of the gain recognition statement ("GRS") See § 1.338–4T(j)(2) for guidance on the GRS. The requirement of the preceding sentence applies both to the corporation for which the statement of election is expressly made and to a corporation subject to such a statement by reason of section 338(f)(1).

(ii) *Transitional rule.* If all of the required items (with the required contents) are not attached to a return filed on or before August 23, 1985, the requirements of paragraph (e)(2)(i) of this section will be satisfied if, on or before August 23, 1985, all of the required items (with the required contents) are filed with the Internal Revenue Service Center(s) with which the returns to which the required items should have been attached were filed ("corrective statement").

(iii) *Additional filings with certain Service Centers.* On or before the day on which a return or corrective statement described in paragraph (e)(2)(i) or (ii) of this section is filed, the

required items also must be filed (A) with the Internal Revenue Service Centers with which the statement of election is required to be filed under paragraphs (c) and (d) of this section and (B) if the GRS is a required item, with each other Service Center with which each affected P group member (determined as of the day of filing) files its annual income tax return. For the definition of "affected P group member," see § 1.338–T(j)(2) *Answer 5* (ii)(A). The required items need not, however, be filed with a Service Center that already has received the identical required items.

(iv) *Schedule and GRS must be updated.* The schedule attached to a return or filed as part of a corrective statement under paragraph (e)(2) (i) or (ii) of this section (or filed with a Service Center under paragraph (e)(2)(iii) of this section) must contain the required data described in paragraph (e)(1)(i) of this section for each corporation subject to the statement of election as of the day the schedule is filed. Similarly, the GRS filed under the circumstances described in the preceding sentence must include the name, address, and employer identification number of each corporation that is an affected P group member as of the day the GRS is filed.

* * * * *

§ 1.338–2T [Amended]

Par. 3. Section 1.338–2T is amended by removing, from each place they appear in *Example 1* and *Example (2)* of paragraph (j), the words "the 60th day after the date of publication of temporary regulations § 1.338–4T" and by adding in their place the words "August 23, 1985".

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "1.338–4T . . . 1545–0702".

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

This Treasury decision is issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 324, 26 U.S.C. 338; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

Approved: April 17, 1985.

Ronald A. Pearlman,

Assistant Secretary of the Treasury.

[FR Doc. 85–9899 Filed 4–19–85; 4:31 pm]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[LR-33-85]

Income Taxes; Questions and Answers Relating to Domestic Matters Under Section 338 of the Internal Revenue Code of 1954; Cross-Reference

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations that add a new § 1.338–4T, relating to miscellaneous matters under section 338, and that amend existing temporary regulations §§ 1.338–1T and 1.338–2T, relating generally to procedural matters under section 338. The text of new § 1.338–4T and of the revisions to §§ 1.338–1T and 1.338–2T also serves as the comment document for this notice of proposed rulemaking.

DATES:

Proposed Effective Date

The regulations are proposed to generally apply to stock acquisitions made after August 31, 1982.

Date for comments and requests for a public hearing. Written comments and requests for a public hearing must be delivered or mailed by June 24, 1985.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [LR–33–85], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Duane H. Pellervo of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3458, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new temporary regulations § 1.338–4T to Part 1 of Title 26 of the Code of Federal Regulations ("CFR") and amend temporary regulations §§ 1.338–1T and 1.338–2T, which were published as T.D. 7942 in the **Federal Register** on February 8, 1984 (49 FR 4722), and which were amended and redesignated (as §§ 1.338–1T and 1.338–2T) by temporary regulations published as T.D. 7975 in the **Federal Register** on September 6, 1984 (49 FR 35086). The final regulations that are proposed to be based on the new and amended temporary regulations would be added to Part 1 of Title 26 of the CFR. Those final regulations would provide guidance on a broad range of issues under section 338 of the Code, as added by section 224 of TEFRA (Pub. L. No. 97–248; 96 Stat. 485) and as amended by section 306 (a) (8) of the TCA (Pub. L. No. 97–448; 96 Stat. 2402) and section 712 (k) of the TRA (Pub. L. No. 98–369; 98 Stat. 946). For the text of the new and amended temporary regulations, see T.D., published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the additions to the regulations.

Appropriate Amendments to Regulations Under Affected Sections To Be Made

If the rules in the temporary regulations that relate to sections of the Code other than section 338 are issued in the form of final regulations, the appropriate regulations sections will be amended to reflect those rules (see *e.g.*, the regulations under sections 48, 79, 168, and 304).

Regulatory Flexibility Act and Executive Order 12291

Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**. The collection of information requirements contained herein have been submitted to the Office of Mangement and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Drafting Information

The principal author of these proposed regulations is Duane H. Pellervo of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.301–1–1.383–3

Income taxes, Corporations, Corporate distributions, Corporate adjustments, Reorganizations.

These regulations are proposed to be issued under the authority contained in sections 338 and 7805 of the Internal Revenue Code of 1954 (96 Stat. 484, 26 U.S.C. 338; 68A Stat. 917, 26 U.S.C. 7805, respectively).

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 9900 Filed 4–19–85; 4:31 pm]

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federal register

Thursday
April 25, 1985

Part III

Environmental Protection Agency

40 CFR Part 261

Identification and Listing of Hazardous Waste Management System; Proposed Rule and Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH-FRL 2755-1]

Identification and Listing of Hazardous Waste Management System

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comments.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to amend its regulations under the Resource Conservation and Recovery Act (RCRA) by listing two wastes generated during the production of methyl bromide. If this proposal is issued in final form, its effect would be to subject these wastes to the hazardous waste management standards contained in 40 CFR Parts 262–266, Part 124, and the permitting requirements of Parts 270 and 271.

DATES: EPA will accept public comments on this proposed rule until June 10, 1985. Any person may request a hearing on this amendment by filing a request with Eileen B. Claussen, whose address appears below, by May 10, 1985.

ADDRESSES: Comments should be sent to the RCRA Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments should identify the regulatory docket "Listing Methyl Bromide." Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

The public docket for this amendment is located in Room S-212A, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline at (800) 424-9346 or at (202) 382-3000. For technical information contact Dr. Howard Fribush, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475-6678.

SUPPLEMENTARY INFORMATION:

I. Background

On May 19, 1980, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published a list of hazardous wastes generated from specific sources. This list has been amended several times, and is published in 40 CFR 261.32. In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to decide whether to list wastes from the production of organobromines. EPA proposes today to add to the list two wastes from the production of methyl bromide.[1] These wastes are: (1) Wastewater from the reactor and acid drier (K131); and (2) spent adsorbent and wastewater separator solids (K132).

One of the hazardous constituents in these wastes is methyl bromide, which causes hyperplasia of the forestomach in rats. It is also a direct mutagen in the Ames *Salmonella* assay and a central nervous system depressant. The wastewater stream, K132, also contains significant concentrations of dimethyl sulfate, for which there is substantial evidence of carcinogenicity. In addition, it is a severe irritant.

The Agency previously has listed as hazardous under 40 CFR 261.33(f), discarded commercial chemical products, off-specification species, container residues, and spill residues containing methyl bromide and dimethyl sulfate, (EPA Hazardous Waste No. U029, Methyl bromide; EPA Hazardous Waste No. U103, Dimethyl sulfate). Methyl bromide and dimethyl sulfate also are listed in Appendix VIII of 40 CFR Part 261.

Methyl bromide typically is present in high concentrations in each waste stream. Methyl bromide also is mobile and persistent, and can reach environmental receptors in harmful concentrations if these wastes are mismanaged. Dimethyl sulfate, which is present in Waste K131, wastewater from the reactor and acid drier, also is present in high concentrations and is mobile and persistent. Waste K131 also is corrosive because it has a pH of less than 2. Evaluated against the criteria for listing hazardous wastes [40 CFR 261.11(a)(3)], EPA has determined that these wastes are hazardous because they are capable of posing a substantial present or potential threat to human health and the environment when improperly treated, stored, transported, disposed of, or otherwise mismanaged.

[1] The Agency already proposed to list wastes from the production of ethylene dibromide (EDB) on November 8, 1984 (see 49 FR 44718-44721). The Agency currently is evaluating other wastes from the production of other organobromines and may propose to list additional wastes in the near future.

II. Summary of the Regulation

A. List of Wastes

This proposed regulation would list as hazardous two wastes generated during the production of methyl bromide. These residual wastes are:

- K131—Wastewater from the reactor and acid drier from the production of methyl bromide.
- K132—Spent adsorbent and wastewater separator solids from the production of methyl bromide.

In 1984, three domestic companies were producing methyl bromide at three locations, with a toal annual production capacity of 33,142 kkg (73 million pounds). The major uses for methyl bromide are as a soil fumigant (80%) and as a space fumigant (15%) (Mannsville, 1984). The total annual volume of the aqueous residual wastes from production of methyl bromide by the processes described here at nameplate capacity is approximately 12,825 kkg (28 million pounds) of reactor and acid drier wastewater (EPA Hazardous Waste No. K131) and 147 kkg (324,000 pounds) of spent adsorbent and wastewater separator solids (EPA Hazardous Waste No. K132).

Methyl bromide typically is produced by reacting methanol with liquid hydrobromic acid. The wastes that are being listed from this operation are formed as residuals at several points in the production of methyl bromide. Waste K131 includes any of a collection of wastewaters and is formed from either of the following two operations: (1) Removal of reactor process water and (2) drying of the product with sulfuric acid. Waste K132 includes any solids formed from (1) the purification of the product by passing it over an adsorbent solid or (2) separating solids from wastewater. Due to the high (greater than 50%) concentration of sulfuric acid in waste K131, this aqueous waste has a pH less than 2. In addition, this waste has considerable quantities of methyl hydrogen sulfate (up to 25 percent), which is also corrosive. This waste, therefore, meets the corrosivity characteristic specified in 40 CFR 261.22(a)(1).

The listing background document (available from the public Docket at EPA Headquarters—see "**ADDRESSES**" section—and from the EPA Regional Libraries) and sources cited there describe this production process in detail. Sections of the background document, however, contain confidential business information (CBI); these CBI sections are not available to the public and will be deleted.

As derived from both industry study questionnaries and sampling analyses, these wastes typically contain significant concentrations of methyl bromide, a halomethane. In addition to methyl bromide, waste K131 contains significant concentrations of dimethyl sulfate, a by-product from the side reaction of methanol with sulfuric acid. The following concentrations are approximate, as they have been derived and aggregated from industry-supplied CBI.

EPA hazardous waste nos.	Hazardous constituents	Typical concentrations	
		Percent	ppm
K131	Methyl bromide	Up to 5	Up to 50,000.
	Dimethyl sulfate	Up to 0.5	Up to 5,000.
K132	Methyl bromide	Up to 1.5	Up to 15,000.

The concentrations of the hazardous constituents in these wastes are significant and present a substantial hazard to human health. Methyl bromide at a concentration of 5 percent in waste K131 is about 36,000 times greater than the ambient water quality criteria (AWQC) (1.39 mg/l for methyl bromide on the basis of chronic toxicity (USEPA), 1980a).[2] Dimethyl sulfate at a concentration of 0.5 percent in waste K131 is about 5,600,000 times greater than the estimated ambient water quality criteria of 0.0089 mg/l. Only a small percentage of these contaminates need migrate from the waste to be present in ground water at levels above the health-based standards and thus present a substantial hazard to human health and the enviroment.

Methyl bromide exhibits acute and chronic toxicity. Methyl bromide was found to cause inflammation and hyperplasia of the forestomach of rats (Danse, *et al.*, 1984). In this 90-day gavage study, 13 of 20 rats of the highest dose group (50 mg/kg) developed squamous cell carcinomas of the forestomach. Methyl bromide also is a central nervous system depressant and may clause psychic, motor, and gastrointestinal disturbances (USEPA, 1980a). Furthermore, methyl bromide exposure has been associated with convulsions and seizures in humans (Alexeeff and Kilgore, 1983), and direct damage to the brain cortex and peripheral axons (Doull, *et al.*, 1980). In addition, there are numerous accounts of human fatalities from accidental methyl bromide exposure due to pulmonary edema (Hayes, 1982; Von Oettingen 1964, Alexeeff and Kilgore, 1983), as well as reports of pathological changes in humans (Von Oettingen, 1964; Alexeeff and Kilgore, 1983) and animal kidneys (Alexeeff, 1982). Dogs chronically ingesting bromide (methyl bromide-fumigated food yielding residual bromide at a dose level of 150 mg/kg/day) for a year became obese, lethargic, and died due to high blood bromide levels (Rosenblum, 1960). In another experiment using fumigated food with residual bromide, pathological changes in the parathyroid and thyroid glands were detected (USEPA, 1980a). Methyl bromide also is a direct-acting mutagen in the Ames *Salmonella* Assay (USEPA, 1980a).

Dimethyl sulfate also is very toxic. Based on numerous studies, the International Agency for Research on Cancer (IARC) and the Agency's Carcinogen Assessment Group (CAG) have determined that there is substantial evidence that dimethyl sulfate is carcinogenic. Dimethyl sulfate is carcinogenic in rats after inhalation or subcutaneous injection, producing mainly local tumors, and after prenatal exposure, producing tumors of the nervous system (IARC, 1974; USEPA, 1980b).

Methyl bromide and dimethyl sulfate, therefore, exhibit toxicological properties of regulatory concern. The listing background document and Health and Environmental Effects Profiles (HEEPs, available from the public docket at EPA Headquarters—see **"ADDRESSES"** section—and from the EPA Regions Libraries) contain additional details on the health effects of these toxicants.

Methyl bromide is a heavier-than-air gas at ambient temperatures with a vapor pressure of 1,420 mm Hg at 20 °C. At this vapor pressure, it is likely that methyl bromide can escape from the waste and present an inhalation hazard. In particular, the Occupational Safety and Health Administration (OSHA) maximum workplace standard for methyl bromide is 20 ppm (15 minute average). Due to the large concentrations of methyl bromide found in the waste—up to five percent—it is quite likely that the health-based standard would be exceeded and may pose an inhalation hazard if the waste was not properly contained. In addition, based on the high solubility of methyl bromide in water (17.5 g/l at 25 °C.), and its miscibility with organic solvents, such as chloroform, the Agency believes that methyl bromide can migrate from the matrix of the waste and is capable of entering the aquatic environment either through runoff or leaching through solid. The Agency also believes that, due to its high migration potential, methyl bromide is likely to leach to ground water in sufficient concentrations to pose a health hazard. Based on the volume of waste that could be generated from methyl bromide production, approximately 640 kkg (1.4 million pounds) of methyl bromide could escape into the environment annually from waste K131, and approximately 1.5 kkg (3,200 pounds) of methyl bromide could escape into the environment annually from waste K132.[3] Based on the toxicity of methyl bromide, the Agency believes these waste volumes are significant.

The Agency has also determined that methyl bromide is sufficiently persistent in both water and air to present a human health hazard. Data show that methyl bromide has a half-life of approximately 40 days in water at 20 °C. and pH 7 (Ehrenberg *et al.*, 1974), a time more than adequate for human exposure. In addition, the estimated lifespan of methy bromide in the troposphere is 1.7 years (Molina *et al.*, 1982). These facts have been demonstrated by actual damage cases (see below).

The Agency further believes that dimethyl sulfate is mobile and can enter the environment via surface water or ground water if improperly managed. This is based on its high solubility in water (2.8 g/100 ml at 18 °C.) and organic solvents, such as ether. Based on the volume of waste that could be generated from production of methyl bromide, approximately 64 kkg (141,000 pounds) of dimethyl sulfate could escape into the enviroment annually from waste K131. Based on the carcinogenicity of dimethyl sulfate, the Agency believes this volume of waste is significant.

Environmental fate data indicate that dimethyl sulfate hydrolyzes to sulfuric acid and methanol with a half-life of 1.2 hours at 25 °C. and pH 7 (USEPA, 1977), and much slower at less than 18 °C. (Clayton and Clayton, 1981). As reported

[2] The agency has developed an AWQC based on carcinoginicity for halomethanes (EPA, 1980a) a class of chemical to which methyl bromide belongs. This AWQC, 0.19 mg/L, has not been used in this evaluation since methyl bromide has not been determined to be a carcinogen. In the event that methyl bromide is shown to a carcinogen, however, the risk that is presented by these levels would be much greater.

[3] The amunt of methy bormide that could escape into the environment is a worst case estimate and is equal to the amount of methyl bromide in the waste. These figures are calculated by multiplying the percent of methy bromide in the waste by the total volume of waste produced. The amount of methyl bromide in waste K131 is 12,825 kkg × 0.05 = 640 kkg. This method is also used to determine the amount of dimethyl sulfate that could escape into the environment.

in the industry study questionnaires and confirmed by sampling analyses, however, there is a significant concentration of dimethyl sulfate in waste K131 (up to 0.5 percent). The Agency believes that this data demonstrates that dimethyl sulfate, as reported in the matrix of the waste, has a greater half-life than that reported in an aqueous solution of dimethyl sulfate, and thus is likely to be sufficiently persistent to enter the environment, if mismanaged.

The Agency has documented an environmental damage incident for wastes which contain methyl bromide. This damage incident provides evidence that methyl bromide is mobile, and may persist after migrating. Methyl bromide was found at 15 ppb downstream of Vandale's Junkyard in Marietta, Ohio (JRB, 1984). This junkyard, a National Priority List site under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), covers about 10 acres. In addition to non-hazadous solid wates, hundreds of drums containing waste dyes and organic chemicals were disposed of in the junkyard. As a result of geological conditions and poor management practices, the stream, sediments, and an adjacent marshy area are contaminated with a variety of chemicals, including methyl bromide.

Additional evidence of the mobility of methyl bromide is found in field studies where methyl bromide was used as a fumigant. Methyl bromide was sampled in the drainage water during the leaching periods of soil after the application of the fumigant. Within 24 hours after the start of leaching, the maximum concentration of methyl bromide in the drainage water was 9.3 mg/l [Wegman *et al.*, 1981). In addition, in data gathered from the Netherlands where methyl bromide is used as soil fumigant, bromide ion was found in precipitation, surface water, and ground water up to 0.98, 41, and 17 mg/l, respectively (Wegman *et al.*, 1983).

Air monitoring was performed at three organobromide production plants in Arkansas in 1976. Trace quantities (less than 31 ppm) of methyl bromide were found in the air near the plants (USEPA, 1978). These data show that methyl bromide is released into the environment and therefore could pose a threat to human health and the environment.

Moreover, the Agency believes that current industry waste management practices may not adequately protect human health and the environment from significant exposures to methyl bromide and dimethyl sulfate. Since information on management of these hazardous wastes is contained in CBI documents, the Agency cannot reveal the actual management practices. Certain of these waste streams, however, typically are disposed using methods that, under reasonable worst case mismanagement scenarios, may pose a significant risk to human health and the environment. These practices do not prevent methyl bromide from leaching from these wastes and contaminating surface water and ground water at significant levels. See the listing background document and the HEEPs for additional details on the fact, transport, and mismanagement of methyl bromide and dimethyl sulfate.

Consequently, due to the high concentrations of methyl bromide and dimethyl sulfate in these wastes, the toxic effects of these constituents, the mobility of methyl bromide and dimethyl sulfate via leaching and runoff, and their persistence in the environment, EPA has determined that these wastes pose a significant present or potential hazard to human health and the environment, when improperly stored, transported, disposed of, or otherwise mismanaged. The Agency, therefore, is proposing to add these wastes to the hazardous waste list in 40 CFR 261.32.

B. Test Methods for New Appendix VII Compounds

The Agency recently proposed making standardized test methods mandatory for use by persons who wish to conduct waste evaluations (49 FR 38786–38809; October 1, 1984). Appendix III of 40 CFR Part 261 is a list of the chemical analysis test methods which the Agency has determined are suitable for use in analyzing wastes for hazardous constituents. The Agency has evaluated the currently available methods and has determined that Method Numbers 8010 and 8240 are suitable for testing for the presence and concentration of methyl bromide, while Method Number 8250 is suitable for testing for dimethyl sulfate. These methods are described in "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods," SW–846, 2nd ed., July 1982, as amended, and are available from: Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, (202) 783–3238, Document number: 055–002–81001–2. This manual explains why the methods selected for methyl bromide and dimethyl sulfate are appropriate. A subscription to this manual sells for $55.00.

III. Regulatory Status of Hazardous Wastewaters

Under the existing hazardous waste regulations, wastewaters that are hazardous and that are treated in a tank as part of a wastewater treatment facility that is subject to regulation under either section 402 or section 307(b) of the Clean Water Act are exempt from the Parts 264 and 265 management standards. Treatment units, such as concrete basins, which may or may not be in-ground, routinely provide for certain steps in a wastewater treatment process such as equalization, neutralization, aeration (in biological treatment facilities), settling, (in both biological and physical/chemical treatment facilities), flocculation or treated wastewater storage before recycling.

Where such units are constructed primarily of non-earthen materials designed to provide structural support, they are defined as tanks for purposes of the hazardous waste regulations. See 40 CFR 260.10 (definition of "tank"). In applying this definition, the Agency has provided guidance that a unit is to be evaluated as if it were free-standing and filled to its design capacity with the material it is intended to hold. If the walls or shell of the unit alone provide sufficient structural support to maintain the structural integrity of the unit under these conditions, the unit is considered to be a tank. Alternatively, if the unit is not capable of retaining its structural integrity without supporting earthen materials, it is considered to be a surface impoundment, and subject to Parts 264 and 265 requirements.

When wastewaters, including those covered by the listing proposed today, are stored or treated in tanks that are part of a unit subject to regulation under section 307(b) or 402 of the Clean Water Act, they are exempt from the Parts 264 and 265 management standards.

IV. CERCLA Impacts

The hazardous wastes designated by today's proposed rule, if listed, become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). (See CERCLA section 101(14), 42 U.S.C. 9601(14).) A final listing of these methyl bromide production wastes under RCRA would affect reporting responsibilities under CERCLA. (See CERCLA section 103, 42 U.S.C. 9603; 48 FR 23552–23605, May 25, 1983 (proposal); and 50 FR 13456–13521, April 4, 1985 (final).)

Methyl bromide, a hazardous constituent in both waste streams, and dimethyl sulfate, a hazardous constituent in waste K131, will be added to 40 CFR Part 261, Appendix VII if this proposal is made final. Both of these compounds have a statutory reportable

quantity (RQ) of one pound. The final RQ for methyl bromide is 1,000 pounds, and the final RQ for dimethyl sulfate is one pound.

The Agency is currently assessing the available data on all of the hazardous constituents and the waste streams to determine if an adjustment from the statutory one pound RQ is appropriate.

V. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within their States. (See 40 CFR Part 271 for the standards and requirements for authorization.) Authorization, either interim or final, may be granted to State programs that regulate the identification, generation, and transportation of hazardous wastes and the operation of facilities that treat, store, or dispose of hazardous waste. Interim authorization is granted to States with programs that are "substantially equivalent" to the Federal program (section 3006(c)). Final authorization is granted to States with programs that are equivalent to the Federal program, consistent with the Federal program and other State programs, and that provide for adequate enforcement (section 3006(b)).

Under RCRA, prior to the Hazardous and Solid Waste Amendments of 1984, once EPA authorizes a State program, EPA suspends administration and enforcement within the State of those parts of the Federal program for which the State is authorized. In authorized States, EPA does retain enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility. However, under section 3006(g) of the Hazardous and Solid Waste Amendments of 1984, any requirement pertaining to hazardous wastes promulgated pursuant to the Amendments is effective in authorized States at the same time it is effective in other States. EPA will administer and enforce the requirements in each State until the State is authorized with respect to such requirements.

The listing and related management standards promulgated in today's rule are applicable in all States since the requirements are imposed pursuant to the Amendments. Thus, EPA will implement these standards until authorized States revise their programs to adopt these rules.

B. Effect on State Authorizations

Under RCRA, authorized State programs must be revised to incorporate new requirements imposed by statute or EPA regulations. The procedures and schedule for State adoption of these requirements is described in 40 CFR 271.21. See 49 FR at 21678 (May 22, 1984).

States that have final authorization must revise their programs within a year of promulgation of today's regulations if only regulatory changes are necessary. These deadlines can be extended in exceptional cases. See 40 CFR 271.21(e).

States that submit official applications for final authorization less than 12 months after promulgation of today's regulations may be approved without including standards equivalent to those promulgated. However, once authorized, a State must revised its program to include the listing and related management standards substantially equivalent or equivalent to EPA's within the time period discussed above.

Under the HSWA, states revising their programs to adopt new requirements imposed under the HSWA may do so based on state requirements that are equivalent or substantially equivalent to the HSWA requirements. See section 3006(g)(2). Thus, a state seeking authorization for today's amendments may do so based on controls that are equivalent or substantially equivalent to today's rule.

VI. Status of Methyl Bromide Under FIFRA

Methyl bromide is used as a fumigant and therefore is also subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide (FIFRA). FIFRA uses a statutory risk-benefit balancing test: products are "registered" (authorized) if they generally will not cause any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of use. Accordingly, pesticides that present more than a substantial risk can be approved if the benefits outweigh the risks. (See FIFRA sections 3(c)(5), 3(c)(7), and 2(bb).) If the Agency ever decides that a pesticide no longer meets the standards for registration, then its registration may be canceled. Proponents of the pesticide, however, are afforded opportunities to contest the Agency's determination that registration should be canceled.

Methyl bromide is a major substitute for ethylene dibromide, whose agricultural use as a soil, grain, and grain milling fumigant and as a post-harvest treatment for other commodities was recently banned by the Agency (see 48 FR 46228–56248, October 11, 1983). Since methyl bromide is registered for these uses, the Agency believes that methyl bromide production may increase significantly.

The Agency's Office of Pesticides Program has requested oncogenicity and reproduction studies on methyl bromide, as well as additional food residue and environmental fate data on this chemical. As of this writing, the Office of Pesticides and Toxic Substances plans to complete a Registration Standard and to reach an initial Special Review decision on methyl bromide by the end of 1985. The Agency believes that the decision to list methyl bromide waste streams as RCRA hazardous wastes, for which a different statutory standard applies, is consistent with the treatment of methyl bromide under FIFRA.

VII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must determined whether a regulation is "major" and therefore requires a Regulatory Impact Analysis. The total additional cost for disposal of the wastes as hazardous wastes is estimated to be less than $23,000 (JRB, 1985), well under the $100 million constituting a major regulation. This cost is insignificant and results from some companies already managing these wastes as if they were hazardous wastes and from minimal additional compliance requirements, such as manifesting these additional wastes.

In addition, we do not expect that there will be an adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Since this proposal is not a major regulation, no Regulatory Impact Analysis is being conducted.

VIII. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on small entities.

The hazardous wastes proposed to be listed here are not generated by small entities (as defined by the Regulatory Flexibility Act). Accordingly, I hereby certify that this proposed regulation

would not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis. (See 5 U.S.C. 603.)

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: April 17, 1985.

Lee M. Thomas,

Administrator.

References

Alexeeff, G.V. 1982. Determination of toxic effects in mice following acute inhalation exposure to methyl bromide. Ph.D. Dissertation, University of California, Davis. (As reported in DIALOG (Dis. Abst.) 1984).

Alexeeff, G.V. and Kilgore, W.W. 1983. Methyl bromide. Res. Rev. 88:100–153.

Clayton, G.D. and Clayton, F.E. 1981. Patty's industrial hygiene and toxicology. 3rd ed., vol. 2. John Wiley & Sons, Inc. New York, NY.

Danse, L.H.J.C., *et al.* 1984. Methyl bromide: Carcinogenic effects in the rat forestomach. *Toxicology and Applied Pharmacology.* 72:262–271.

Doull, J., Klassen, C.D., and Amdur, M.O., ed. 1980. Casarett and Doull's toxicology, the basic science of poisons, 2nd ed. New York: MacMillan. p. 191.

Ehrenberg, L., *et al.* 1974. On the reaction kinetics and mutagenic activity of methylating and beta-halogenethylating gasoline additives. *Radiation Botany.* 15:185–194.

Hayes, W.J., Jr. 1982. Pesticides studies in man. Baltimore, MD: Williams and Wilkins. pp. 140–142.

IARC. 1974. International Agency for Research on Cancer. IARC monographs on the evaluation of the carcinogenic risk of chemicals to humans. Volume 4. Lyon, France. pp. 271–276.

JRB Associates, Inc. 1984. Mismanagement Incident Data Base. McLean, VA.

JRB Associates, Inc. 1985. Economic impact screening analysis of methyl bromide listing. Confidential business information. EPA Contract No. 68–01–6563.

Mannsville. 1984. Chemical products synopsis—Methyl bromide. Mannsville Chemical Products Corp. Cortland, NY.

Molina, L.T., Molina M.J., and Rowland, F.S. 1982. Ultraviolet absorption cross sections of several brominated methanes and ethanes of atmospheric interest. *J. Phys. Chem.* 86:2672–2676.

Rosenblum, I., *et al.* 1960. Chronic ingestion by dogs of methyl-bromide-fumigated food. *Arch. Environ. Health* 1:316–323.

USEPA. 1977. Review of the environmental fate of selected chemicals. NTIS PB No. 267121, EPA–560/5–77–003. Washington, D.C.

USEPA. 1978. Environmental monitoring near industrial sites: Brominated chemicals. NTIS PB No. 286484. EPA–560/6–78–002.

USEPA. 1980a. Office of Water Regulations and Standards. Ambient water quality criteria for halomethanes. EPA–440/5–80–051. Washington, D.C.

USEPA. 1980b. Office of Research and Development. "The Carcinogen Assessment Group's List of Carcinogens." Washington, D.C. Unpublished.

Von Oettigen, W.F. 1964. The halogenated hydrocarbons of industrial and toxicological importance. New York: Elsevier Publishing Company. pp. 25–55.

Wegman, R.C., *et al.* 1981. Methyl bromide and bromide ion in drainage water after leaching of glasshouse soils. *Water, Air, and Soil Pollution.* 16(1):3–11. Cited from abstract.

Wegman, R.C., *et al.* 1983. Bromide-ion balance of a polder district with large-scale use of methyl bromide for soil fumigation. *Food Chem. Toxicol.* 21(4):361–7. Cited from abstract.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In § 261.32, add the following waste streams to the subgroup "Organic Chemicals":

§ 261.32 Hazardous wastes from specific sources.

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
•	• • • • •	
K131	Wastewater from the reactor and acid drier from the production of methyl bromide.	(C, T)
K132	Spent adsorbent and wastewater separator solids from the production of methyl bromide.	(T)
•	• • • • •	

3. Add the following entries in numerical order to Appendix VII of Part 261:

Appendix VII—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous constituents for which listed
•	• • • • •
K131	Methyl bromide, dimethyl sulfate.
K132	Methyl bromide.
•	• • • • •

[FR Doc. 85–9997 Filed 4–24–85; 8:45 am]

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federal register

Thursday
April 25, 1985

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

Indian Prototype Cost Determinations Issued Under the United States Housing Act of 1937; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-85-1518; FR-2096]

Indian Prototype Cost Determinations Issued Under the United States Housing Act of 1937

[Note.—This document originally appeared in the issue of Tuesday, April 16, 1985, at 50 FR 14994. It is reprinted at the request of the department because the Appendix appearing on pages 14995–14998 contained typographical errors.]

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of prototype cost determinations.

SUMMARY: This Notice establishes prototype limits for development of Indian housing new construction projects under the United States Housing Act of 1937. The prototype cost determinations stated in this Notice supersede the prototype cost schedules previously published, and all amendments and additions to such schedules published before the date of this Notice.

FOR FURTHER INFORMATION CONTACT: Andrew Suski, Office of Indian Housing, Room 4234, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 755–6522. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 6(b) of the United States Housing Act of 1937 (42 U.S.C. 1437d) requires HUD to determine costs in different areas for construction and equipment (prototype costs) of new dwelling units suitable for occupancy by lower income families. This determination must be published in the **Federal Register.** The prototype costs constitute a limit on development cost for the construction and equipment of new housing projects.

The schedules in this Notice represent updates of the per unit prototype cost limits for development of Indian housing under 24 CFR Part 905 (§§ 905.213 and 905.214(b)), last published and effective December 7, 1982 (47 FR 55136). This Notice does not affect the schedules for public housing prototype costs published December 6, 1984 (49 FR 47772). Additionally, this notice does not govern prototype costs for Indian housing projects located in areas not identified in the appendix to this notice (e.g., Oklahoma). These projects will be governed by the prototype costs set forth in the December 6, 1984 public housing notice.

The prototype cost determinations for the update are based on actual public and Indian housing project data from HUD field offices and on construction cost information published by the private sector of the housing industry. The update includes approximately a 3.4 percent national average increase to reflect inflation. This increase should be sufficient based on our experience that the prototype limits last published have been more than sufficient to permit Indian housing development to proceed during the past two years.

Since Section 6(b) of the U.S. Housing Act of 1937 provides that the prototype costs shall become effective upon publication in the **Federal Register**, this Notice is effective today, the day of publication.

The following factors were considered in developing prototype cost:

(1) Prototype cost comprises the cost of dwelling structure, (Account No. 1460), and dwelling equipment, (Account No. 1465), as described in HUD Low-Rent Housing Accounting Handbook 7510.1, Chapter 3, Section 15, and includes a pro rata share of the builders' fee and overhead, insurance, social security, sales tax, and bonds.

(2) Prototype cost does *not* include the costs of site acquisition, site improvement, nondwelling structures or spaces (and equipment), planning (architectural-engineering fees, permit fees, inspection, and similar costs), relocation, interest or IHA administrative costs, all of which are described in HUD Low-Rent Housing Accounting Handbook 7510.1, Chapter 3, Section 15.

(3) Section 6(b) of the Act identifies eight factors the Secretary is to consider in determining prototype costs, which include such things as the effectiveness of existing cost limits in the area, advice of local housing producers, maximization of energy conservation for heating, lighting and other purposes, and the extra durability required for safety, security and economical maintenance of the housing. (See 42 U.S.C. 1437d).

(4) Prototype costs are ceiling amounts that may be approved for a particular project. Development of Indian housing under Part 905 also must take into account compliance with applicable design requirements in the Indian housing regulations. The HUD Minimum Property Standards are taken into account but are not controlling. (See § 905.212(a)).

Written comments will be considered, and additional amendments will be published, if the Department determines that acceptance of the comments is appropriate. Comments with respect to the cost limits for a given location should be sent to the local HUD office having jurisdication for that location. A list of these offices follows:

	Area(s) served
Region 5, Office of Indian Programs, 300 S. Wacher Drive, Chicago, Illinois 60606.	Regions 1–5 and Iowa.
Region 6, Indian Programs Division, 200 N.W. Fifth Street, Oklahoma City, Oklahoma 73102.	Oklahoma, Kansas, Missouri, Texas, Arkansas and Louisiana.
Region 8, Office of Indian Programs, 1404 Curtis Street, Denver, Colorado 80202.	Region 8 and Nebraska.
Region 9, Office of Indian Programs, 101 North First Ave., Phoenix, Arizona 85003.	Region 9 and New Mexico.
Region 10, (Seattle) Office of Indian Programs, 1321 Second Ave., Seattle, Washington 98101.	Region 10, except Alaska.
Region 10, (Anchorage) Office of Indian Programs, 701 C Street, Box 64, Anchorage, Alaska 99513.	Alaska.

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since statutorily required prototype costs are categorically excluded under 24 CFR 50.20(1).

The Catalog of Federal Domestic Assistance program is: 14.147, Low-Income Housing-Homeownership for Low-Income Families (Turnkey III, Mutual Help for Indians).

The prototype per-unit cost schedule for all prototype cost areas issued under 24 CFR § 905.213 are hereby established as shown on the tables set forth below entitled "Prototype Per-Unit Cost Schedule."

(Sec. 7(d), Department of HUD Act, 42 U.S.C. 3535(d); Sec. 6(b), U.S. Housing Act of 1937, 42 U.S.C. 1437d(b))

Dated: April 10, 1985.

Warren T. Lindquist,

Assistant Secretary for Public and Indian Housing.

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APPENDIX

PROTOTYPE PER UNIT COST SCHEDULE - INDIAN HOUSING

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
			Region I				
Mashantucket	Connecticut						
		Detached	36293	40068	47823	57749	64160
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Old Town	Maine						
		Detached	31744	33605	40016	48184	53406
		Row	27918	30968	36914	44462	49425
		Walk-up	28073	32106	37689	43842	48081
Calais	Maine						
		Detached	30917	34225	40791	49218	54802
		Row	28435	31589	37844	45496	50356
		Walk-up	28280	32364	38206	44255	48443
			Region III				
Big Cyprus	Florida						
		Detached	24558	29986	36655	43687	48029
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Brighton	Florida						
		Detached	24558	29986	36655	43687	48029
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Cherokee	North Carolina						
		Detached	22851	28125	33553	39861	44152
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
			Region V				
Manistique	Michigan						
		Detached	30762	37741	44927	53923	60437
		Row	26574	32674	38827	43480	52165
		Walk-up	26005	31951	38051	45703	51183
Cass Lake	Minnesota						
		Detached	36035	44410	53096	63694	71036
		Row	31847	39240	46892	56250	62764
		Walk-up	28177	35880	42394	49012	52114

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Red Lake	Minnesota						
		Detached	32881	40843	48598	58163	64780
		Row	29262	36087	42963	51597	57646
		Walk-up	25850	32933	38930	44927	49529
Lac Du Flambeau	Wisconsin						
		Detached	32623	40171	47978	57697	64367
		Row	28900	35570	42342	50873	56612
		Walk-up	25281	32106	37793	43790	48184
Red Cliff	Wisconsin						
		Detached	31279	38517	46013	55267	61730
		Row	27556	33915	40585	48805	54233
		Walk-up	24144	30658	36190	41825	46220
			Region VI				
Dulce	New Mexico						
		Detached	34122	38000	45341	54492	60954
		Row	29004	32364	38465	46013	51235
		Walk-up	27866	31744	37483	43583	47874
Isleta	New Mexico						
		Detached	31537	35311	42084	50821	56663
		Row	25643	28538	34225	40791	45599
		Walk-up	22645	25643	30400	35208	38568
Laguna	New Mexico						
		Detached	32313	35828	42911	51752	57542
		Row	29159	32571	38878	46582	51752
		Walk-up	25592	29211	34536	39964	43997
Mescalero	New Mexico						
		Detached	32416	36035	42963	51752	57697
		Row	29986	33243	39706	47357	52734
		Walk-up	26160	29728	35208	40895	44824
Penasco	New Mexico						
		Detached	32571	36293	43221	52165	58318
		Row	30400	33812	40326	48184	53561
		Walk-up	26677	30245	35828	41360	45651

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Pojoaque	New Mexico						
		Detached	33036	36862	43945	52631	58938
		Row	30555	33760	40326	48184	53665
		Walk-up	26677	30400	35932	41670	45703
Zuni	New Mexico						
		Detached	31227	38723	46116	55526	61730
		Row	28177	35001	41567	49787	55629
		Walk-up	25333	32054	37948	43738	48236
Standing Rock	New Mexico						
		Detached	32674	40429	48081	58007	64367
		Row	31123	39757	45961	54905	61420
		Walk-up	27763	35104	41619	47874	52837
Nageezi	New Mexico						
		Detached	33140	41102	48857	58886	65401
		Row	31589	39240	46582	55733	62454
		Walk-up	28228	35621	42187	48650	53561
Alamo	New Mexico						
		Detached	32674	40429	48081	58007	64367
		Row	31123	38568	45961	54905	61420
		Walk-up	27763	35104	41619	41619	47874
			Region VII				
Sac + Fox	Iowa						
		Detached	26987	33450	39654	47771	53148
		Row	25436	31227	37121	44669	49891
		Walk-up	23730	30245	36966	42911	45393
Holton	Kansas						
		Detached	27763	34381	40740	49063	54647
		Row	26367	32778	38982	46995	52424
		Walk-up	26936	34174	40326	46737	51648
Santee	Nebraska						
		Detached	31744	39240	46840	56353	63022
		Row	27556	34122	40636	48857	54440
		Walk-up	26626	33760	39964	46375	51338

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Winnebago	Nebraska						
		Detached	31744	39240	46840	56353	63022
		Row	27556	34122	40636	48857	54440
		Walk-up	26626	33760	39964	46375	51338
			Region VIII				
Ronan	Montana						
		Detached	33450	39861	45961	55422	61782
		Row	30451	36242	41825	50511	56198
		Walk-up	29676	35311	40791	49218	54802
Browning	Montana						
		Detached	34432	40740	46892	56405	62971
		Row	31175	37017	42549	51183	57077
		Walk-up	30451	36035	41463	49839	55629
Harlem	Montana						
		Detached	35518	42291	48857	58938	65659
		Row	32313	38465	44410	53561	59662
		Walk-up	31485	37483	43325	52217	58111
Wolf Point	Montana						
		Detached	35156	41722	48701	58369	65245
		Row	31951	37948	44204	53044	59197
		Walk-up	31123	36966	43066	51597	57646
Lodge Grass	Montana						
		Detached	36242	41877	48340	58266	64935
		Row	32157	37172	42911	51700	57646
		Walk-up	30400	36190	41774	50356	56146
Ft. Totten	North Dakota						
		Detached	39137	44669	49994	58266	63901
		Row	35518	40533	45393	52889	58007
		Walk-up	34277	39034	43687	50976	55836
Mission(SD)	South Dakota						
		Detached	35415	42187	48857	58835	65452
		Row	33657	40068	46375	55888	62143
		Walk-up	30089	35880	41515	50046	55681

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Ft. Thompson	South Dakota						
		Detached	36759	43790	50718	61109	68089
		Row	34898	41670	48184	58059	64677
		Walk-up	31227	37224	43118	51959	57904
McLaughlin	South Dakota						
		Detached	37741	44824	51907	62350	69588
		Row	35880	42653	49270	59197	66073
		Walk-up	32157	38155	44100	52993	59145
Wagner	South Dakota						
		Detached	34070	40585	46995	56560	63074
		Row	32313	38568	44669	53768	59920
		Walk-up	28952	34484	39964	48029	53561
Sisseton	South Dakota						
		Detached	34742	41205	47564	57129	63850
		Row	33036	39137	44152	54285	60696
		Walk-up	29521	35001	40429	48546	54285
			Region IX				
Kaibab	Arizona						
		Detached	32261	39861	47564	57180	63850
		Row	29366	36190	43273	51803	57801
		Walk-up	27504	35208	41412	48029	52837
Ft. Mojave	Arizona						
		Detached	28228	35104	41567	50046	55733
		Row	26626	33088	39189	47202	52527
		Walk-up	24144	29986	35466	42808	47667
Sacaton	Arizona						
		Detached	27763	34019	40688	48960	54388
		Row	25126	30917	36862	44359	49529
		Walk-up	23937	30089	35673	41153	45393
San Carlos	Arizona						
		Detached	28435	35156	41722	50304	55991
		Row	25953	32054	38258	45910	51131
		Walk-up	24661	31020	36862	42497	46892

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Sells	Arizona						
		Detached	29004	35673	42497	51235	56922
		Row	26470	32468	38723	46582	51959
		Walk-up	25126	31537	37379	43221	47616
White River	Arizona						
		Detached	28538	35415	42084	50614	56198
		Row	26419	32571	38827	46633	52165
		Walk-up	24816	31227	37121	42756	47306
Camp Verde	Arizona						
		Detached	28073	34794	41102	49787	55474
		Row	25902	31847	37948	45599	50976
		Walk-up	24299	30710	36397	41929	46220
Keams Canyon	Arizona						
		Detached	34587	42859	50976	61368	68244
		Row	32830	40688	49477	57852	64780
		Walk-up	29314	36966	43790	50511	55629
Ft. McDowell	Arizona						
		Detached	27815	34587	40895	49322	54957
		Row	25850	31847	37844	45341	50925
		Walk-up	23989	30503	36087	41515	46065
Parker	Arizona						
		Detached	29366	36035	42859	51752	57646
		Row	26729	32881	39292	47150	52682
		Walk-up	25230	31899	37638	43480	48133
Peach Springs	Arizona						
		Detached	31744	39292	46633	56250	62660
		Row	29262	36087	43014	51648	57542
		Walk-up	27401	34742	41102	47357	52372
Rough Rock	Arizona						
		Detached	36190	44772	53303	64211	71294
		Row	34225	42549	50666	60541	67675
		Walk-up	30606	38672	45806	52786	58163

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Steamboat	Arizona						
		Detached	34432	42601	50666	61006	67779
		Row	32571	40429	48133	57542	64315
		Walk-up	29159	36759	43531	50201	55267
Kaibito	Arizona						
		Detached	38000	47047	55991	67417	74965
		Row	36035	44669	53199	63591	71139
		Walk-up	32157	40636	48133	55474	61058
Lone Pine	California						
		Detached	33036	41774	49374	57180	62971
		Row	31537	39861	47099	54595	60127
		Walk-up	30038	37948	44876	51959	57232
Ft. Bidwell	California						
		Detached	41515	51493	56301	62350	66124
		Row	39395	48960	53510	59145	61471
		Walk-up	35725	44359	48391	53613	55733
Susanville	California						
		Detached	40843	50769	57284	64315	68244
		Row	38827	48081	54544	60696	64780
		Walk-up	35208	43531	49322	54905	58680
Grindstone	California						
		Detached	36759	45599	51597	57594	61368
		Row	35001	43480	49012	54802	58318
		Walk-up	31744	39344	44410	49425	52786
Hoopa	California						
		Detached	37483	46582	50666	56198	58421
		Row	35570	44100	48133	53458	55319
		Walk-up	32209	39912	43531	48184	50046
Tule River	California						
		Detached	38465	47771	51959	57646	59972
		Row	36500	45238	49374	54802	56715
		Walk-up	33036	40895	44669	49425	51338

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Barona	California						
		Detached	22490	34484	42446	50976	56973
		Row	21094	32261	39602	47512	53096
		Walk-up	20525	32261	39395	45651	50097
Campo	California						
		Detached	20163	34794	42859	51493	57490
		Row	18871	32571	40016	48029	53613
		Walk-up	18509	32726	40016	46323	50821
Morongō	California						
		Detached	21559	33088	40791	48960	54595
		Row	20370	30968	38206	45755	51183
		Walk-up	19543	30813	37638	43583	47823
Torrez-Martinez	California						
		Detached	29469	36604	43687	52579	58473
		Row	27866	34225	40895	49322	54750
		Walk-up	27091	34225	40688	47099	51597
Chemehueui	California						
		Detached	30658	37689	44721	54027	60075
		Row	28900	35259	42032	50873	56405
		Walk-up	28487	35053	41619	50252	55939
Santa Ynez	California						
		Detached	30245	37224	44255	53354	59455
		Row	29934	33191	41102	52993	59093
		Walk-up	26574	32985	39189	47409	52682
Rincon	California						
		Detached	22076	33864	41619	49891	55784
		Row	20732	31640	38930	46685	52269
		Walk-up	20163	31640	38775	44876	49218
Pala	California						
		Detached	21404	32830	40481	48495	54130
		Row	20215	30710	37896	45393	50769
		Walk-up	19388	30555	37327	43221	47461

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Elko	Nevada						
		Detached	37638	41825	48960	58524	64884
		Row	35776	39757	46530	55578	61678
		Walk-up	32778	36500	42704	50976	56612
Fallon	Nevada						
		Detached	37638	41825	48960	58524	64884
		Row	35776	39757	46530	55578	61678
		Walk-up	32778	36500	42704	50976	56612
Gardnerville	Nevada						
		Detached	37638	38517	45289	54182	59869
		Row	35776	39757	46530	55578	61678
		Walk-up	32002	35518	41619	49684	55164
			Region X				
Coeur D'Alene	Idaho						
		Detached	32881	40636	48340	58318	64884
		Row	30968	38103	45186	54802	60696
		Walk-up	27660	35466	41619	48081	53096
Mission(OR)	Oregon						
		Detached	34019	41877	50304	60386	67055
		Row	32261	39757	46995	56870	63229
		Walk-up	31175	39499	46530	54182	59610
Warm Springs	Oregon						
		Detached	31847	39240	47047	56508	62712
		Row	29986	37017	43738	52941	58835
		Walk-up	29055	36759	43325	50459	55474
Tahola	Washington						
		Detached	29676	36397	43531	52320	58163
		Row	28590	35156	42032	50459	56198
		Walk-up	27298	32830	40016	48081	53510
Nespellum	Washington						
		Detached	30762	37741	45134	54182	60127
		Row	28900	35466	42291	50821	56456
		Walk-up	28332	34742	41515	49839	55319

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PROTOTYPE PER UNIT COST SCHEDULE

Indian Prototype Area	State	Design Type	One Bedroom Prototype	Two Bedroom Prototype	Three Bedroom Prototype	Four Bedroom Prototype	Five Bedroom Prototype
Yakutat	Alaska						
		Detached	40378	49839	59300	71088	79618
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Ft. Yukon	Alaska						
		Detached	56405	69795	83030	101229	0
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Galena	Alaska						
		Detached	60748	74965	89338	108777	0
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Coastal Area North of Aleutians	Alaska						
		Detached	68451	84530	100505	122839	0
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Tok Junction	Alaska						
		Detached	52579	64780	77188	9409	0
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Barter Island North Coastal Area	Alaska						
		Detached	70415	86959	103555	126407	0
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0
Island Area North of Aleutians	Alaska						
		Detached	78119	96524	114929	140159	0
		Row	0	0	0	0	0
		Walk-up	0	0	0	0	0

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